

IN THE COURT OF APPEALS OF IOWA

FILED

DEC 18 1985

CLERK SUPREME COURT

Filed December 18, 1985

ERMA J. CASPERS, JEAN MARIE CASPERS)
CONNIE KAY ECHOLS, BRENDA JAY ECHOLS,)
RICK G. CASPERS, RIVA JANE ECHOLS,)
RANDY RAY CASPERS, and RUSTY A. CASPERS,)

Plaintiffs-Appellants,)

vs.)

GEORGE H. CASPERS, RONALD DEAN WOOD,)
and SHERYL A. WOOD,)

Defendants-Appellees.)

5-504
84-1647

25

Appeal from the Iowa District Court for Jones County - August F. Honsell,
Judge.

Plaintiff Erma appeals from trial court's order dismissing her application to set aside a decree modifying her divorce decree. Appeal dismissed for lack of jurisdiction. All plaintiffs appeal from trial court's order dismissing their action for damages and to set aside a deed. **AFFIRMED.**

Benjamin W. Blackstock, of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, for the plaintiff-appellants.

David M. Remley and J. C. Fraker, of Remley, Heiserman & Williams, Anamosa, for the defendant-appellee George Caspers.

Heard by Danielson, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

Defendant George Caspers and Plaintiff Erma Caspers were divorced in October of 1967. The other plaintiffs are their seven children. Defendants Ronald and Sheryl Woods are purchasers of a farm (south farm) owned by George and Erma at the time of their divorce.

In the divorce decree, the south farm was given to George with Erma to have the use and enjoyment of the farm. George, however, was responsible for all expenses and was to receive all income. Furthermore, George was ordered to give the property by will in accordance with a stipulation of settlement between the parties.

In June of 1970, the parties, both represented by separate counsel, filed a joint application to modify the divorce decree. The application sought to modify the decree to give concessions to both parties. The application sought to have title to the south farm go to George, and Erma sought to release any interests she held in the farm. The divorce decree was modified to release Erma and the childrens' interest in the south farm.

In 1981 Erma filed an action under the caption of the divorce decree seeking to have the 1970 modification set aside as fraudulent. She also asked to have her alimony increased.

Erma, Jean Marie Caspers, Connie Kay Echols, Brenda Jay Echols, Rick G. Caspers, Riva Jane Echols, Randy Ray Caspers, and Rusty A. Caspers in 1983 filed a petition (Jones Co. Equity No. 14-1083) asking for money damages because George allegedly made fraudulent and false representations at the time the decree was modified and alleging defendants Dean and Sheryl Wood knew of the irregularity when the deed to them was entered and that the deed should be set aside. The trial court denied plaintiffs' claims on all counts except to increase Erma's alimony. The plaintiffs have appealed.

The first issue we must address is whether the appeal is properly perfected in the divorce case. The divorce case is captioned Erma Caspers, Plaintiff v. George Caspers, Defendant. The divorce case had been consolidated for trial with Jones County Equity No. 14-1083.

On September 18, 1984, the trial court entered a Judgment and Decree which was captioned in both causes and made separate findings and separate determinations in each action. Plaintiffs filed one notice of appeal which we set out

IN THE IOWA DISTRICT COURT IN AND FOR JONES COUNTY

ERMA J. CASPERS, JEAN MARIE)	
CASPERS, CONNIE KAY ECHOLS,)	
BRENDA JAY ECHOLS, RICK G.)	
CASPERS, RIVA JANE ECHOLS,)	
RANDY RAY CASPERS,)	
and RUSTY A. CASPERS)	IN EQUITY NO. CE 14-1083
)	
Plaintiffs,)	NOTICE OF APPEAL
vs.)	
)	
GEORGE H. CASPERS, RONALD)	
DEAN WOOD and CHERYL A.)	
WOOD,)	
Defendants.)	

TO THE DEFENDANT GEORGE H. CASPERS AND
 HIS ATTORNEY, DAVID REMLEY
 P. O. Box 228
 Anamosa, Iowa 52205
 and
 TO DEAN WOOD AND SHERYL A. WOOD, AND
 THEIR ATTORNEY, STEVEN WARBASSE
 1715 1st Avenue S.E.
 Cedar Rapids, Iowa 52403:

The Plaintiffs, Erma J. Caspers, Jean Marie Caspers, Connie Kay Echols, Brenda Jay Echols, Rick G. Caspers, Riva Jane Echols, Randy Ray Caspers, and Rusty A. Caspers, hereby appeal to the Supreme Court of Iowa from the Final Judgment entered herein on September 18, 1984, and all rulings and orders inhering therein.

EELLS, BLACKSTOCK, AFFELDT & HARMS

By S/Benjamin W. Blackstock
Benjamin W. Blackstock
Suite 201, Cedar Plaza
385 Collins Road N.E.
Cedar Rapids, Iowa 52402

ATTORNEYS FOR PLAINTIFFS

Appellees argue, and we agree, the appeal was perfected only as to Jones County Equity No. 14-1083.

Appellants claim the notice is also an appeal of the divorce action because it contains the language: ". . . appeal to the Supreme Court of Iowa from the Final Judgment, entered herein on September 18, 1984 and all rulings and orders inhering therein." They claim because the notice stated they appealed from the September 18 judgment they did in fact appeal from the judgments in both cases. What they ignore, however, is that the notice says "from the Final Judgment entered herein." (emphasis added). The only way we can determine the cause appealed is to refer to the caption. The caption shows only one cause.

If the intent of the appellant to appeal from a judgment may be inferred from the text of the notice, and if the appellee has not been misled by the defect, the appeal will be entertained. It is preferred to hear a case on the merits and not mere technicalities. Hawkeye Security Insurance Co. v. Ford Motor Co., 199 N.W.2d 373, 378 (Iowa 1972); In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980). In Hawkeye the court determined there was no assertion of prejudice nor was there any showing of confusion.

There is nothing in appellants' notice that would alert us to the fact that appellant was appealing from anything other than Jones County Equity No.

14-1083. The question is whether there was substantial compliance. State v. Birch, 306 N.W.2d 781, 783 (Iowa 1981). We find none and determine we only have jurisdiction to entertain the issues raised in Jones County Equity No. 14-1083. We address only the issues presented to the trial court in that cause.

Plaintiffs claim the trial court erred in failing to find the modification was obtained by fraud. The trial court held the evidence produced at trial does not obviate the impact of the statute of limitations applied to actions for money damages found on fraud. We agree. Iowa Code section 614.4 provides:

In actions for relief on the ground of fraud or mistake, and those for trespass to property, the cause of action shall not be deemed to have accrued until the fraud, mistake, or trespass complained of shall have been discovered by the party aggrieved.

Section 614.4 applies only to actions for relief on the ground of fraud that were, at common law solely cognizable in equity before the adoption of the statute; that an action at law for damages growing out of fraud or deceit is not such an action as was solely cognizable in chancery prior to the adoption of the statute and the provision of section 614.4 would not apply to such actions. Pride v. Peterson, 173 N.W.2d 549, 554 (Iowa 1970). We agree with the trial court that the claims if any are barred by the statute of limitations.

Appellants state as their final issue "Children not parties in original action." The appellant then goes on to argue that Erma and George could not make an agreement to their childrens' detriment. We fail to find that this issue was presented to the trial court. We therefore refuse to consider it for the first time on appeal. Shill v. Careage Corp., 353 N.W.2d 416, 420 (Iowa 1984).
AFFIRMED.