

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 29 1985

CLERK SUPREME COURT

**RALPH L. MICHEHL and MARGARET
MICHEHL,**

Plaintiffs-Appellees,

vs

PAMELA L. PEDERSEN,

Defendant-Appellant.

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Filed October 29, 1985

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83-1567

Appeal from the Iowa District Court for Webster County - R. K. Richardson,
Judge

Defendant appeals the trial court's order granting plaintiffs' judgment notwithstanding the verdict, and in the alternative, granting plaintiffs a new trial in a breach of contract action. **AFFIRMED.**

Dan T. McGreevy and Robert M. Sherman of McGreevy & Sherman, Ackley, Iowa, for defendant-appellant.

David A. Opheim of Kerstein, Opheim & Carlson, Fort Dodge, Iowa, for plaintiffs-appellees.

Considered by Donielson, P.J., Snell, and Schlegel, JJ.

SCHLEGEL, J.

Defendant appeals the trial court's order granting plaintiffs' motion for judgment notwithstanding the verdict, and in the alternative granting plaintiffs a new trial in a breach of contract action. We affirm the trial court.

Defendant, Pam Pedersen, is the former daughter-in-law of plaintiffs Ralph and Margaret Michehl. Pam had been married to plaintiffs' son, Craig, for approximately one year until he was killed in an automobile accident. Litigation ensued concerning the distribution of Craig's estate but it is unclear from the record as to the specific judgment entered. However, it is certain that the Michehls were considering an appeal of the judgment.

Defendant remarried and was anxious to conclude the estate litigation because she and her husband wanted to move to Colorado. She phoned plaintiffs and asked them if they were going to appeal, but Mrs. Michehl said they were still undecided. When Mrs. Michehl inquired about some of her son's personal belongings, Pam became upset and ended the conversation. It is unclear from the record whether she dropped the receiver or simply hung up. Shortly thereafter defendant's mother, Mrs. Hochel, called plaintiffs and said she wanted to know what plaintiffs would need to agree not to appeal. Initially Mrs. Michehl said that they were told by their attorney not to discuss such matters, but after several more phone calls from Mrs. Hochel, plaintiffs agreed to give up their right to appeal in return for \$55,000. It was agreed that defendant would pay them the difference between their award from Craig's estate and \$55,000, or \$34,152.

After her phone call, defendant did not personally take part in any negotiations. She did, however, discuss the terms with her husband and her mother. Mrs. Hochel prepared an agreement containing the agreed terms, had Pam sign it, and then took the document to the plaintiffs for them to sign. Plaintiffs

signed the agreement, but phoned the Hochels later that night and asked that defendant sign the agreement in front of plaintiffs. On the following day plaintiffs brought the agreement to defendant who signed the document again. No words were spoken during this encounter.

When the appeal period had expired, Mrs. Hochel called plaintiffs to be sure they had not appealed. Defendant had already moved to Colorado and it was after the appeal period that defendant refused to pay plaintiffs.

Plaintiffs filed a breach of contract claim against defendant, and defendant denied the claim alleging (1) there was no contract, (2) defendant was under duress when she signed the agreement, and (3) there was no consideration. At the end of all the evidence plaintiffs moved for a directed verdict alleging, in part, that there was insufficient evidence to submit the issue of duress and/or undue influence to the jury. Plaintiffs' motion was overruled and the case was submitted to the jury. The jury rendered its verdict pursuant to special interrogatory and found that a contract was made, that there was sufficient consideration, but that defendant had shown duress. Plaintiffs filed a motion for judgment notwithstanding the verdict which was granted by the trial court and judgment was entered against the defendant. Defendant appeals that decision alleging that the trial court erred in ruling that there was not substantial evidence to submit defendant's claims of duress or coercion and undue influence to the jury. We agree with the trial court.

I. Scope of Review. The jury's verdict was based upon a finding of duress. The trial court admitted its reservations in even submitting the issue of duress to the jury, but felt that it was somewhat obligated to submit the issue with the reserved authority to enter a judgment notwithstanding the verdict if required. See Iowa R. Civ. P. 243(b). The scope of our review in these circumstances has been stated as follows:

Our function is to review the evidence to determine . . . whether it is sufficient so the trial court was justified in submitting the question to the jury

In determining this issue this court views the evidence in accordance with the same principles required for review by the trial court.

