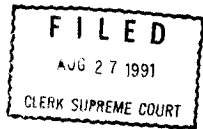


IN THE COURT OF APPEALS OF IOWA

No. 0-507 / 90-104



LEONARD LYNN PESICKA, SR.,

Appellee,

vs.

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MARY JANE PESICKA,

Appellant.

Appeal from the Iowa District Court for Kossuth County,
Joseph J. Straub, Judge.

Defendant appeals a trial court judgment finding that the plaintiff was entitled to damages for loss of profits since defendant failed to give notice of termination of an alleged farm tenancy. **AFFIRMED.**

Ned A. Stockdale of Fitzgibbons Brothers, Estherville,
for appellant.

Leo J. Cassel and Todd A. Stowater of Cassel, McMahon &
Courtney, Algona, for appellee.

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

HABHAB, J.

Leonard and Mary Jane Pesicka had been married for twenty-four years when Mary Jane filed her petition for dissolution on August 21, 1985. During their marriage, the parties accumulated a considerable amount of farmland and debt. After the dissolution petition was filed, the parties began negotiating a settlement. A written stipulation of settlement was eventually reached.

In August 1986, a decree of dissolution was entered, which decree incorporated the parties' stipulation. Under the decree, Leonard was required to deed three tracts of their farmland to Mary Jane without incumbrances. The decree also placed Leonard in possession to harvest and divide (75% to Leonard and 25% to Mary Jane) the 1986 crop on those tracts. The decree made no mention of the 1987 crop year.

Following the entry of the decree, Leonard continued to farm the deeded land. He harvested and delivered Mary Jane's 25% portion of the 1986 crop. He also made arrangements for the 1987 crop year by purchasing seed, fertilizer, and other products. He additionally went to the Kossuth County A.S.C.S. office to sign up for the federal farm program. In March 1987, Leonard was advised Mary Jane had rented the land to another person. It was not until July of 1987 that Mary Jane served a notice of termination of farm tenancy upon Leonard.

On June 3, 1987, Leonard filed the present law action against Mary Jane for damages arising from his ex-wife's breach of a landlord-tenant relationship. Leonard claimed, based on the parties' negotiations during the dissolution proceedings, he was entitled to farm the land in 1987. Following trial, the district court agreed with Leonard and awarded him damages in the amount of \$8,367.90 for his loss of profits from the 1987 crop.

Mary Jane has appealed. She contends the district court erred by: 1) considering the intention of the parties during the settlement negotiations; 2) admitting into evidence the settlement correspondence between the parties' attorneys for the sole purpose of impeachment; and 3) by finding Leonard was a tenant entitled to notice of termination of the farm tenancy. Mary Jane also argues Leonard conveyed all his rights in the land by quit claim deed without a reservation of a leasehold interest. Finally, Mary Jane asserts Leonard's claim is precluded by the dissolution decree that transferred the land to Mary Jane without incumbrances. We affirm.

This case was tried to the court sitting at law. Therefore, our review is on assigned errors of law only. Iowa R. App. P. 4. We are bound by the trial court's findings of facts in a law action if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. Grinnell Mut. Reinsurance C. v. Voeltz, 431 N.W.2d 783, 785

(Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the trial court's judgment. Id. We are prohibited from weighing the evidence or the credibility of the witnesses. Id.

A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

Evidence is substantial or sufficient when a reasonable mind would accept it as adequate to reach the same findings. Waukon Auto v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reinsurance Co., 431 N.W.2d at 785.

The main thrust of Mary Jane's appeal is the trial court erred in considering the circumstances surrounding the negotiations concerning the stipulation prior to the decree. Mary Jane asserts once the stipulation was incorporated into the decree, it is the decree that is controlling as to the rights and obligations of the parties regarding the property settlement, and the stipulation may not be interpreted as a separate contract from the divorce decree.

We agree with Mary Jane's basic premise the dissolution decree is not to be interpreted according to the intent of the parties to the underlying stipulation, as the stipulation is merged into and superseded by the court's decree. In Prochelo v. Prochelo, 346 N.W.2d 527, 529 (Iowa 1984), the Iowa Supreme Court noted it was inappropriate for the trial court to consider evidence of the parties' intentions regarding the stipulation. The court reasoned that "[a]lthough a property settlement agreement is a contract between the parties to a dissolution proceeding, it does not become a final contract until it is accepted and approved by the court." Id. at 529, citing Travelers Indemnity Co. v. Cormaney, 258 Iowa 237, 243-44, 138 N.W.2d 50, 54-55 (1965). When the stipulation is merged in the dissolution decree, it is interpreted and enforced as a final judgment of the court, not as a separate contract between the parties. Id. at 530.

We further agree a dissolution decree ordinarily "settles all property rights and interests of the parties." Id. at 529. The Prochelo court, citing to Roberts v. Playle, 150 Iowa 279, 280, 129 N.W. 945, 946 (1911), opined:

In divorce proceedings, property rights that have not been otherwise settled must, of necessity, be settled by the decree, and it can make no difference where the title rests. If the title is left undisturbed, it is, in effect, adjudged in the party who holds it. In other words, property rights are settled and adjudged in a divorce decree whenever the parties own property.

346 N.W.2d at 529.

Thus, with these basic principles of law in mind, we give no consideration to the intent of the parties when they entered into the stipulation. It is the dissolution decree that is determinative. The rights of the parties were established at the time the decree was filed.

This case boils down to two essential issues. First, was Leonard a farm tenant such as to be entitled to notice of termination of farm lease? Second, was Leonard a periodic or at will tenant, such that he was entitled to notice of termination for the 1987 crop year?

