

FILED

MAR 23 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WILLIAM CARAHER, Guardian of)
MARK WILLIAM CARAHER, JOHN)
GERALD CARAHER, MAUREEN)
JOAN CARAHER, and COLLEEN)
ANN CARAHER, Minors,)

Filed March 23, 1982 **408**

Plaintiffs-Appellants,)

vs.)

JAMES RAMAEKERS and BERNETTE)
RAMAEKERS,)

1-410
2-66267

Defendants-Appellees.

Appeal from Greene District Court - James C. Smith and Milton Seiser,
Judges.

Plaintiffs appeal the trial court's decree denying plaintiffs' request for double rental damages under section 562.2, The Code 1977, and awarding plaintiffs \$35 per acre cash rents in an equity action brought to recover the reasonable rental value for use of an eighty-acre tract of farmland, contending (a) the uncontradicted evidence establishes cash rents of \$100 per acre as the prevailing and customary fair rental value of the farmland to which plaintiffs are entitled and (b) plaintiffs were entitled to double rental damages under section 562.2, The Code 1977, since defendants willfully held over after the expiration of their lease.

AFFIRMED.

James R. Van Dyke, Carroll, for plaintiffs-appellants.

Robert L. Horak of Pauley, Horak & Mumma, Jefferson, and David L. Phipps of Whitfield, Musgrave, Selvy, Kelly & Eddy, Des Moines, for defendants-appellees.

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

Plaintiffs appeal the trial court's decree denying plaintiffs' request for double rental damages under section 562.2, The Code 1977, and awarding plaintiffs \$35 per acre cash rents in an equity action brought to recover the reasonable rental value for use of an eighty-acre tract of farmland contending (a) the uncontradicted evidence established cash rents of \$100 per acre as the prevailing and customary fair rental value of the farmland to which plaintiffs are entitled and (b) plaintiffs were entitled to double rental damages, under section 562.2, The Code 1977, since defendants willfully held over after the expiration of their lease. We affirm the trial court's decree awarding plaintiffs judgment of \$2800 with statutory interest from November 1, 1977.

This appeal involves a claim for rents for the use of an eighty-acre tract of farmland originally owned by Edward L. Caraher. It is the culmination of the problems that arose when both plaintiffs and defendants asserted their right to farm the land under leases granted by two different people. In 1975 Edward Caraher died and bequeathed a life estate in the eighty acres to his brother, Father Paul E. M. Caraher, with the remainder interest going to the children of his nephew, William Caraher. William Caraher is the plaintiff in this action as guardian for his children. James Ramaeker, defendant, had farmed the land for many years under a landlord-tenant relationship with Edward Caraher. Upon Edward's death, Robert Bruner, Edward's attorney, informed Father Paul Caraher of his right to receive the income from the eighty acres for the remainder of his life. Being a member of the Franciscan Order, Father Paul Caraher, who had taken a vow of poverty and spurned affairs of business, engaged Robert Bruner to be his agent for the purpose of securing a tenant to farm the land.

Bruner was contacted by William Caraher in 1975 about renting the farm. At that time, they agreed if William Caraher in fact rented the farm, the terms would be the same as under the agreement between Edward Caraher and defendant. Since William Caraher agreed to rent the farm, Mr. Bruner served a notice of termination of farm tenancy on defendant in August of 1976. Defendant considered the termination notice to be a formality which had to be satisfied whenever the ownership of the land changed or the landlord wanted to renegotiate the tenancy. Consequently, since he knew Edward Caraher had died, defendant approached Father Caraher about renegotiating the terms of the lease in September of 1976. At that time, defendant then entered into a lease with Father Caraher. Thus, both plaintiffs and defendants claimed to have a leasehold interest in the land through Father Caraher or his agent, Robert Bruner.

Plaintiffs, asserting their right to possession of the land resulting from the lease arrangement negotiated with Robert Bruner, sought a declaration of their rights. That action was equity no. 15917. The trial court concluded defendant was a good faith purchaser, without notice of the pre-existing interest asserted by plaintiffs, who would prevail over plaintiff's prior unrecorded interest. The court noted plaintiffs were not entitled to possession of the land over defendant, but could recover from Father Caraher, damages to be determined in a subsequent hearing scheduled at plaintiffs' request.

