FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

428

RONALD BLUME,

Plaintiff,

vs.

LARRY KOOS, Appellee, and CONNIE CASEY, Appellant,

Defendants.

Filed April 28, 1978

475
2-60625

Appeal from Calhoun District Court - Edward J. Flattery, Judge.

Defendant-Casey appeals from that portion of a judgment ordering her to contribute to defendant-Koos one-half of the judgment of $30,000 entered in favor of plaintiff against Koos for personal injuries he sustained. REVERSED.

M. Gene Blackburn, of Mitchell, Murray, Blackburn & Coleman, of Fort Dodge, counsel for appellant.

James L. Kramer, of Johnson, Burnquist, Erb, Latham & Gibb, of Fort Dodge, counsel for appellee.

Heard by Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Defendant-Connie Casey appeals from that portion of a judgment ordering her to contribute to her co-defendant, Larry Koos, one-half of the judgment of $30,000 entered in favor of plaintiff-Ronald Blume against Koos. The instant action was commenced by plaintiff for personal injuries he sustained when the snowmobile on which he was riding and which was being operated by Koos collided with a snowmobile driven by Casey.

On appeal, Casey contends that the procedure utilized by Koos and approved by the trial court, wherein Koos orally moved at the close of plaintiff's evidence to amend his answer to include a cross-claim against Casey for contribution, was so foreign to the Rules of Civil Procedure as to render the cross-claim, and portion of the judgment dealing with it, void. Casey also argues that when Koos pleaded the guest statute, § 321.494, The Code, as a defense to plaintiff's action, Koos was precluded from subsequently seeking contribution from her because he had admitted that there was no common liability between the co-defendants.[1] Our resolution of the first issue renders consideration of the second one unnecessary.

A brief discussion of the procedural aspects of this case is essential to an understanding of the issue involved. Casey was driving her snowmobile when it collided with a snowmobile being operated by Koos with Blume as a passenger, causing extensive injuries to all three individuals. Blume filed a petition in which he alleged that the accident occurred as a proximate result of the negligence of both Casey and Koos. Defendants filed separate answers--Casey alleging that the proximate cause of plaintiff's injuries was the negligence of Koos and Koos alleging that the proximate cause was the negligence of Casey. Koos further alleged that plaintiff was a guest on his snowmobile and would be barred from recovering against him under the guest statute, § 321.494, The Code.

The case was tried to the court on March 16, 1977. At the close of plaintiff's evidence, Koos' attorney dictated a motion to dismiss the petition as to Koos into the record, alleging in essence that plaintiff had not proven a prima facie case under the

[1] Blume is not involved in this appeal.

guest statute, which he claimed was applicable here. Casey also moved to dismiss the petition as to her on the ground that plaintiff had failed to prove she was negligent. Both motions were submitted with the case. Also at this time, the attorneys for Casey and Blume announced to the court that they had reached a compromise and had entered into an "agreement not to proceed" which was in the nature of a covenant not to sue, but was not a settlement and was not to be construed as a release of any claims or tortfeasors. Koos then asserted that if Blume released or discharged Casey as a tortfeasor, he should be released as well and the petition dismissed. Koos then asked counsel for Casey for clarification of the arrangement and if Casey had rested. Apparently, counsel refused to respond.

Next, Koos requested leave of court to amend his answer to plaintiff's petition by adding a separate division seeking contribution from Casey if a judgment was entered against Koos. Although it appears from the record that the court did not rule on this request, Koos' attorney proceeded to dictate into the record a claim for contribution against Casey. Koos then rested and no written claim or petition against Casey was ever filed.

Thereafter, Casey's attorney filed a written motion to strike the remarks of Koos' counsel insofar as they purported to state a claim for contribution against Casey, which motion was resisted by Koos. On April 6, 1977, Blume filed a dismissal without prejudice as to Casey and on April 7, the court issued its Ruling and Judgment in which it found both Koos and Casey negligent and awarded Koos contribution from Casey.

