FILED
MAR 31 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GERALD GWINN, et al.,	)	
Plaintiffs,	)	Filed March 31, 1980
vs.	)	
THE IOWA DISTRICT COURT FOR LUCAS COUNTY,	)	0-5 2-62735
Defendant.	)	

Certiorari to Lucas District Court - James E. Hughes, Judge.

Estate heirs challenge by certiorari trial court's rulings on summary judgment motion, trial judges' informal observations on admissibility of evidence, and trial court's order to settle the case. WRIT SUSTAINED.

John A. Jarvis, Chariton, for plaintiffs.

Paul Christoffers, Chariton, for defendant.

William L. Shelton, Chariton, and Ronald A. Riley, Des Moines, for estate.

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

PER CURIAM

The heirs of the estate of John Gwinn challenge by way of certiorari several rulings made by the trial court with regard to a claim against the estate. They challenge the trial court's overruling of their motion to strike the claimant's resistance to their motion for summary judgment, as well as the trial court's failure to grant their motion for summary judgment. They also contend that the trial court acted illegally when one of the judges below issued a memo that made informal observations on the admissibility of certain evidence. Finally, they contend that the trial court acted illegally and beyond its jurisdiction when it ordered the parties to settle the claim rather than proceed to trial despite the objections of many of the estate heirs. We sustain the writ on this last contention.

This claim arose out of a shooting incident that allegedly occurred in John Gwinn's car while Hilda Sinclair was a passenger. John Gwinn was found dead in the driver's seat with a gunshot wound in his head. Hilda Sinclair was injured by a gunshot that allegedly occurred while she was in the car. She brought a claim against John Gwinn's estate to recover damages for her injuries. While her claim was awaiting trial, she died, and her estate was substituted as claimant. Subsequent attempts at settlement proved unsuccessful after the heirs of John Gwinn's estate intervened in the action. The heirs moved for summary judgment in favor of John Gwinn's estate and the representatives for Hilda Sinclair's estate resisted. The heirs then moved to strike the resistance on the ground that the resistance did not have any supporting affidavits. The trial court overruled the motion to strike and denied the motion for summary judgment. After pretrial conference, Judge Denato issued a memo making informal observations regarding the admissibility of certain evidence. Later on, after ruling on several motions, Judge Hughes determined that the best interests of the estate would be served if the parties settled the case, and ordered the parties to settle the claim for $1000.

In a certiorari action, we determine only whether the lower court exceeded its proper jurisdiction, or otherwise acted illegally. Gibb v. Hansen, 286 N.W.2d 180, 184 (Iowa 1979); Manning v. Engelkes, 281 N.W.2d 7, 9 (Iowa 1979); Iowa R. Civ. P. 306. Since certiorari is an action at law, we do not review de novo, but only determine whether there was substantial evidence to support the findings on which the lower court based

its conclusions in deciding whether the court acted illegally. State v. Cullison, 227 N.W.2d 121, 126 (Iowa 1975).

The estate heirs contend that the trial court acted illegally and without jurisdiction in overruling their motion to strike claimant's resistance to their motion for summary judgment on the ground that claimants failed to attach supporting affidavits to their resistance as required by Iowa R. Civ. P. 237(e). However, rule 237(e) clearly does not require the attachment of affidavits as support for a resistance to a summary judgment motion, since the rule itself states that the resistance may be supported "by affidavits or as otherwise provided in this rule." The rule does not mandate the filing of opposing affidavits. Mead v. Lane, 203 N.W.2d 305, 306 (Iowa 1972). The rule itself only requires evidentiary support for a resistance when the motion is "supported as provided in this rule." Iowa R. Civ. P. 237(e); see Mead, 203 N.W.2d at 306-07. "Whether or not either side filed affidavits the test whether the motion should be granted remains the same. . . ." Mead, 203 N.W.2d at 306. Consequently, we conclude that the trial court did not act illegally or without jurisdiction in overruling the motion to strike the resistance to the motion for summary judgment and turn our attention to the ruling on the motion itself.

In ruling on a motion for summary judgment, the trial court is required to look at the whole record, including pleadings, answers to interrogatories, admissions on file, and affidavits, in the light most favorable to the party against whom the motion was made. Tasco, Inc. v. Winkel, 281 N.W.2d 280, 282 (Iowa 1979). The burden is on the moving party to show the absence of a fact issue, and even if the facts are undisputed, if reasonable minds could draw different inferences from them, the motion should be denied. Id. We apply these same principles in reviewing the trial court's ruling on the motion. Id.

The trial court examined the pleadings, depositions, and other matters and concluded that there was a justiciable issue existing in the case. Given the unusual circumstances giving rise to the claim in this case, we cannot conclude that the trial court acted illegally or without jurisdiction in so ruling.

With regard to the challenge to Judge Denato's memo concerning his observations on the admissibility of certain evidence, we note that Judge Denato qualified his

remarks by stating that his observations were "informal and for [the trial court's] consideration only." Since the memo was clearly intended not to have any legally binding effect, it is equally clear that the issuance of the memo could not constitute an illegality. Thus, the challenge to its issuance is without merit.

The final challenge to the proceedings below concerns the trial court's ordering the parties to settle the case. We agree with the contention that such an order was illegal and we sustain the writ on that ground. While settlement is to be encouraged to avoid prolonged, extensive, and uncertain litigation, Moore v. Bailey, 163 N.W.2d 435, 437 (Iowa 1968), it is nonetheless a denial of due process for a trial judge to compel a settlement prior to trial when one of the parties finds the terms completely unacceptable. In re LaMarre, 494 F.2d 753, 756 (6th Cir. 1974). Here, it was clear that many of the estate heirs found any form of settlement unacceptable since they wished to go to trial and protect their ancestor's name from the innuendo of the claim against his estate. Consequently, the attorney for the estate, the attorney for the heirs and the executor felt that they could not recommend settlement for any amount. The trial court acted illegally in ordering a settlement and denying them that opportunity.

WRIT SUSTAINED.