

IN THE COURT OF APPEALS OF IOWA

No. 6-401 / 95-1418

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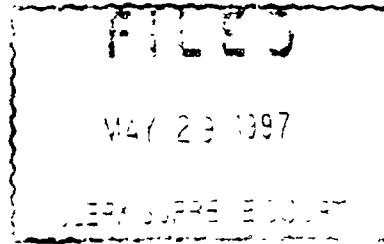
DONNA ASTLE,

Appellant,

vs.

DANIEL L. WIEDERIN and MAUREEN A. WIEDERIN,

Appellees.



Appeal from the Iowa District Court for Carroll County, Joel E. Swanson,
Judge.

Donna Astle appeals the district court's order granting Daniel and Maureen
Wiederin's motion for summary judgment in Donna Astle's personal injury action
arising out of an automobile accident. **AFFIRMED.**

David S. Wiggins of Wiggins, Anderson & Conger, P.C., West Des Moines,
for appellant.

Roy M. Irish of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker &
Ordway, L.L.P., Des Moines, for appellees.

Considered by Cady, P.J., Streit, J., and Peterson, S.J.*

*Senior judge from the First Judicial District serving on this court by order of the
Iowa Supreme Court.

PETERSON, S.J.

Donna Astle filed a petition in the Iowa District Court in and for Carroll County on April 1, 1994, seeking damages as the result of an automobile accident that happened on October 20, 1990. She alleged she has been disabled since the accident and is entitled to the exception in section 614.8 of the Iowa Code. The defendants, in their answer, pled as an affirmative defense that more than two years had expired since the accident and that section 614.8 of the Iowa Code was not applicable. They filed a motion for summary judgment raising this issue, and after a hearing, the trial court sustained the motion. Donna Astle appeals that ruling.

I. Scope of Review. The granting of a motion for summary judgment is appropriate under Iowa Rule of Civil Procedure 237 only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *City of West Branch v. Miller*, 546 N.W.2d 598, 600 (Iowa 1996). When ruling upon a motion for summary judgment, the court considers the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any. *City of West Branch*, 456 N.W.2d at 600. A fact question does not exist if the only dispute concerns the legal consequences flowing from the undisputed facts. *Id.* Consequently, the appellate court examines the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law. *Gerst v. Marshall*, 453 N.W.2d 810, 811-12 (Iowa 1996). The

appellate court will review the facts in the light most favorable to the party opposing the motion for summary judgment. *Id.*

II. Undisputed Background Facts and Proceedings. On October 20, 1990, Donna Astle was injured when a vehicle being driven by her husband collided with a vehicle being driven by Daniel Wiederin. The accident occurred in Carroll County, Iowa.

As a result of that accident, Donna Astle suffered certain injuries. In March of 1991, she was referred to Dr. Allen Ingenito by her family practitioner in Alexandria, Minnesota. Dr. Ingenito is a board-certified neurologist. He saw Donna Astle on three occasions between March of 1991 and March of 1993.

Dr. Ingenito's history indicates Donna Astle told him she had been involved in an automobile accident and that she struck her head was unconscious for approximately fifteen minutes. She was amnesic and could not remember a great deal of the accident. She had a nasal fracture and suffered numbness in her face. She also injured her knee and had low back pain. He believes this is a permanent condition.

Dr. Ingenito prescribed a series of tests. One of those was an electroencephalogram, commonly known as "brain wave test." This particular test showed a slowing and a changing in the delta activity in the front of the brain. The neurologists refer to this by the acronym FIRDA. (Frontal Intermediate Rhythmic Delta Activity.) This indicates a type of injury to the frontal area of the brain. It is not

specific, but it shows evidence of an injury. He believes this is a permanent condition.

The frontal areas of the brain are the areas responsible for personality, mood, and what is called the "executive function." This function is the type in which complex decision making and anticipation of consequences of events and the understanding of the complex relationship between things resides.

In addition, Dr. Ingenito had psychometric testing or neurological evaluation done by Dr. Steven Morgan, who is a board-certified neuropsychologist. This testing showed that Donna Astle had a cognitive inefficiency and a mild impairment, particularly in the areas of the higher-level executive skills particularly involving the frontal lobe. The report from Dr. Morgan also found that a psychological stress factor made her physical symptomology worse. He explained this by saying if she is stressed out, either from a psychological reason, depression, anxiety, pain, something like that, it would make her mental and cognitive functioning worse.

Dr. Ingenito, in explaining the impact of this injury on Donna Astle's executive functioning, postulated that she would be able to plan a dinner for her family, but if she were planning a big get-together such as a reunion in which she had to get together a band and a site for a tent, this would be extremely difficult for her because the ability to make those plans and anticipate the implications of her decisions would be difficult for her.

Dr. Ingenito classified Donna Astle's injury as a neurological disorder as opposed to a psychiatric disorder. He was asked "and does it get to the level of a mental illness or a mental impairment?" His answer was,

It can become a mental impairment. If it were a matter of categorization here, it's not really a matter of difference in quality but of a categorization--if that person is then unable to care for any of their own affairs, sometimes people would categorize that as a psychiatric or a mental illness.

