IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IOWA ELECTRIC LIGHT & POWER COMPANY,

Plaintiff-Appellant,

vs.

MARTHA LAGLE d/b/a LAGLE CARDS & PARTY,

Defendant-Appellee.

Filed April 20, 1988

7-496
87-194

Appeal from the Iowa District Court for Linn County (No. 13778), Larry J. Conmey, Judge.

Plaintiff brings this interlocutory appeal challenging the district court's ruling granting the defendant's motion to reconsider, motion to amend answer by filing a counterclaim, and request for a jury. **AFFIRMED.**

Julie A. Cohen, Cedar Rapids, for plaintiff-appellant.

David P. McManus of Olinger & McManus, Cedar Rapids, for defendant-appellant.

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

OXBERGER, C.J. 112

Iowa Electric Light & Power Company (Iowa Electric) brings this interlocutory appeal to challenge the district court's ruling granting the defendant's motion to reconsider, motion to amend answer by filing a counterclaim, and request for a jury. Iowa Electric claims: (1) the district court did not have jurisdiction to hear the motion to reconsider the partial summary judgment; (2) a final decision of the Iowa Utilities Board (IUB) concerning a utility's service is res judicata and precludes a collateral attack in a subsequent district court proceeding; (3) defendant's counterclaim is barred by res judicata principles because it alleges issues previously brought before the IUB; and (4) defendant's jury demand was untimely and should not be allowed. We affirm.

Defendant Martha Lagle operated a business, Lagle Card & Party, in the Montrose Hotel. After a time she was the only remaining tenant and felt her electric bill was too high. Iowa Electric supplied Lagle with power until September 26, 1984, when her service was disconnected for nonpayment. Lagle filed a complaint with the Iowa State Commerce Commission and they determined the billing was Lagle's responsibility. Lagle supplied additional information but the staff did not change its decision. She did not exercise her right to request a formal hearing.

Iowa Electric then filed a petition against Lagle for her unpaid account. The district court granted partial summary judgment for Iowa Electric finding the commission's final decision was res judicata and not subject to collateral attack by Lagle's affirmative defense that Iowa Electric was negligent in responding to her complaint. Lagle was unrepresented at this hearing because her attorney withdrew thirty days earlier.

Six months later, Lagle, through her new attorney, filed a motion to reconsider, a jury demand, and a counterclaim. The district court sustained the

motions. Iowa Electric then was granted permission to bring this interlocutory appeal.

The first issue raised is whether the district court had jurisdiction to rule on Lagle's motions. Iowa Electric argues the Rules of Civil Procedure do not authorize a motion to reconsider, that Lagle's motion is really either a rule 179(b) motion or a rule 252 petition and is untimely.

An Iowa district court has the power to correct any of the rulings, orders, or partial summary judgments it has entered until a final decree or order is rendered. Hayes v. Kerns, 387 N.W.2d 302, 308 (Iowa 1986); Mason City Production Credit Assoc. v. Van Duzer, 376 N.W.2d 882, 885 (Iowa 1985); Davenport Bank & Trust v. City of Davenport, 318 N.W.2d 451, 455 (Iowa 1982) (court retains jurisdiction to change a ruling on a subsequent request). A motion to reconsider is not expressly authorized in the rules, but it has been recognized in prior cases as a legitimate method of asking a court to change a ruling. See Stover v. Central Broadcasting Co., 247 Iowa 1325, 1331-32, 78 N.W.2d 1, 5 (1956); Ricard v. Ricard, 143 Iowa 182, 185, 121 N.W. 525, 526 (1909); Townsend v. Wisner, 62 Iowa 672, 673, 18 N.W. 304, 304 (1884). Davenport Bank & Trust also bears on this issue. The court in that case recognized a litigant's right to ask a court to reconsider a ruling by holding the trial court had jurisdiction to rule on the motion. Id. at 454. We recognize the need for finality and the orderly progression of litigation, but a trial court has the power to reconsider rulings and a motion to reconsider is a valid way to raise the issue.

