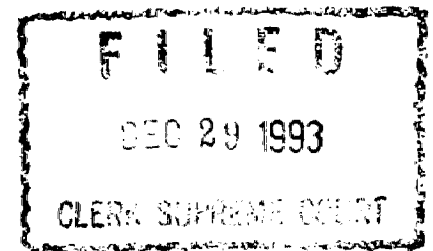


IN THE COURT OF APPEALS OF IOWA

No. 3-131 / 92-904



PATRICIA L. LEWIS,

Appellee,

vs.

TIMOTHY R. CLARK,

Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Bryan H. McKinley, Judge.

Timothy Clark appeals a district court's judgment entered, following a jury trial, finding Patricia Lewis, Clark's former spouse, proved she had been fraudulently induced to enter into a settlement of the parties' dissolution action. **AFFIRMED.**

Karla J. Shea of Lindeman & Yagla, Waterloo, for appellant.

Charles H. Levad, Mason City, for appellee.

Heard by Oxberger, C.J., and Sackett, J., and Keefe, S.J.*

*Senior Judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

OXBERGER, C.J.

Patricia Lewis and Timothy Clark were married July 6, 1985. Prior to the marriage, Clark incorporated a business, then called Cycle-Video, with three other people. Cycle-Video transmits radio and television commercials by satellite to stations instead of sending them express mail. Cycle-Video later changed its name to Cycle-Sat and Winnebago Industries became the parent corporation. The business did well during the marriage, and the parties eventually accumulated 8,093 shares of Cycle-Sat stock and 10,000 shares of Winnebago Industries stock.

In October 1987, the parties financed a home by borrowing \$120,000 from John K. Hanson, Chief Executive Officer of Winnebago, on a demand note pledging the 8,093 shares of Cycle-Sat stock and 10,000 shares of Winnebago as collateral for the loan.

On February 4, 1988, Clark filed a petition for dissolution. The next day, Hanson called the note due and transferred the shares of stock into his own name. Throughout the proceedings, Clark indicated he would lose his job with Cycle-Sat unless the dissolution settled promptly. Lewis conducted discovery to determine whether the stock could be returned and if there was any collusion in the transfer. She was unable to obtain the return of the stock or find evidence of collusion. Eventually, the parties entered into a stipulation regarding the

dissolution. Lewis agreed to release both Clark and Hanson of any cause of action she might have because of the stock transfer. The district court approved the stipulations on May 20, 1988, and dissolved the parties' marriage.

In September 1988, Clark was fired from Cycle-Sat. In October 1988, Clark informed Hanson he was considering bringing a cause of action for wrongful termination and he might use his knowledge to compete against Cycle-Sat. Clark and Hanson entered into an agreement which allowed Clark to repurchase the same shares of stocks he had prior to the forfeiture for \$42,229.45 and sell the shares back for \$100,000.00 per year for ten years. The agreement contained a covenant not to compete. Clark released any potential wrongful termination suit.

In October 1990, Lewis brought this action claiming Clark had fraudulently induced her to enter into the stipulations dissolving the parties' marriage. Clark filed an answer asserting affirmative defenses of res judicata, impermissible collateral attack, a valid release, and that Lewis was barred from bringing the action by Iowa Rules of Civil Procedure 252 and 253. Clark also filed a counter-claim which is not part of this appeal.

Following trial, the jury found Lewis proved her claim of fraudulent misrepresentation by clear and convincing evidence. The jury found Lewis sustained damages in the amount of \$202,325.00 and punitive damages in the amount of \$5,000.00. The court entered judgment in Lewis's favor.

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Clark filed a posttrial motion to set aside the jury verdict and a motion for a new trial which the district court denied. The court rejected Clark's argument there was insufficient evidence to support the jury verdict. The district court found the evidence of the stock transfer, coupled with the testimony, provided sufficient evidence of fraudulent misrepresentation. Clark argued the court erred in instructing the jury that the release executed at the time of the settlement may be invalid if induced by fraud. Clark argued that the jury should not have been given the instruction since Lewis failed to plead the release was obtained by fraud. The district court rejected this argument. Finally, the district court rejected Clark's remaining arguments and called counsel's attention to Courtney v. Feldstein, 382 N.W.2d 734 (Mich. Ct. App. 1986), which found there was a separate cause of action for fraudulently inducing a dissolution settlement.

Clark has appealed.

I. Denial of Motion for New Trial

Clark first contends the district court erred in refusing to grant his motion for new trial. He claims the trial court improperly instructed the jury and incorrectly allowed a special verdict question. We reverse the denial of a motion for a new trial only upon a showing that the trial court abused its discretion. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983).

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To give a proposed instruction, the theory or cause must have been pleaded or properly litigated. Gunnison v. Torrey, 216 N.W.2d 361, 364 (Iowa 1974). The evidence must be sufficient to warrant submission to the jury. Id. The trial court must give the evidence the most favorable construction it will reasonably bear in favor of the party urging submission. Id.

All issues which are pled and for which there is substantial support in the evidence must be submitted. It is error not to do so, just as it is error to submit those which do not conform to both these conditions.

