FILED
DEC 27 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MAURICE CULLEN,

Plaintiff,

vs.

MARY LYNAM, OSCAR LYNAM, BONNIE SCHEPERS, LEONARD SCHEPERS, DONALD ERICKSON, NANCY ERICKSON, STEVEN ERICKSON, and BARBARA ERICKSON,

Defendants.

Filed December 27, 1983

OSCAR LYNAM and LEONARD SCHEPERS,

Counterclaimants-Appellants,

vs.

MAURICE CULLEN,

Defendant to Counterclaim-Appellee.

3-320
83-301

Appeal from Cass District Court - E. F. Hansen, Judge.

Counterclaimants Oscar Lynam and Leonard Schepers appeal from the judgment against them on their counterclaim for farm labor. AFFIRMED.

Ann M. Nielsen of Nielsen & Nielsen, P.C., Corning, for counterclaimants-appellants.

Roland K. Landsness of Cambridge, Feilmeyer, Landsness, Chase, Anderson & Wells, Atlantic, for defendant to counterclaim-appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

Counterclaimants Oscar Lynam and Leonard Schepers appeal from the judgment against them on their counterclaim for farm labor. The plaintiff and the counterclaimants' wives were heirs to a small farm; plaintiff brought this action for partition and appellants counterclaimed for the value of their work in taking care of the farm. Appellants assert that (1) the court took judicial notice of a fact which is not generally known or readily verifiable; (2) they are entitled to the reasonable value of their services on theories of implied contract or unjust enrichment; and (3) the testimony of their farm manager expert witness should not have been excluded as a sanction for failure to reveal his name in response to an interrogatory. We affirm.

Plaintiff Maurice Cullen, along with defendants Mary Lynam and Bonnie Schepers, inherited a 120-acre farm in 1975. In 1976 and 1977, Mary's husband Oscar, a counterclaimant-appellant in this case, assisted the executor in maintaining the property. He was not paid for this work. After the estate was closed in 1977, Oscar and Bonnie Schepers' husband, Leonard, took care of the farm. They took out trees, repaired fences, and mowed weeds. They also asserted that they acted as farm managers, i.e., hired a tenant, kept the books, and so on. Some old buildings were also removed.

The services were rendered without payment because the farm was not generating enough money. Family animosity developed between plaintiff and the Lynams and Schepers. In late 1981, plaintiff filed this action for partition of the farm. Oscar Lynam and Leonard Schepers counterclaimed for the value of their services, both in farm labor and management. The counterclaim was tried separately from the partition action.

The court found that the appellants never had an agreement with plaintiff as to reimbursement for labor or management. The court held that the appellants were not entitled to a management fee equal to that charged by professional farm

managers, but did hold that they were entitled to reasonable compensation and awarded them together $1,067.86 as against plaintiff's share of the farm. The court denied the claims for labor in removing trees and outbuildings on the grounds that appellants did not prove that this work was beneficial to the property and because the work was unauthorized by plaintiff. Appellant's claims for labor in weed control, mowing, and fence maintenance were denied on the grounds that such "items are usually the duties of a tenant . . . ." At that time, appellants had been leasing the farm to one Donald Erickson. The court also awarded appellant Lynam $550 for tiling work done by him. This appeal followed.

I.

We must first determine the appropriate standard of review. Although the original partition action was tried in equity, the parties do not agree on whether the proceeding on the counterclaim was in law or equity. "A case is reviewed as tried in the court below." Mosebach v. Blythe, 282 N.W.2d 755, 758 (Iowa Ct. App. 1979). We believe the court below tried the counterclaim in law. First, appellants were seeking money damages for services rendered. Id. In addition, the trial court ruled on all evidentiary objections and did not reserve ruling on them. Finally, judgment was entered against plaintiff for specific dollar amounts. Although the counterclaim was based in part on equitable theories, "the basic relief sought was legal in nature." Id. Since it was tried at law, the trial court's findings are binding on us if they are supported by substantial evidence. Iowa R. App. P. 14(f)(1).

II.

Appellants first claim that the court erred in taking judicial notice of the fact that weed control, mowing, and fence building and maintenance are normally considered to be the duties of the tenant (i.e. Erickson) and not of the landlords (i.e. appellants), and that appellants therefore could not recover on those claims. We disagree. It is clear that Iowa courts may take judicial notice of Iowa

statutory law. Iowa R. Civ. P. 94. It is also true that state courts may take judicial notice of the common law of that state. 31 C.J.S. Evidence § 14 (1964). It has long been the common-law rule in this state that, "in the absence of a covenant or agreement by the landlord to make repairs or maintain the leased premises in a safe and suitable condition for occupancy and use of the tenant, he is not bound to do so." Chicago Joint State Land Bank v. Eggers, 214 Iowa 710, 714, 243 N.W. 193, 194 (1932). In this case, the trial court could have reasonably concluded that the general rule applied. The only evidence of an agreement with the tenant to the contrary (i.e. that the landlords had the duty to perform necessary maintenance and repairs) was the self-serving testimony of appellants. "It was for the trial court to determine the credibility of the witnesses and the weight to be accorded their testimony." Hawkeye Specialty Co. v. Bendix Corporation, 160 N.W.2d 341, 343 (Iowa 1968). We will not disturb the court's apparent conclusion that appellants' testimony lacked credibility. This issue presents no cause for reversal.

III.

Appellants also allege that the trial court failed to give them adequate compensation for the work done by them on the farm. We have already determined in Division II of this opinion that the court did not err in disallowing appellants' claim for their work in weed control, mowing, and fence building and maintenance. In addition, the court did award them judgment against plaintiff for their management services in the amount of $1,067.86; appellant Lynam also received judgment of an additional $550 for tiling work done by him. We see no reason to disturb the amounts awarded by the court.

IV.

Finally, appellants claim that the trial court erred in excluding from evidence the testimony of Richard Mullenix, a professional farm manager, on the duties performed and fees charged by a farm manager. Appellants wished to

present this testimony to support their damages claims. During discovery, plaintiff submitted an interrogatory asking appellants to disclose the names of any expert witnesses they expected to call at trial. Plaintiff was not notified until the day of trial that Mullenix would be called as an expert witness; on plaintiff's motion, the court disallowed Mullenix's testimony.

In effect, the court's action was the imposition of a sanction against appellants for their failure to timely serve or supplement their answer to the "expert witness" interrogatory propounded by plaintiff, see Iowa R. Civ. P. 134(d)(2), and we treat it as such. Trial courts are vested with broad discretion with regard to the imposition of discovery sanctions. R. E. Morris Investments, Inc. v. Lind, 304 N.W.2d 189, 191 (Iowa 1981). We find no abuse of that discretion here. The fact that appellants did not decide to call Mullenix as a witness until the day before trial is irrelevant. A party's failure to comply with discovery need not be willful in order to justify the imposition of sanctions. Rumley v. City of Mason City, Iowa, 320 N.W.2d 648, 652 (Iowa Ct. App. 1982).

We find no errors in the proceeding below. We therefore affirm the judgment of the trial court.

AFFIRMED.