On March 19, 1977, Father Paul Caraher died. Plaintiffs then filed a petition in equity, case No. 15955, claiming defendants' interest in the farm was extinguished by the death of the life tenant. Plaintiffs claimed defendants' lease was an interest per autre vie, which automatically dissolved upon the termination of the life estate. Plaintiffs sought immediate possession and double damages, pursuant to section 562.2, The Code 1977, for defendants' willful holdover past the termination of the life tenant's interest. On September 13, 1977, the court held plaintiffs were entitled to immediate possession of the land, subject to defendants'

right to remove the growing crops upon maturity and denied plaintiffs' request for double damages, finding no willful holdover. Defendants then appealed the portion of the final judgment entered against defendants in case no. 15955, which transferred immediate possession of the land to plaintiffs. Defendants' appeal was dismissed without prejudice by the supreme court.

Plaintiffs then filed a motion for a hearing to determine the fair rental value of the farm for the period after the death of the life tenant. Plaintiffs contended defendants should pay a cash rent of \$100 per acre, as that was the fair cash rental value of the land. Defendants contend if there is rent due it should be a crop share rental, with credit for the loss of stalk tillage and fertilizer carryover. Defendants also filed a special appearance contending the trial court lacked jurisdiction to conduct a hearing on damages due to the pending appeal. The trial court dismissed defendants' special appearance, stating the appeal did not divest the trial court of jurisdiction to hear the issue of damages since defendants only appealed the portion of the order concerning immediate possession. After a hearing on damages, the trial court awarded plaintiffs the equivalent of \$35 per acre cash rents plus interest.

On appeal, plaintiffs claim the trial court applied an incorrect rule of law and contends double damages should have been awarded for defendants' willful holdover beyond the termination of the lease. Defendants claim the trial court lacked jurisdiction to conduct a hearing on the issue of damages. Defendants also challenge this court's jurisdiction to review the issue of double damages claiming plaintiffs failed to preserve error on that issue.

Initially, we conclude the trial court had jurisdiction to conduct a hearing on the issue of damages. Defendants claim the trial court's order filed September 13, 1977, implicitly denied plaintiffs' request for general damages and thereby precludes any further action on that issue by the trial court. Defendants also

claim their notice of appeal, filed after the trial court filed the September 13, 1977, judgment, divested the trial court of jurisdiction pending appeal. We disagree with defendants on both arguments.

The judge, James C. Smith, in ruling on the special appearance, stated the prior order of September 13, 1977, which was also written by him, implicitly reserved the issue of damages for subsequent determination. We give the interpretation of an order by the same court that originally drafted the order great weight. In re Estate of Cooper, 215 N.W.2d 249, 260 (Iowa 1974). Given Judge Smith's interpretation of his order, we fail to find an adjudication of the issue of damages that would preclude a subsequent hearing. We also conclude defendants' appeal did not affect the trial court's jurisdiction over the issue of damages. The trial court, in ruling upon the special appearance contesting jurisdiction, stated defendants appealed only the award of immediate possession of the land to plaintiffs. Defendants did not appeal the court's order reserving the issue of damages for subsequent determination. The court, citing section 686.5, The Code 1977, and Iowa R. Civ. P. 66, held defendants' appeal divested the trial court of jurisdiction only over the issue of immediate possession. We agree with the trial court's analysis. Thus, after considering both of defendants' arguments, we conclude the trial court had jurisdiction to consider the issue of damages.

Defendants also claim plaintiffs failed to preserve error on the issue of double damages for willful holdover under section 562.2, The Code 1977. Defendants contend plaintiffs were required to appeal from the September 13, 1977, judgment denying double damages and failure to do so within the prescribed time limit barred any future appeal on that issue. The essence of defendant's argument is that the September 13, 1977, judgment constituted a final adjudication on the issue of double damages, which bars further action on that issue unless a

timely appeal had been filed. We do not accept defendants' premise the September 13, 1977, decree constituted a final adjudication.

In Shoemaker v. City of Muscatine, 275 N.W.2d 206, 208 (Iowa 1979), the court dismissed an appeal for lack of jurisdiction. In that case, the supreme court indicated the trial court's order, dismissing only part of the petition was interlocutory since the order was not finally decisive of the case and the trial court retained jurisdiction over the balance of the petition. Id. In this case, the court's order denying double rental damages did not put the issue beyond the power of the court to change since the court retained jurisdiction to determine damages. See Travelers Indemnity Company v. Cormaney, 258 Iowa 237, 243, 138 N.W.2d 50, 54 (Iowa 1965) and Rehder v. Rankin, 249 Iowa 1201, 1206, 91 N.W.2d 399, 403 (Iowa 1958), which indicate once equity jurisdiction attaches, jurisdiction will be retained in order to dispose of all issues involved in the case. This case is not a case in which a separate lawsuit would have to be initiated to obtain jurisdiction. Thus, the trial court's order was not a final adjudication. Compare Lyon v. Willie, 288 N.W.2d 884, 886-87 (Iowa 1980) (holding the trial court's order was a final adjudication since the court would lack authority to order a return to the status quo prior to the order without a new law suit) with Shoemaker v. City of Muscatine, 275 N.W.2d at 208, (holding the trial court's order dismissing a portion of the petition was not a final adjudication since the trial court retained jurisdiction of the balance of the petition and, therefore, the court still had the power to overrule its own decision). Since the September 13, 1977, order dealing with double damages was not a final adjudication, plaintiffs' appeal was properly taken.