Seaway Candy, Inc. v. Cedar Rapids YMCA, 283 N.W.2d 315, 316 (Iowa 1979) (citing Mora v. Savereid, 222 N.W.2d 417, 419 (Iowa 1974)) (emphasis added).

It is the trial court's duty to instruct with reasonable fullness on the pleaded issues which have evidentiary support. A mere abstract definition of the law having no application to the facts is insufficient. The giving of instructions which are conflicting and confusing is reversible error.

Hartwig v. Olson, 158 N.W.2d 81, 88 (Iowa 1968); see also Moser v. Stallings, 387 N.W.2d 599, 605 (Iowa 1986); Sammons v. Smith, 353 N.W.2d 380, 385 (Iowa 1984).

The instruction to which Clark objects, in pertinent part, states:

Defendant denies the allegations of fraudulent misrepresentation and asserts the affirmative defense of a valid and intentional release.

A person may release her right to a claim against another by knowingly and intentionally signing a release of those rights. A valid release bars a recovery on the claim or rights released. A release obtained by fraud, however, is not valid and does not bar such recovery.

Defendant therefore asserts that the plaintiff cannot recover on her lawsuit because she has released her claims.

Plaintiff in response contends the release is not valid and does not bar her claim because it was obtained and induced by the fraudulent misrepresentation that if the dissolution was not settled promptly that the defendant Timothy Clark would lose his employment.

You must therefore decide these issues:

1. Whether the plaintiff knowingly and intentionally entered into a release of her claims of fraud; and

2. If so, whether the release was obtained by fraudulent misrepresentation concerning Timothy Clark losing his employment if the dissolution was not promptly settled.

To render the release invalid the plaintiff must prove by the preponderance of clear, convincing and satisfactory evidence that the representation was false (see Instruction No. 13); that the representation was material (see Instruction No. 14); that the defendant knew the representation was false (see Instruction No. 15); the defendant intended to deceive the plaintiff (see Instruction No. 16); and the plaintiff acted in reliance on the truth of the representation and was justified in relying on the representation (see Instruction No. 17).

Clark contends Lewis did not plead that the release was invalid due to fraud in its procurement and thus, the district court erred in so instructing the jury. However, in her petition, Lewis alleged the following:

8. In negotiations for settlement of the dissolution action, the defendant, or the defendant through his attorney, made the following representations to induce the plaintiff to agree to a settlement of the case:

- a. That the Cycle-Sat and Winnebago stock had been forfeited to John K. Hanson because of the defendant's default on the note.

- b. That neither the defendant nor the defendant had any rights with respect to the stock.

- c. That the stock was no longer marital property to be divided in the dissolution action.

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d. That the stock was worthless as to the plaintiff and the defendant.

e. That if the dissolution action was not settled promptly, the defendant would be fired from his employment at Cycle-Sat.

9. On May 19, 1988, the plaintiff signed an agreement settling the property rights of the parties in the dissolution action. . . .

Lewis's petition includes the remaining facts and allegations necessary to plead fraud. She also indicates, in her petition, she was induced to sign a release to John K. Hanson of "any claim that she had to the stock."

We find these pleadings to allege the factors necessary to support the jury instruction and the special verdict question. It is inherent in Lewis's allegations with regard to the settlement that she was also fraudulently induced to sign the release accompanying the settlement. We find no abuse of discretion.

II. Denial of Motion Notwithstanding the Verdict

Clark next contends the district court erred in denying his motion for judgment notwithstanding the verdict. He claims the evidence was insufficient to prove fraud.

A judgment notwithstanding the verdict must stand or fall on the grounds stated in the motion for directed verdict. On appeal, our review is limited to those grounds.

When considering a motion for a judgment notwithstanding the verdict, the district court must view the evidence in the light most favorable to the party against whom the motion is directed. In reviewing . . . , we also view the evidence in

the same manner. Simply put, we ask, was there sufficient evidence to generate a jury question?

Konicek v. Loomis Bros., 457 N.W.2d 614, 617 (Iowa 1990).

We find sufficient evidence to generate a jury question. The undisputed facts clearly establish the following facts. The day after the dissolution action was filed, John K. Hanson demanded payment on the demand note and transferred title of the stocks to himself. Five months after the dissolution had been finalized, the stock was returned to Clark. Clark then resold the stock to Hanson for one million dollars. Clark also admitted to Charles Holland that his wife would not get his assets in the dissolution because "it had been taken care of." When the evidence was viewed in a light most favorable to Lewis, considerably stronger inferences could be drawn. Based on this, we conclude there was sufficient evidence to engender a jury question.

We have considered the other issues on appeal and find them without merit. We affirm the district court.

AFFIRMED.

Keefe, S.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent.

I would reverse and dismiss.

The issue of the stock transfer was at issue in the dissolution case. It was raised and litigated and principles of res judicata apply.

In the dissolution case, discovery was done upon this issue; negotiations were based on this issue. The parties reached a settlement where Patricia signed a release of any cause of action regarding fraudulently transferring the stocks and received \$1500 for the release. The issues of whether Tim Clark fraudulently represented the stocks had been forfeited, and whether they were property to be allocated in the dissolution were identical in the dissolution action and the issue in this case.