IN THE COURT OF APPEALS OF IOWA

No. 8-012 / 97-0143

000175

DAVID H. JOBE and SARAH L. JOBE,

Plaintiffs/Defendants to Cross-Claim,

FILED
MAR 27 1998
CLERK SUPREME COURT

vs.

ANNA MARIE HOPWOOD,

Defendant,

CAROL HOPWOOD,

Defendant-Appellee/Cross-Appellant,

DANNY CLAWSON and DONA CLAWSON,

Defendants/Cross-Claimants-Appellants/Cross-Appellees,

DANNY CLAWSON and DONA CLAWSON,

Third Party Plaintiffs-Appellants,

vs.

BOX & BOX, and HERBERT F. BOX, Individually,

Third Party Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Davis County, James P. Rielly, Judge.

The Clawsons, third-party plaintiffs and cross-claimants, appeal the district court's ruling dismissing their action against the third-party defendant for negligence and their action against defendant for breach of contract or misrepresentation. **AFFIRMED.**

John R. Silko, Bloomfield, for appellants.

M. H. Pothoven of Pothoven, Blomgren & Stravers, Oskaloosa, for appellees.

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

SACKETT, P.J.

Third-party plaintiffs-appellants Danny Clawson and Dona Clawson appeal the trial court's decision contending the trial court erred in dismissing the claim for malpractice against third-party defendant-appellee Herbert F. Box. Box on cross-appeal contends the trial court erred in failing to find as a matter of law that Clawsons, even if they did show evidence of negligence, failed to show proximate cause and damages. Clawsons further contend the trial court erred in dismissing their claim for termination of real estate contract against defendant-appellee Carol Hopwood. We affirm.

Clawsons, advancing what they contend should be our scope of review, rely on *Schmitz v. Crotty*, 528 N.W.2d 112 (Iowa 1995), where the court in a legal malpractice case, recognizing the issue of whether an attorney has exercised reasonable care is ordinarily a fact question, said, "[I]f the facts are so compelling that no conflicting inferences can be drawn from them, and rational people cannot differ in response, then whether an attorney has performed the duty owed may be decided as a matter of law by the court." *Id.* at 115.

To apply the *Schmitz* standard, there must be the rare instance where only one inference may be drawn from the facts. *See id.* at 116. Clawsons contend this is the rare instance. In this case, there are conflicting opinions on the issue of negligence and it does not present that rare instance. We, therefore, review to determine whether there is substantial evidence supporting the trial court's decision. *Id.* at 115.

Clawsons purchased a tract of land from Carol Hopwood. Box examined the abstract of title. The metes and bounds description, as written in the abstract, returned to the point of beginning. Yet, the description did not close. Had there been a survey, it would have shown the description did not close. The title opinion directed Clawsons, "[I]f there are any questions to the property lines, have them determined at this time."

Clawsons were subsequently sued by the owners of an adjacent parcel over the location of a boundary. At the time of sale, Hopwood was not able to visually locate the east boundary of the parcel. Hopwood and the realtor suggested the property be surveyed, and Hopwood agreed to pay for one-half of the survey. Clawsons declined to have the survey.

Clawsons sued Box contending Box was negligent because the east boundary line in the description was not long enough to reach from one section line to the other and the description did not close. At trial, the parties stipulated to a corrected description, the only difference being a longer east boundary line.

Clawson's claim is premised on the location of boundaries. There is no showing the description used in the title examination does not identify the property sold or that it is equally applicable to other property. The trial court, in addressing the claim against Hopwood, found Hopwood told Clawsons she was not sure of the location of the property lines, she wanted a survey, and she offered to pay for

one-half of the survey. The trial court found Clawsons negligent in this regard and dismissed their claim against Hopwood. These findings are supported by substantial evidence.

Expert testimony on Box's standard of care was introduced by both Box and Clawsons. Box's expert, David Kubicek, an attorney practicing real estate law who had examined over two thousand abstracts, was chairman of the Linn County Title Standards Committee, and was a member of the real estate section of the Iowa State Bar Association and a member of the American College of Real Estate Lawyers, testified section dimensions in Iowa are not accurate and an actual survey of the area showed this property was not an exception to the rule. He further testified the inaccuracy of the section dimensions did not make the title defective. He testified reference points and markers take precedence over measurements and directions in an unsurveyed description. He further testified Box told Clawsons in the title opinion to have any questions as to property lines determined at that time.

Section 2.1(D) of *Marshall's Iowa Title Opinions and Standards* states:

> The general rule regarding descriptions is that they are sufficient if they can be made certain. Any description is sufficient by which the identity of the premises can be established, or which furnishes a means of identification. . . . All that is necessary is that the description is not equally applicable to some other property.

George F. Madsen, *Marshall's Iowa Title Opinions and Standards* § 2.1(D), at 39 (2d ed. 1978).

Clawsons' claim is based on the visual location of a specific boundary line. This would not come from the abstract of title and Box so advised Clawsons. The trial court found Hopwood informed Clawsons the boundary could not be visually established, and further found Clawsons negligent in failing to agree to the survey. There is no claim the description was not sufficient to identify the property sold or that it was equally applicable to other property.

While Clawsons on appeal contend the boundary was not where they thought it was, the boundary was never visually identified for them. Furthermore, Clawsons have failed to show they suffered damage.

Clawsons also contend the trial court's dismissal against Hopwood should be reversed. We affirm on this issue. Having done so, we find it unnecessary to address the issues raised on cross-appeal.

Costs on appeal are taxed to Clawsons.

AFFIRMED.