Dr. Ingenito, in responding to a question concerning Donna Astle's understanding of the statute of limitations, stated that "but rather the knowledge and understanding of the executive function to pursue that and be sure that one's personal rights and interests are being served would not be something she could adequately control." Dr. Ingenito believed that

[B]ased on the difficulty with the executive function she experiences, frontal lobe dysfunction based on the EEG and the nature of the head injury due to the motor vehicle accident, that it would be very difficult for her to comprehend the complex nature of her legal rights and the aggressive pursuit of a lawsuit.

Dr. Ingenito found that Donna Astle was able to respond to commands and questions appropriately and her speech was normal and she could usually comprehend words and she was able to explain or translate clearly and reply and her short-term as well as long-term memory appeared to be appropriate. He had discussed the taking of medication for Donna Astle's complaints of facial and leg numbness and explained the side effects of that medication. She elected not to take the medication because of the side effects.

During the period of time Donna Astle was seen by Dr. Ingenito and being treated for these injuries, she executed eleven releases. These releases were for treatment by the doctor, treatment in a hospital, and for information to be sent to Attorney Rodney Hanson and to insurance companies.

On April 15, 1991, a letter was addressed to Daniel L. Wiederin from Rodney C. Hanson. That letter was on the letterhead of the firm of Anderson, Burgett, Spillseth & Hanson, Attorneys at Law, with offices in Wilmer, Minnesota. That letter indicates this firm had been retained to represent Donna and Bill Astle for the injuries they incurred in the October 28, 1990, accident. The record also contains letters from Rodney Hanson to Dr. Ingenito requesting information about Donna Astle's injuries. In October of 1992, a complaint and summons was served upon Daniel L. Wiederin¹. The complaint alleges a cause of action based on negligence as a result of the automobile accident of October 28, 1990. The summons does not comply with the requirements of Iowa Rule of Civil Procedure 49 and nothing was filed by Rodney Hanson in the Iowa District Court in and for Carroll County.

The information in the record shows Donna Astle's employer was Astle Concrete, Inc. That corporation has a checking account at the First National Bank of Henning, Minnesota. The only authorized signature on that account is Donna M.

¹A civil action is commenced in Minnesota when a summons is served upon the defendant. Minn. R. Civ. P. 3.01. A copy of the complaint shall be served with the summons. Minn. R. Civ. P. 3.02.

Astle. The record contains sixteen promissory notes with the earliest being March 6, 1992, and the last one being August 2, 1995, signed only by Donna Astle. These notes vary in amount from \$3,000 to \$8,000, and the purpose of the notes is shown as "operating." One note was for \$26,000 for the purchase of a Ford Loader.

III. Application of the Statute of Limitations. Section 614.8 of the Iowa Code (1995) provides that:

The time limit for actions herein, except for that brought for penalties and forfeitures, shall be extended in favor of minors and mentally-ill persons, so that they have one year from and after the termination of such disability within which to commence said action.

Iowa Code § 614.8 (1995)

The term "mentally ill" is defined in section 4.1(15) as follows:

The word "mentally-ill person" includes mental retarded, psychotic person, severely-depressed person, and person of unsound mind

Iowa Code § 4.1(15) (1995).

In order to fall within the provisions of Iowa Code section 614.8, Donna Astle must show that she was mentally ill as defined in Iowa Code section 4.1(15) for the period of time up to the filing of the lawsuit in question and that such mental illness disabled her to the extent that she was unable to file her lawsuit within the appropriate period of time. *Borchard v. Anderson*, 542 N.W.2d 247, 249 (Iowa 1996); *Langner v. Simpson*, 533 N.W.2d 511, 523 (Iowa 1995).

The issue of whether a person is mentally ill for the purpose of tolling the statute of limitations is factual. *Altena v. Altena*, 428 N.W.2d 315, 317 (Iowa App.

1988). A proposition may be established as a “matter of law” when no other factual findings can be reasonably drawn from the evidentiary facts. *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 888 (Iowa 1976).

Donna Astle was not mentally ill and entitled to the benefit of Iowa Code section 614.8. Dr. Ingenito would not say that Donna Astle was impaired seriously enough to be classed as mentally ill.

Donna Astle since the accident retained an attorney to represent her for her injuries she sustained in the accident, and executed releases for medical information to her attorney, her doctors, and to a hospital for insurance purposes. She also elected not to take medication because of possible side effects and signed notes for business purposes at a bank and is the only signature on a checking account for a business. She also attempted to commence an Iowa case in accordance with Minnesota procedures.

We considered these uncontested facts, including the opinion of doctors Ingenito and Morgan, and find the only conclusion that can be reasonably drawn is that she is not entitled to claim the exemption in Section 614.8 of the Iowa Code.

The trial court was correct in sustaining the defendant’s motion for summary judgment.

AFFIRMED.