IN THE COURT OF APPEALS OF IOWA 000251

No. 7-528 / 96-1024

FILED
NOV 25 1997
CLERK SUPREME COURT

ALICE SAUER,
Appellee,

vs.

LESTER SAUER,
Appellant.

Appeal from the Iowa District Court for Buchanan County, Jon Fister, Judge.

Lester Sauer appeals from a district court order awarding Alice Sauer $4044 in damages for the value of items he allegedly failed to return to her as required by the parties' dissolution decree. **AFFIRMED.**

Kenneth F. Dolezal of Dolezal, Lindeman & Davison, Cedar Rapids, for appellant.

Gary F. McClintock of Hoeger & McClintock, Independence, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

PER CURIAM

Alice Sauer filed suit in equity against her former husband, Lester Sauer, in April, 1995, seeking either the tangible personal property awarded to her in a 1994 decree of dissolution or damages for the value of the property not provided to her. The court overruled Lester's motion to dismiss and motion for reconsideration. After trial, the district court awarded Alice $4044 as the fair and reasonable market value of the property after a reduction for obsolescence and depreciation.

On appeal, Lester argues the district court should have granted his motion to dismiss, that he was not in possession of the property, and the court's valuation of the items was not supported by substantial evidence. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

In reviewing rulings on motions to dismiss, we look to the pleadings to determine if they are so deficient defendant was deprived of notice of the claim made. *Haupt v. Miller*, 514 N.W.2d 905, 909 (Iowa 1994). With the advent of notice pleading, disposition of most unmeritorious claims are now accomplished by pretrial procedures to narrow the issues or pierce the bare allegations of the petition, not by motions to dismiss. *American Nat'l Bank v. Sivers*, 387 N.W.2d 138, 140 (Iowa 1986). We conclude the petition gave sufficient notice of the claim and of the property sought so as to withstand Lester's motion to dismiss.

Lester next asserts he proved he no longer possessed the property claimed. In Iowa, a plaintiff has the option to seek judgment for money damages, considering the

conversion of the property complete when taken, instead of seeking return of the property. *Flickinger v. Mark IV Apartments, Ass'n*, 315 N.W.2d 794, 797 (Iowa 1982). Lester's argument is without merit.

Finally, Lester asserts the value assigned to the property is not supported by substantial evidence. Alice introduced evidence concerning the value of the property at trial. The district court reduced that amount to allow for depreciation and obsolescence. The measure of damages is the fair and reasonable market value of the property. In evaluating the sufficiency of the evidence, we view it in the light most favorable to sustaining the trial court's judgment, and need only consider evidence favorable to the judgment, whether or not it is contradicted. *Briggs Transportation Co. v. Starr Sales Co.*, 262 N.W.2d 805, 808 (Iowa 1978). We determine substantial evidence supports the valuation of the property determined by the district court.

AFFIRMED.