

IN THE COURT OF APPEALS OF IOWA

000293

No. 7-055 / 95-1741

LOREN G. LARSON,
Plaintiff-Appellee,

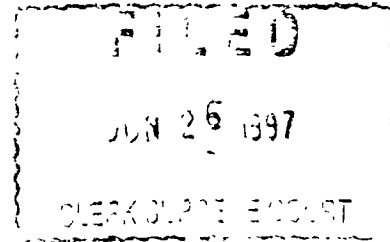
vs.

JEANNE A. REITER,
Defendant-Appellant.

ROBERT W. CONRAD,
Defendant-Appellee,

and

HORIZON FEDERAL SAVINGS BANK f/k/a
OSKALOOSA HOME LOAN AND SAVINGS ASSOCIATION,
Defendant.



Appeal from the Iowa District Court for Lucas County, James W. Brown,
Judge.

This is an appeal from the entry of a default judgment in an action to quiet
title. **AFFIRMED AS MODIFIED.**

Jeanne A. Reiter, Laguna Niguel, California, pro se.

William L. Shelton of Shelton Law Firm, Chariton, for appellee Larson.

Robert W. Conrad, Knoxville, pro se.

Considered by Habhab, C.J., Sackett, J., and Cady, J. Streit, and Vogel, JJ.,
take no part.

CADY, J.

Defendant Jeanne Reiter appeals the decision of the district court which granted a default judgment to plaintiff Loren Larson in this quiet title action. We have modified the amount of the default judgment, but otherwise affirm the court's decision.

On April 28, 1988, Reiter signed a quit claim deed transferring certain property in Lucas County to Oskaloosa Home Loan and Savings Association, now known as Horizon Federal Savings Bank. On November 27, 1991, the bank transferred the property to Larson.

In an affidavit in a previous action, Reiter claimed she still had an interest in the property. In a facsimile transmission to Larson's attorney, Reiter claimed she signed the quit claim deed at the request of attorney Robert Conrad. She stated the next day she called Conrad and told him she was rescinding the deed and instructed him not to file it. She claimed Conrad assured her he would destroy the deed.

On March 27, 1995, Larson filed an action to quiet title against Reiter, Horizon, and Conrad. Reiter is a resident of California. She was served notice of the present action by personal service in California. She filed a motion to quash the service of notice and to dismiss the action, claiming the Iowa district court did not have personal jurisdiction over her. The district court denied the motion.

Conrad filed an answer which contained a cross-claim against Reiter. The cross-claim alleged Reiter had defamed and libeled him and had caused him great

emotional distress. Reiter filed a motion for the dismissal of Conrad's cross-claim. She alleged she had never been served with the cross-complaint, the complaint failed to state a cause of action, and the court did not have personal jurisdiction over her.

In June 1995, Reiter sent a letter to the court stating she did not intend to answer the complaint. Reiter did not file any answer to the petition. On July 13, 1995, Larson filed a motion for default, which the district court granted. A separate default judgment was entered which quieted title to the property to Larson. In addition, the court ordered Reiter to pay \$2,080.25 in attorney fees and \$102.50 in court costs. Reiter has appealed.

I. Reiter contends the district court should have granted her motion to quash service. She asserts the court did not have personal jurisdiction over her and should not have ordered her to pay court costs and attorney fees. She states she does not have sufficient minimum contacts with Iowa to allow it to exercise jurisdiction.

All assertions of state court jurisdiction must be evaluated according to minimum contacts standards. *Shaffer v. Heitner*, 433 U.S. 186, 212, 97 S. Ct. 2569, 2584, 53 L. Ed. 2d 683, 703 (1977); *In re Marriage of Kimura*, 471 N.W.2d 869, 873 (Iowa 1991). Where claims to property, however, are the source of the underlying controversy, it would be unusual for the State where the property is located not to have jurisdiction. *Shaffer*, 433 U.S. at 207, 97 S. Ct. at 2581, 53 L. Ed. 2d at 700. There is a presumption of jurisdiction in such circumstances because: 1) the cause of action arises solely out of the defendant's claim to ownership of the property; 2) the

claimant may properly expect the forum State's protection of his or her recognized beneficial interest in property located within its borders; and 3) a State holds a strong interest in assuring the marketability of property within its borders and in providing a procedure for peaceful resolution of disputes about the possession of that property. *Percival v. Bankers Trust Co.*, 450 N.W.2d 860, 863 (Iowa 1990).

