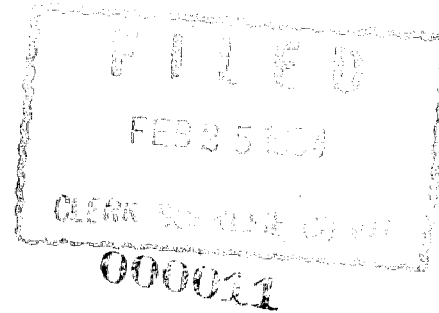


IN THE COURT OF APPEALS OF IOWA

No. 4-027 / 93-0654



HAROLD (SKIP) BERNET,

Plaintiff-Appellee,

vs.

SHARON ROGERS,

Defendant-Appellant.

Appeal from the Iowa District Court for Linn County,
Van D. Zimmer, Judge.

Defendant appeals a district court judgment providing
for forcible entry and detainer requiring her to leave
plaintiff's home. **REVERSED AND DISMISSED.**

James C. Larew of the Larew Law Office, Iowa City, for
appellant.

T. Todd Becker and Sara Riley Brown of the Tom Riley
Law Firm, P.C., Cedar Rapids, for appellee.

Heard by Oxberger, C.J., Sackett, J., and Critelli,
S.J.*

*Senior judge from the 5th Judicial District serving on
this court by order of the Iowa Supreme Court.

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SACKETT, J.

Plaintiff-appellee Harold Bernet filed a forcible entry and detainer action to remove defendant-appellant Sharon Rogers from the home where she had resided with him for six years. The trial court ordered Sharon be removed and this appeal followed. We reverse and dismiss the case.

The facts relevant to our decision are basically without dispute. Harold owns a home in Linn County. Harold and his daughter moved into the home in 1987. About this same time, Sharon, with whom Harold was having a romantic relationship, moved into the home. Sharon was not asked to pay rent and did not pay rent. Sharon did household tasks and made other substantial contributions to the household. In late October or early November 1992, Harold asked Sharon to leave. She did not leave, asking to stay until after Christmas. On January 20, 1993, Harold received a letter from a lawyer representing Sharon telling Harold that Sharon claimed some possessory interest in the home. Harold had the locks changed. Sharon got back in and had the locks changed again. She gave Harold a key to the new locks.

On February 24, 1993, Harold had a three-day notice to quit served on Sharon demanding she vacate the home in three days. Sharon did not vacate the home. On March 1, 1993, Harold filed a petition for forcible entry and detainer. Sharon answered the petition and claimed she had not received a thirty-day notice which was a precedent to

the notice to quit. Sharon asked the trial court to dismiss the petition contending the trial court did not have jurisdiction.

The trial court found Sharon was merely a guest, it had jurisdiction to entertain the action, and Sharon had no possessory right to the house and had knowledge for six months that Harold wanted her out of the house. An order was issued to be executed to remove Sharon from the premises.

Sharon appeals contending (1) the action should have been preceded by a thirty-day written notice of termination of tenancy; (2) the trial court did not have subject matter because she had enjoyed thirty days of peaceable possession after Harold's cause of action accrued; (3) Harold went in without clean hands and equity should not entertain his action; (4) the trial court erred when it determined she had no ownership interest in the property; and (5) evidence was admitted that was not relevant to the proceeding.

Review of an action of forcible entry and detainer, tried as an equitable action, is de novo. McElwee v. DeVault, 255 Iowa 30, 34, 120 N.W.2d 451, 453 (1963)(citations omitted); Roshek Realty Co. v. Roshek Bros. Co., 249 Iowa 349, 351, 87 N.W.2d 8, 10 (1958).

We address only the issue of whether the trial court had subject matter jurisdiction to entertain the forcible entry and detainer action. We find the trial court did not.

Harold had proven ownership of the property. This action is concerned with rights to possession. McElwee, 255 Iowa at 36, 120 N.W.2d at 454. We disagree with the trial court's findings that Sharon was a mere guest in the home.

Sharon was granted permission from Harold to occupy the premises. For some six years the house was Sharon's only home. She made substantial contributions to the household. She had a possessory right of occupancy. She was a tenant at will.

Harold, for six months, asked Sharon to leave. He agreed she could stay beyond Christmas. After Christmas, she was in peaceful possession of the premises with Harold's knowledge for more than thirty days.

An action for forcible entry and detention of real property is a summary remedy. Iowa Code § 648.1 (1993). It is purely statutory. Ashpole v. Delaney, 217 Iowa 792, 794, 253 N.W. 30, 31 (1934). Because it is a drastic remedy, the statute conferring the right is given strict construction. Fritch & Himes v. Reynolds, 189 Iowa 16, 20, 176 N.W. 297, 299 (1920).

Iowa Code section 648.18 provides thirty days' peaceable possession, with the knowledge of the plaintiff after the cause of action accrues, is a bar to this proceeding. The statutory provision that thirty days' peaceable possession, with the knowledge of plaintiff after cause of action accrues, is a bar to forcible entry and

detainer proceedings is applicable only to summary actions for forcible entry and detainer and does not affect ordinary actions for possession of real estate. Thomas v. Brodsack, 215 N.W.2d 503, 504 (Iowa 1974). A forcible entry and detainer proceeding is not exclusive but is cumulative of any other remedy a party may have. Wernet v. Jurgensen, 241 Iowa 833, 839, 43 N.W.2d 194, 198 (1950)(citations omitted).

Forcible entry and detainer to recover possession was barred by purchasers' peaceable possession of property with vendor's knowledge after vendor's right of action accrued. Warren v. Yocum, 223 N.W.2d 258, 263 (Iowa 1974).

We find Sharon's peaceful possession after Harold told her that her tenancy at will was terminated deprived the trial court of jurisdiction to entertain the action and it should have been dismissed. Because of our holding, we need not address the other issues raised by Sharon on appeal and do not do so.

REVERSED AND DISMISSED.