Turning to this case, it is clear the trial court could rule on Lagle's motions. It retained jurisdiction because the partial summary judgment was not finally decisive of the case. There remained the determination of damages and the rendition of judgment. See Davenport Bank & Trust, 318 N.W.2d at 454. We hold therefore the trial court had jurisdiction to rule on the motions and enter

the January 29, 1987, order. We now turn to the merits of the trial court's rulings.

Iowa Electric contends the trial court erred in not finding the IUB's final decision res judicata and precluding a collateral attack in this action. Iowa Electric argues the IUB's decision in the informal complaint procedure under Iowa Code section 476.3 decided the issues raised by Lagle's counterclaim and is sufficiently adjudicative to bar relitigation of the issues raised.

There is conflicting authority on whether the informal proceedings are res judicata in a subsequent lawsuit. Administrative rules promulgated pursuant to Iowa Code sections 476.2 and 476.3 create both an informal and formal complaint procedure. See 199 Iowa Admin. Code Chs. 6-7 (1986). The informal procedure requires the customer to provide the IUB with a list of allegations and all relevant information. 199 Iowa Admin. Code § 6.2. The IUB then forwards the complaint to the utility, who then must answer the complaint. Id. at §§ 6.3(1) and 6.3(3). The IUB then reviews all the information gathered and then either informs the customer that the complaint has been resolved or proposes a resolution. Id. at § 6.4(1). If either party is dissatisfied, a request for a formal complaint proceeding may be made. Id. at § 6.5(1). If no request is made within fourteen days, then the proposed resolution is deemed binding on all parties. Id. But see 1971 I.D.R. §§ 1.2 and 1.3 (this language not included). A request for a formal complaint must explain why the proposed resolution should be modified or rejected and must include an alternative proposed resolution. Id. at § 6.5(2). A formal complaint proceeding then takes place under the IUB's formal rules. 199 Iowa Admin. Code Ch. 7 (1986) (rules regarding notice, hearing, and related procedure).

In direct opposition to this is the Iowa Supreme Court decision in Oliver v Iowa Power & Light Co., 183 N.W.2d 687 (Iowa 1971). The court in Oliver

held that a utility customer could bring an independent lawsuit to collect overcharges rather than first pursuing administrative remedies. Id. at 692. The court found the administrative remedy to be inadequate because the regulatory statute involved, Iowa Code section 490A.3, did not grant any authorization to the commission to require reparation by the utility for overcharges. Id.

However, the supreme court in Mid-Iowa Community Action, Inc. v. Iowa State Commerce Comm'n, No. 87-227, slip op. at 7 (Iowa April 13, 1987), found the IUB could order reparation of overcharges. This holding would appear to place exclusive jurisdiction in the IUB for the collection of overcharges. The court in Mid-Iowa, however, did not address the question of whether the informal complaint procedure would be binding in an independent lawsuit. Oliver holds that "if the person proceeds before the commission by informal complaint only, as plaintiff did here, we are clear that neither he nor the utility is bound in an independent court suit, such as this one, by the result before the commission." Oliver, 183 N.W.2d at 692.

Presented with these conflicting authorities, we find Oliver is dispositive. We therefore hold the informal proceedings before the IUB are not binding on the parties in this case, and the issues raised by Lagle can be resolved in subsequent proceedings.

Finally, we address Iowa Electric's contention that the trial court erred in granting Lagle's request for a jury on all issues. Iowa Electric argues the demand was untimely.

Iowa Rule of Civil Procedure 177(d) provides:

> Notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made of right, the court, in its discretion on motion and for good cause shown, but not ex parte, and upon such terms as the court prescribes, may order a trial by jury of any or all issues.

The granting or denial of a jury trial belatedly sought under this rule rests within the trial court's discretion. Sher v. Burche, 353 N.W.2d 859, 864 (Iowa App. 1984); Schupbach v. Schuknecht, 204 N.W.2d 918, 920 (Iowa 1973).

The trial court did not specify why the jury demand was granted, but the ruling must have been based on the court's reversal of its prior ruling on partial summary judgment. The trial court was very concerned about Lagle's lack of representation and sought to provide a fair hearing on all the issues raised by Lagle. In this case we conclude the trial court did not abuse its discretion in granting the jury demand.

AFFIRMED.