I.

We turn to the first issue. A mere cropper is not entitled to notice of termination of tenancy. Iowa Code § 562.6. A tenant, on the other hand, is statutorily entitled to such notice. Id. The trial court found Leonard was a tenant rather than a mere cropper.

To determine whether Leonard was a tenant or a mere cropper, the trial court followed the criteria laid out by the Iowa Supreme Court in Dopheide v. Schoeppner, 163 N.W.2d 360 (Iowa 1968). The supreme court stated in that case:

The fact there is an agreement for a division of crops between the owner of land and the person working it does not alone determine the status of the parties. What the relationship is depends upon the true intention of the parties to be determined from all of the circumstances surrounding the making of the agreement. Where the negotiations are oral and informal and the evidence is in dispute, ordinarily a jury question

as to whether plaintiff is a tenant or cropper is presented.

Id. at 362 (citations omitted).

The trial court found Leonard was a tenant, rather than a mere cropper. The trial court's finding is binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). While the court may not look to the intent of the parties in interpreting the decree, Dopheide suggests the circumstances in general may be examined to determine the actual posture of the parties.

After Leonard was placed in possession by court decree, he had total control over the farming operation except as to how the crop was to be divided. He decided when to harvest, when and how to market the crop, and all the other decisions relating to use and control of the farming operation on the subject farm land. In addition, although we have held that it is improper to consider the intent of the parties as it relates to the stipulation, the intent of the parties and their conduct after Leonard was placed in possession is relevant. A combination of the relevant facts tends to show Leonard was a farm tenant, rather than a mere cropper. We determine the trial court's finding Leonard was a tenant is supported by substantial evidence. We affirm the trial court on this issue.

II.

We next turn to the issue of whether Leonard was a periodic or tenant at will, such that he was entitled to

notice under Iowa Code section 562.7. We start with Iowa Code section 562.4. That section states in pertinent part:

A person in the possession of real estate, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown, ...

Iowa Code section 562.6 provides in pertinent part:

In the case of farm tenants, except mere croppers, occupying and cultivating an acreage of forty acres or more, the tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7, whereupon the tenancy shall terminate March 1 following. ...

In Estate of Thompson v. O'Tool, 175 N.W.2d 598, 599 (Iowa 1970), there was a written lease for one year. No notice of termination of the farm tenancy was ever given. The supreme court stated the written one-year lease "stood renewed from year to year . . . under the terms of sections 562.6 and 562.7." Id.; see also Ganzer v. Pfab, 360 N.W.2d 754, 756 (Iowa 1985).

In the present case by the terms of the decree Leonard was a person placed in possession of real estate. His rights stood renewed from year to year unless and until either party terminated it according to the provisions of section 562.7.

In Iowa there is well established public policy "in favor of the security of farm tenancies." Ganzer v. Pfab, 360 N.W.2d 754, 756 (Iowa 1985). The Iowa legislature incorporated this public policy in special provisions regarding the termination of farm tenancies in chapter 562 of the Iowa Code. Id. These statutes were enacted for the benefit of the tenant and are

aimed at security of tenure. Id. Our duty is to construe these statutes liberally. Id.

Kansas City Life Insurance Co. v. Hullinger, 459 N.W.2d 889, 893 (Iowa App. 1990).

In Ganzer, the Iowa Supreme Court ruled the statutory provisions protecting the security of the farm tenancy superseded the well-established common-law rule the right of a tenant to occupy the premises can rise no higher than the right of the landlord to so occupy the premises. Id. at 756. In that case, the contract vendor forfeited out the contract vendee. Id. at 755. However, the contract vendor did not provide the contract vendee's farm tenant with the statutory termination notice required by section 562.7. Id. Therefore, although the contract vendee was forfeited out, the farm tenancy continued, with the contract vendor as the new landlord. Id. at 756.

In the present case, notice of termination was not given until July 1987. Under the Code, absent agreement of the parties, the termination would not take effect until March 1, 1988. Therefore, Leonard was entitled to farm the land under the terms of the tenancy for the 1987 crop year.

Another reason appears supporting the trial court's ruling. There is evidence Mary Jane and her attorney assured Leonard he could farm the subject land until his retirement. The trial court found no evidence was introduced to the contrary. This assurance is separate and apart from the dissolution decree. In addition, there is

no provision in the decree specifically terminating the tenancy, as would be required under sections 562.4 and 562.6.

Essentially, the trial court held Mary Jane is estopped from denying the tenancy by her earlier promises. Leonard relied on Mary Jane's representations. His reliance appears reasonable. He changed his position to his detriment based upon this reasonable reliance. We determine the trial court's finding of an estoppel is supported by substantial evidence.

III.

Mary Jane argues the quit claim deeds by Leonard abrogated any tenancy rights he may have had in the land in question. However, in accord with the principle the decree settles the property rights of the parties, we determine the quit claim deeds mandated by the stipulation and decree were of no greater effect than the decree itself. The decree settled the property rights of the parties. The quit claim deeds were merely instruments manifesting what the decree had already accomplished. We further note none of the quit claim deeds were signed or delivered until well after September 1, 1986, the cut-off date for notice of termination of a farm tenancy. Iowa Code 562.7. Thus, the quit claim deeds have no bearing on the question of whether Leonard was entitled to notice of termination of tenancy for the 1987 crop year.

IV.

We find Mary Jane's remaining claims to be without merit, covered by our holding, or not essential to the outcome of the case. We affirm the ruling of the trial court in full.

AFFIRMED.