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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

LLOYD L. HANSON and **VALORA J. HANSON**, as Administrators of the Estate of Dennis L. Hanson, Deceased,

Plaintiffs-Appellants,

vs.

SHERMAN REICHELT,

Defendant-Appellee.

Filed June 29, 1988

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7-578
87-925

Appeal from the Iowa District Court for Jasper County (No. 03438), Michael J. Streit, Judge.

Plaintiffs appeal from a district court order granting defendant's motion for summary judgment. **REVERSED.**

Nathan B. Updegraff of Selby, Updegraff and Smith, Newton, for plaintiffs-appellants.

Richard G. Book of Jones, Hoffman and Davison, Des Moines, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

OXBERGER, C.J.

Plaintiffs Lloyd and VaLora Hanson, administrators of the estate of Dennis Hanson, appeal from the district court's order granting defendant's motion for summary judgment. We reverse.

Plaintiffs sued the defendant for injuries and subsequent death suffered by the deceased as a result of heat stroke which allegedly occurred while he was working on the defendant's farm. Defendant moved for summary judgment on the tort action claiming that the plaintiffs' exclusive remedy lay pursuant to Iowa Code Chapter 85 (Worker's Compensation). Plaintiffs had previously filed an administrative action under Iowa Code Chapter 85. As of the date of the order granting the defendant summary judgment, no final decision had been rendered by the Industrial Commissioner regarding plaintiffs' claim. The plaintiffs filed the tort action in district court prior to the rendering of the Industrial Commissioner's final decision because the statute of limitations was about to run. The district court granted summary judgment to the defendant stating only that "there are no genuine issues of material facts." The court gave no analysis of the facts presented to it or applicable law in its order granting summary judgment.

Upon appeal the plaintiffs filed a statement of proceedings held before the district concerning oral arguments made pursuant to I. R. App. P. 10(c). The defendant's objections to this statement were subsequently approved by the district court as "characterizing the proceedings." In the defendant's objections it was stated:

> [T]he basis of the court's opinion sustaining the motion for summary judgment was that there was no genuine issue of material fact with respect to whether the plaintiffs' decedent was in the course of his employment when he sustained his injuries and that, as a matter of law, the exclusive remedy provisions of Chapter 85 of The Code of Iowa prohibit the plaintiffs from bringing this action.

Id at p. 26.

The record before us reflects that the Industrial Commissioner has not made a final decision concerning the applicability of Iowa Code Chapter 85 to the plaintiffs' claim. Without this final resolution, it is unclear whether plaintiffs' claim falls outside the purview of Chapter 85 as exhibited by its numerous exceptions listed in Iowa Code Section 85.1. The district court's decision that the provisions of Chapter 85 are the exclusive remedy available to the plaintiff is premature. The doctrine of primary jurisdiction allows the district court to abstain from resolving an issue prior to its resolution in the administrative forum and provides a more orderly resolution of claims. Northwestern Bell Tel. Co. v. Hawkeye State Tel. Co., 165 N.W.2d 771, 776 (Iowa 1969).

> The precise function of the doctrine of primary jurisdiction is to guide a court in determining whether the court should refrain from exercising its jurisdiction until after an administrative agency has determined some questions or some aspect of some question arising in the proceeding before the court.
>
> The doctrine of primary jurisdiction does not necessarily allocate power between courts and agencies, for it governs only the question whether court or agency will initially decide a particular issue, not the question whether court or agency will finally decide the issue. Even if the agency is held to have primary jurisdiction with respect to an issue, a court may still set aside or modify what the agency has done, in accordance with the law governing the scope of review.

Id. (Court quoting Davis, Administrative Law Treatise.)

It is premature for the district court to rule upon the applicability of Chapter 85 in this case prior to a final agency ruling in view of the provisions for judicial review of this matter upon appeal from the agency decision. To hold otherwise would allow parties to "collaterally attack" a proposed decision of the agency before the agency arrives at a final decision. The facts of this particular case will be more fully developed and further resolved if the administrative agency is allowed time to reach a final decision. If at that time, it is resolved that Chapter 85 does not apply to the plaintiffs' case, it will be more clear to the district court whether an action in tort will lie.

For these reasons we reverse the district court's order granting the defendant's motion for summary judgment and further order that such action be continued until such time as the Industrial Commissioner reaches a final decision in this matter or that judicial review of the contested case is exhausted to the parties' satisfaction.

The district court's order granting the defendant's motion for summary judgment is reversed.

REVERSED.