

FILED

JAN 26 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ELLEN SARGENT,

)

Plaintiff-Appellant-
Cross-Appellee,

)

)

vs.

P. F. ELGIN and STEPHEN A. HALL,

)

Defendants-Appellees-
Cross-Appellants.

)

)

Filed January 26, 1983

00140

2-417
2-67798

Appeal from Warren District Court - Gene L. Needles, Judge.

Plaintiff appeals from a judgment entered on a directed verdict for defendant, a lawyer, in this suit alleging that defendant's alteration of a settlement agreement between plaintiff and a third person constituted the tort of intentional interference with contractual relations. **AFFIRMED.**

Mark C. Smith, West Des Moines, Iowa, for plaintiff-appellant.

Charles D. Hunter of Belin, Harris, Helmick & Heartney, Des Moines, Iowa,
for defendant-appellees.

Considered en banc.

PER CURIAM

Plaintiff, Ellen Sargent, appeals from a judgment entered on a directed verdict for Stephen A. Hall, a lawyer, in this suit alleging that defendant's alteration of a settlement agreement between plaintiff and a third person constituted the tort of intentional interference with contractual relations. On appeal, plaintiff asserts that there was substantial evidence on each of the elements of the tort, so that defendant Hall's motion for directed verdict should not have been granted. We affirm.

This case arose out of a conflict over life insurance proceeds between the mother of the deceased and his widow. David Sargent had life insurance policies totalling about \$35,500. The named beneficiary was Wilma Sargent, David's mother. David had been married to Ellen Sargent, plaintiff in the present action, for about eleven months at the time of his death. He had considered changing the name of the beneficiary on the policy, but had not done so. Ellen Sargent was represented by P. F. Elgin, a defendant in this case but not involved in the appeal. Ellen filed suit in February of 1979 against Wilma Sargent, asserting a right to a portion of the life insurance proceeds. Wilma responded by hiring defendant Stephen A. Hall to defend her. Hall and Wilma Sargent agreed that Hall would receive a 1/3 contingent fee if successful in the defense of the action.

Ellen and Wilma apparently talked to each other about settling the suit and reached an agreement. Wilma was to receive \$15,000 "free and clear;" Ellen was to pay Wilma's attorney fees. Ellen was to receive the balance of the insurance proceeds. Apparently in reaching this agreement Ellen had not determined what Wilma's attorney, Hall, would charge for his services. Defendant Elgin, Ellen's attorney, had told her that he thought Hall's fee might be \$200-\$1,500. There was some dispute as to whether Ellen had been told about the contingent fee arrangement.

The settlement agreement drafted by Ellen's attorney provided that Ellen would pay Wilma \$15,000, as well as Wilma's attorney's fee. At a settlement

meeting Wilma's attorney, defendant Hall, altered the agreement to provide for payment to Wilma of \$22,500. This was evidently based upon a calculation that amount would be necessary to cover his attorney fees and leave Wilma with \$15,000 "free and clear." At trial Hall testified that he made this change because he felt it was improper for his attorney fees to be paid directly by an outsider rather than by his client.

Despite the changes, Ellen's attorney advised her to sign the agreement, because he felt that her case against Wilma was weak and that she would come out better under the settlement, even with the larger payment of \$22,500. Ellen and Wilma signed the papers and the settlement was approved by the judge.

Ellen subsequently filed suit against Elgin, her former attorney, for malpractice, and against Hall, Wilma's attorney, for intentional interference with contractual relations for having altered the agreement (the present action). At trial, the court granted Hall's motion for directed verdict at the close of all the evidence. The malpractice claim against Elgin was submitted to a jury, and the jury returned a verdict for Ellen in the amount of \$6,309.21. The judgment entered on this jury verdict was appealed to this court, and is presently pending. Ellen also applied for reimbursement of a portion of the cost of preparing the appendix. This appears to be essentially an "unnecessary designation" claim, see Iowa R. App. P. 15(b), but because the appellant failed to comply with the deadlines for filing designations of contents of appendix the normal procedure in such cases was not followed. In any event, the supreme court, in an order by Justice McGiverin, ordered the issue submitted with this appeal.

I. Scope of Review. Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4. In reviewing the granting of a directed verdict, we review the evidence in a light most favorable to plaintiff. Jones v. O'Bryon, 254 Iowa 31, 37, 116 N.W.2d 461, 465 (1962). We do not review the merits of plaintiff's claim to determine whether the allegations were proven but rather,

we consider "whether [plaintiff] makes a sufficient showing so that the trial court would be warranted in submitting the question to the jury" Bradt v. Grell Construction, Inc., 161 N.W.2d 336, 343 (Iowa 1968).

II. Interference with Contract Rights. Ellen alleges in her petition that defendant Hall "improperly and tortiously interfered [sic] with the execution and operation of this agreement and substantially changed its provisions when it was reduced to writing." To establish a right to relief based on intentional interference with contractual relations, a party must produce evidence showing: (1) the existence of a valid contractual relationship; (2) knowledge of the relationship on the part of the interfering person; (3) intentional interference causing disruption or breach of the contract; and (4) damages resulting from the disruption. E.g., Stroller Fisheries, Inc. v. American Title Insurance Co., 258 N.W.2d 336, 340 (Iowa 1977).

Ellen alleged that defendant Hall's client, Wilma Sargent, and plaintiff had an agreement to divide life insurance proceeds with defendant's client receiving \$15,000, that plaintiff would pay defendant's client's attorney fees, that defendant's client would receive several personal items and that plaintiff would receive the balance of the proceeds. Plaintiff testified that her attorney had stated the attorney's fees to be charged by defendant Hall would be approximately \$500-\$1,000. In actuality, defendant Hall had a contingent fee arrangement with his client, Wilma Sargent, to be based upon the amount of recovery. The parties and their respective attorneys met at the Warren County Courthouse to consummate the settlement. The original instrument was drafted by plaintiff's attorney in the matter. After reviewing the settlement, defendant Hall altered the document to include his attorney fees in the amount to be paid his client and provided that plaintiff would not be responsible for defendant's fees. This was premised on the fact that defendant Hall feared that an adverse party paying his fees may result in a violation of Iowa Code of Professional Responsibility for Lawyers, EC 5-22. Defendant's client did in fact receive her settlement of

\$15,000, plus another \$7,500 to cover her attorney fees, and the personal effects. It was only after defendant altered the payment provisions of the settlement agreement that plaintiff signed the document. Plaintiff now claims defendant tortiously interfered with the contract between plaintiff and defendant's client.

We find plaintiff's position untenable and without merit. Assuming that the oral agreement between plaintiff and defendant's client was a valid contract, rather than merely an invitation to deal, we find plaintiff has failed to produce evidence of any breach of the agreement. A breach of contract is a failure to perform a promised performance. See Restatement (Second) of Contracts § 260 (1979). Plaintiff does not allege that defendant's client ever breached or disrupted the contract due to defendant's activities. Defendant's client promised to forego further action for the receipt of \$15,000, her attorney fees and several personal items. Defendant's client has performed. Plaintiff agreed to these terms and obligated herself to those conditions. Defendant Hall's alteration of the instrument did not induce his client to breach or disrupt any contractual rights. We accordingly affirm the trial court.

III. Costs. We assess no costs for the appendix against defendant.

AFFIRMED.