On the merits, we reject plaintiffs' claim for double rental damages pursuant to section 562.2, The Code 1977, for willful holdover beyond the termination of the

lease. The double rental provisions of section 562.2, The Code 1977, do not apply in doubtful cases. Leslie Pontiac, Inc. v. Novak, 202 N.W.2d 114, 117 (Iowa 1972). In Leslie Pontiac, Inc. v. Novak, 202 N.W.2d at 117, the court stated in response to section 562.2, The Code 1970, "Such statutes . . . are penal in nature, to be strictly construed, and not to be extended beyond their terms and the evil intended to be remedied." We do not believe the evil intended to be remedied by section 562.2, The Code 1977, includes the holding over by a tenant whose right to possess the property had been adjudicated by a court. Not until the September 13, 1977, was there a court order transferring possession of the farm from the defendants back to the plaintiffs, and that order was subsequently stayed by Chief Justice Moore. Since section 562.2 is penal in nature and aimed at deterring unjustified tenant holdover, we refuse to apply its provisions in this case. Cf. Youngblut v. Wilson, 294 N.W.2d 813, 818 (Iowa 1980).

Plaintiffs also contend the trial court's judgment was based upon an erroneous measure of damages. The trial court made the following findings of fact. The uncontroverted evidence established \$100 per acre as the fair rental value of the farmland. Other evidence, however, established crop share leases as the customary rental arrangement in the community. Defendants had agreed to pay Edward Caraher a cash rent of \$20 per acre and Father Paul Caraher a cash rent of \$35 per acre. A severe drought during the 1976 and 1977 crop years substantially reduced the yield. Under the customary crop share lease, taking consideration of the effects of the drought, plaintiffs would have had a net return of about \$1150. Under the cash rent lease of \$35 per acre, plaintiffs would have received \$2800. It is also interesting to note plaintiffs had agreed to rent the farm for a cash rental of \$35 per acre. The court, after considering those findings of fact, indicated plaintiffs normally would be entitled to recover the customary rental value of the land, which was a crop share lease yielding \$1150. The court,

however, sitting in equity, indicated limiting plaintiffs' recovery to \$1150 would be unjust in light of the fact defendants had previously agreed to pay \$35 per acre for the use of the land. Accordingly, the trial court awarded plaintiff \$2800 plus interest, which was equal to a cash rent of \$35 per acre.

Essentially, plaintiffs claim defendants will be unjustly enriched unless plaintiff is paid a reasonable rental charge. Plaintiffs' claim is an equitable action, reviewable in this court de novo. See Guldberg v. Greenfield, 146 N.W.2d 298, 301 (Iowa 1966). Thus, we give weight to the trial court's findings of fact, but we are not bound by them. Id. We review the record to determine the reasonable rental value of the premises for the period of defendants' possession. See Leslie Pontiac, Inc. v. Novak, 202 N.W.2d 114, 117 (Iowa 1972).

Our review of the record supports the trial court's finding crop share leases are the customary form of leasing arrangement in the community. Consequently, we reject plaintiffs' contention the trial court should have awarded plaintiffs the reasonable cash rental value of \$100 per acre. Cash rental arrangements are not the customary type of leasing arrangement in that community. Since our duty in reviewing the decree of a court in equity is to "work out the equities between the parties," Skubal v. Meeker, 279 N.W.2d 23, 27 (Iowa 1979), we believe the proper award of rental damages must reflect the effect of the drought on the 1977 crop yield. Consequently, we do not believe limiting plaintiffs' recovery to the amount he would have received under a crop share lease is equitable in this case because it would not account for the effects of the drought. Such a result would provide a windfall to the defendants as defendants had previously agreed to pay a rental value in excess of the crop share yield. Therefore, we agree with the trial court defendants should pay at least the rental amount he was obligated to pay under

the prior lease. See Leslie Pontiac, Inc. v. Novak, 202 N.W.2d 114, 117 (Iowa 1972).

The trial court's decree took proper cognizance of each party's situation and fairly balanced the equities involved in this case. We affirm the trial court.

AFFIRMED.