Slocum v. Hammond, 346 N.W.2d 485, 493, 494 (Iowa 1984); Meeker v. City of Clinton, 259 N.W.2d 822, 828 (Iowa 1977). These principles were identified in Winter v. Honeggers' & Co., 215 N.W.2d 316, 321 (Iowa 1974):

[T]he court is required to view the evidence in the light most favorable to the party against whom the motions were made regardless of whether it is contradicted and every legitimate inference that may be fairly and reasonably deducted therefrom must be carried to the aid of the evidence.

"If . . . there is substantial evidence in support of each element of plaintiff's claim, the motion . . . should be denied. . . . Conversely, if there is no substantial evidence . . . a directed verdict or judgment notwithstanding the verdict in defendants' favor is appropriate." Slocum, at 494. Valadez v. City of Des Moines, 324 N.W.2d 475, 477-78 (Iowa 1982).

Rule 243(b), Rules of Civil Procedure, provides:

(b) If the movant was entitled to have a verdict directed for him at the close of all the evidence, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant.

The purpose of the quoted portion of rule 243(b) is to afford the trial court an opportunity to correct its error in failing to sustain a motion for directed verdict where the movant was entitled to a directed verdict at the close of all evidence and moved therefor and the jury did not return such verdict. Meeker v. City of Clinton, 259 N.W.2d 822, 827, 828 (Iowa 1977); Dutcher v. Lewis, 221 N.W.2d 755, 759-760 (Iowa 1974).

A motion for judgment notwithstanding the verdict must stand or fall on the grounds urged in the movant's earlier motion to direct a verdict. See

Miller v. Young, 168 N.W.2d 45, 50 (Iowa 1969); Dutcher v. Lewis, 221 N.W.2d at 760.

Our review is thus limited to the grounds urged in plaintiffs' motion for directed verdict. We therefore examine the record in accordance with the same principles required for review by the trial court to determine if there was sufficient evidence to entitle the plaintiffs to a directed verdict on the issue of duress and/or undue influence.

II. Duress. The elements of duress invalidating a contract are (1) coercion or threats imposed from without, (2) which cause the victim's loss of the free exercise of will so as to prevent the meeting of minds necessary to a valid contract. Gutterfelder v. Ibsen, 222 Iowa 1116, 270 N.W. 900, 903 (1937); Gray v. Shell Petroleum Corp., 212 Iowa 825, 237 N.W. 460, 462 (1931); 17 C.J.S. Contracts § 168(b). Undue influence is defined as any "improper or wrongful constraint, machination, or urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely." Stetzel v. Dickenson, 174 N.W.2d 438, 443 (Iowa 1970).

While the coercion or threats may be exercised by one who is not a party to the contract as by one who is a party, the duress must nonetheless be imposed by another. The duress cannot be the creature of the victim's own mind. In re Marriage of Hitchcock, 265 N.W.2d 599, 606 (Iowa 1978), appeal after remand 309 N.W.2d 432 (Iowa 1981); C.J.S. Contracts §§ 168(b) and 178. The mere fact that a party enters into a compromise contract reluctantly does not constitute duress invalidating the contract. In re Estate of Dayton, 246 Iowa 1209, 71 N.W.2d 429, 434 (1955).

Defendant alleged that plaintiffs tormented her and more or less forced her into signing the agreement. She testified that she "believed" that the stressful situation between plaintiffs and defendant would continue unless she gave plain-

tiffs whatever they wanted. She also stated that due to her state of mind, she "would have given her life just to get away."

We agree with the trial court that there is insufficient evidence to submit to the jury that either the plaintiffs knew of defendant's state of mind or used it against her. While the record shows that plaintiffs were aware that defendant was upset, it does not reveal that they created this distress or manipulated defendant's will during the course of the negotiations. Much of defendant's distress was either a product of her own mind or from her mother's influence. Indeed it was either the defendant or her mother that initiated all of the contacts in the negotiations.

There is a lack of substantial evidence showing that defendant had lost her free will or volition as a result of plaintiffs' actions when she signed the agreement. The mere fact that litigation was involved does not support a basis to support duress. There is no duty to instruct upon an issue without substantial support in the evidence or with support resting only on speculation or conjecture. A mere scintilla of evidence is not sufficient. Nolte v. Case, 221 N.W.2d 741, 745 (Iowa 1974).

Because we agree with the trial court that there was insufficient evidence to submit the issue of duress and/or undue influence to the jury, the trial court's order notwithstanding the verdict is affirmed.

AFFIRMED.