The cause of action in the present case arises solely out of Reiter's claim of interest in the Lucas County property. By claiming an interest in Iowa property, we find Reiter could reasonably expect to be subject to the jurisdiction of an Iowa court. We find Reiter has sufficient minimum contacts with Iowa to allow the Iowa courts to address this quiet title action. We conclude the district court had personal jurisdiction over Reiter.

II. Reiter claims the amount of attorney fees awarded was excessive. In a quiet title action, the damages awarded may include attorney fees. *Kendall v. Lowther*, 356 N.W.2d 181, 191 (Iowa 1984). Iowa Code section 649.5 (1995) provides:

[T]he court may, in its discretion, if the plaintiff succeeds, assess, in addition to the ordinary costs of court, an attorney's fee for plaintiff's attorney, not exceeding twenty-five dollars if there is but a single tract not exceeding forty acres in extent, or a single lot in a city, involved, and forty dollars, if but a single tract exceeding forty acres and not more than eighty acres. In cases in which two or more tracts are included that may not be embraced in one description, or single tracts covering more than eighty acres, or two or more city lots, a reasonable fee may be assessed, not exceeding, proportionately, those provided for in this section.

The district court ordered Reiter to pay attorney fees of \$2,080.25. This is in excess of the amount which may be awarded under the statute. The property in question involves only a single tract, and we find the attorney fees should have been limited to \$25. We modify the default judgment to reduce the award of attorney fees to \$25.

Larson asserts the district court correctly required Reiter to pay the full amount of his attorney fees because of her wrongful conduct. A party generally has no claim for attorney fees as damages in the absence of a statutory or written contractual provision allowing such an award. *Suss v. Schammel*, 375 N.W.2d 252, 256 (Iowa 1985). A rare exception to this general rule exists where the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Hockenberg Equipment Co. v. Hockenberg's Equipment & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993).

Here, there is a statute governing the award of attorney fees. Thus, there is no need to resort to common law attorney fees as Larson suggests. Furthermore, we do not find Larson has sufficiently shown Reiter's conduct rose to the egregious level which must be present before common law attorney fees may be awarded.

III. Reiter contends Larson's action should have been dismissed because he had no cause of action against her. She states her facsimile transmission to Larson's attorney was an unsigned and unrecorded affidavit, which did not constitute a cloud on the title to the property.

Iowa Code section 649.1 provides:

An action to determine and quiet title of real property may be brought by anyone whether in or out of possession, having or claiming an interest therein against any person claiming title thereto though not in possession.

In a title opinion prepared on January 18, 1995, the title examiner cautioned Reiter was claiming an interest in the property. The title examiner recommended Reiter sign a quit claim deed or that title be quieted against her. We find Larson had a cause of action in this case and the district court properly denied Reiter's motion to dismiss.

IV. Reiter asserts the district court improperly granted a default judgment to Larson because he had the burden of proof in the quiet title action. We find the default judgment was properly granted. Reiter did not file an answer to the petition. Under Iowa Rule of Civil Procedure 230, the district court properly found her to be in default.

V. Reiter contends Conrad's cross-claim should be dismissed. She states she was not served with the cross-claim. She asserts that the court has no jurisdiction over her in regard to the cross-claim.

The default judgment in this case pertained only to Larson's petition to quiet title. No action was taken concerning the cross-claim. We find Reiter's arguments are premature. We make no findings in regard to the cross-claim.

We affirm the decision of the district court finding Reiter was in default and quieting title to certain property to Larson. However, we modify the amount of the

default judgment by reducing the amount of attorney fees to \$25. Costs of this appeal are assessed to Reiter.

AFFIRMED AS MODIFIED.

Habhab, C.J., concurs; Sackett, J., partially dissents.

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SACKETT, P.J. (concurring in part; dissenting in part)

I disagree with the majority that Iowa has personal jurisdiction over Reiter by virtue of her claim of an interest in Iowa real estate. Iowa has jurisdiction in rem over the property. Reiter concedes this fact.¹

I would affirm the judgment in quiet title, but I would reverse the order against Reiter for attorney fees and costs.

¹ The notice served on Reiter was served under Iowa Code section 617 3, which provides for service on nonresidents committing torts in Iowa.