Casey contends that Koos' "claim" against her which was dictated into the record at the close of plaintiff's evidence was not a claim at all, but was merely denominated as a motion for leave to amend the answer, which was never directly ruled upon by the court. She argues that the procedures followed by Koos and approved by the court were so completely foreign to those required by the Iowa Rules of Civil Procedure as to render the cross-claim void, especially since (1) the rules make no provision for the oral pleading of original claims or causes of action, (2) the claim here was improperly denominated as a motion for leave to amend the answer instead of an original claim or petition, (3) at the time the motion was made, she was out of the case, subject only to the payment of the settlement amount and the drafting of formal settlement

documents, (4) due to the unique and totally foreign method of procedure, she was precluded from filing an answer, taking discovery or introducing any evidence in defense of the claim, thereby violating both the letter and spirit of the rules, and (5) at the time the court entered its Ruling and Judgment, plaintiff's petition had been dismissed as to her and the court no longer retained jurisdiction over her.

Several specific Rules of Civil Procedure are applicable to our analysis in the instant case. Rule 48 provides that an original civil action is "commenced" within the meaning of the rules by filing a petition with the court. Rule 33 specifies that a pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter of either the original action or a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant. Rule 68 classifies a cross-claim as an "allowable pleading," and rule 69(a) requires that a pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third party claim, contain a statement of the claim showing the right to relief and a demand for judgment. Rule 78 specifies that each pleading must be captioned and bear the signature and address of the pleader. Rule 79 requires that all averments be set out in separate numbered paragraphs, and rule 82 specifies that all pleadings must be served on other parties and filed with the court. Further, a party served with a pleading stating a cross-claim is given 20 days in which to answer. See rule 85(b), R.C.P.; see also rules 121-134 (discovery and inspection) and rule 136 (pretrial conference).

Casey contends that the sum effect of these rules, when applied to the record in this case, is that no petition or cross-claim was ever made against her. All the record reflects, and all the court's Ruling and Judgment is predicated upon, is Koos' motion for leave to amend the answer by adding a separate division which purportedly was intended to state some cause of action against Casey. However, Koos argues that a pleading need not be in writing and that, nevertheless, this court is not bound by the specific name given a pleading, but is obligated to determine the character of it from its allegations and evaluate it accordingly. Schulte v. Mauer, 219 N.W.2d 496, 502 (Iowa 1974); Chicago, R. I. & P. R. v. Linwood Stone Products Co., 258 Iowa 1378, 1381, 138 N.W.2d 902 (1965).

From a review of the relevant Rules of Civil Procedure, we are satisfied that written pleadings are contemplated. Further, although we are obligated to determine the character of pleadings from the allegations contained therein, we must also construe and enforce them to secure a just, speedy and inexpensive determination of all controversies on their merits. See rule 67, R.C.P. We conclude that the procedures utilized in the instant case prevented a just determination of the issue posed by Koos' "claim" against Casey for the reasons she cites.

We agree with Casey that the procedures followed in the instant case were analogous to the entry of summary judgment in the absence of a motion or opportunity to be heard. Such a procedure was recently disapproved in In re Estate of Campbell, 253 N.W.2d 906, 908 (Iowa 1977), where the court stated:

> As we interpret this rule [rule 237], summary judgment may be entered only for one who has filed a motion asking that relief and only after notice and hearing on that motion. The result reached here deprived Nielsen of the fundamental fairness to which he was entitled. See Miller v. United Security Ins. Co., supra, 496 S.W.2d at 875, where the court said summary judgment relief is an extreme and drastic remedy, bordering on a denial of due process. We believe this is true unless courts are careful to preserve a litigant's basic right to contest his adversary's claims. Nielsen had no real opportunity to do so.

The situation here is no different. Casey had no opportunity to respond to the alleged claim for contribution and the result reached denied her of the fundamental fairness to which she was entitled.

We are persuaded that the Rules of Civil Procedure would have little meaning if we were to approve the procedures employed in this case. These rules are intended to adopt a uniform method of procedure. As the court stated in Windus v. Great Plains Gas Co., 255 Iowa 587, 600, 122 N.W.2d 901 (1963):

> ....Procedural rules are not always merely technical. They represent the best means of trying lawsuits by orderly procedures so that all may know what may and what may not be done as found by the experience of courts and lawyers over the years. ... The rule that Courts favor trials on the merits should be qualified to read that courts favor expeditious trials on the merits under settled rules of procedure ... (emphasis in original).

We reverse that portion of the judgment of the district court which grants Koos contribution against Casey. However, we wish to make it clear that our decision is without prejudice to Koos' right to pursue any claim to contribution he may hold against Casey in a separate action.

REVERSED.