IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

JOEL MEYER AND BEVERLY MEYER,

Plaintiffs-Appellants,

vs.

GEORGE NEDERHOFF AND DONNA NEDERHOFF,

Defendants-Appellees.

3-349
83-79

Appeal from Grundy District Court - Peter Van Meter, Judge.

Plaintiffs appeal trial court's judgment sustaining defendants' motion for a directed verdict. REMANDED.

James C. Ellefson, Lundy, Butler & Lundy, 1301 12th Street, Eldora, Iowa, for plaintiffs-appellants.

Gary W. Kazragis, Rickert, Thompson & Kazragis, 115 Broad Street, Reinbeck, Iowa, for defendants-appellees.

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

SACKETT, J.

Plaintiffs appeal from the trial court's judgment sustaining defendants' motion for a directed verdict.

This is an action at law for the breach of both a written and an oral contract. The underlying contracts involved the sale of a dairy herd by the defendants, George and Donna Nederhoff, to the plaintiffs, Joel and Beverly Meyer. Also involved is an agreement to lease 100 acres of cropland owned by the Nederhoffs to the Meyers. The contract action was tried to a jury.

The plaintiffs put on their case in chief during the afternoon of the first day of trial. After the plaintiffs' case in chief had been presented, the defendants made a five-division motion for directed verdict.

The plaintiffs resisted the motion on each and every ground, and the court directed a verdict. The judge did not rule on defendants' grounds separately, but stated that he did not feel there was any basis to submit the case to the jury on any theory that he could think of.

The Meyers filed a motion for new trial claiming, inter alia, that the court had failed to make a separate ruling on each division of the defendants' motion for directed verdict. The trial court overruled the motion for new trial and dismissed the plaintiffs' complaint with the following statement:

> The law of Iowa is well settled that a party may rely upon any ground he asserted in the trial court in support of a motion to dismiss or directed verdict even though the motion was not sustained on such grounds. [citations omitted].
>
> Because defendants' motion was sustained generally, defendants are free to argue the ruling should be affirmed on any asserted ground and plaintiffs are likewise free to argue that any asserted ground should have been overruled.

This appeal followed. The plaintiffs now allege:

(1) that the district court erred in sustaining the defendants' motion for directed verdict without ruling on the grounds separately;

(2) that there was evidence from which, when taken in the light most favorable to the plaintiffs, the jury could have found a breach of contract by defendants;

(3) that defendants failed to carry their burden by clear, convincing and satisfactory evidence that the plaintiffs had acquiesced in the breach of contract by defendants;

(4) that the requirements for termination of a farm tenancy, Iowa Code chapter 562, are relevant to these proceedings;

(5) that the defendants did not exercise their option to terminate the contract when they were in breach; and

(6) that the plaintiffs showed damages.

Rule 118

Iowa Rule of Civil Procedure 118 provides:

> A motion, or other matter involving separate grounds or parts, shall be disposed of by separate ruling on each and not sustained generally.

The trial court failed to comply with rule 118 in sustaining the motion for directed verdict. Furthermore, the trial court failed, when apprised of the error in the motion for new trial, to make any effort to correct it.

In 1973 the Iowa Supreme Court adopted a firm position with reference to rule 118 and made its current position very clear when, in Ruby v. Easton, 207 N.W. 2d 10, 14, 15 (Iowa 1973), the court discussed the history of rule 118.

The court then commented:

> Finally in our last confrontation with a violation of the rule, in Greenwell v. Meredith Corporation, 189 N.W. 2d 901, 904 (Iowa 1971) filed September 9, 1971, we said:
>
> > "While we have declined to reverse in any case for the trial court's noncompliance with rule 118, R.C.P., we shall henceforth insist that the rule be strictly complied with to avoid necessity of appellants arguing each and every ground of a motion to direct a verdict, and shall require trial courts to make clear to parties and to this court what grounds of motion were sustained so that arguments on appeal can be confined and limited thereto."

Id. at 14. The court also noted:

> Our research has revealed the mandate of rule 118 has been called to the attention of the bench and bar in opinions of this court at least 25 times since its adoption. Justice Hays, writing in Melsha v. Tribune Pub. Co. of Cedar Rapids, 243 Iowa 350, 355, 51 N.W. 2d 425, 428 (1952), expressed his personal view that failure to observe the rule "should ordinarily be held to constitute reversible error."

Id. The court went on to say:

> We therefore adopt a position which ought to effectuate our policy without imposing an unreasonable burden on anyone. Cases involving violation of rule 118 will ordinarily be reversed. [emphasis added].

Id. at 15.

We have examined the court's rulings on rule 118 since 1973 and find that, despite this strong pronouncement, the court has been reluctant to enforce the rule.

While declaring that ordinarily a failure to comply with the rule is reversible error, the court managed to avoid that result: by finding "minimal compliance" in Dudley v. William Penn College, 219 N.W. 2d 484, 487 (Iowa 1974), and in Oak Leaf Country Club, Inc. v. Wilson, 257 N.W. 2d 739, 743 (Iowa 1977); or by finding apparent grounds of error on the part of the trial court in Turner v. Thorp Credit, Inc., 228 N.W. 2d 85, 87 (Iowa 1975), and in Brekken v. County Board of Review for Story County, 223 N.W. 2d 246, 247 (Iowa 1974); or by finding that specific rulings would not have explained the court's views any more fully than it already had explained them in Town of Reasnor v. Pyland Construction Co., 229 N.W. 2d 269, 273, (Iowa 1975); or where the court ruled minimally and "it would have been difficult to impossible for the trial court to fully comply with the rule because of the structure of the motion ruled upon." Action Real Estate Corporation v. Bulechek, 309 N.W. 2d 502, 504 (Iowa 1981).

We find no reasons to avoid applying the dictate of Iowa Rule of Civil Procedure 118 in this case. The trial court not only failed to comply with Rule of

Civil Procedure 118 in ruling on the motion for directed verdict, the court also failed to correct the error when presented with an opportunity to do so. When ruling on the motion for new trial and specific rulings Judge Van Meter said, "[m] otion for new trial and request for specific ruling denied."

The supreme court said in Ruby v. Easton:

> We therefore adopt a position which ought to effectuate our policy without imposing an unreasonable burden on anyone. Cases involving violation of rule 118 will ordinarily be reversed. Proceedings upon remand will be a matter for determination in each case. In making that determination we will not usually pass on the merits of each ground of the motion. We will instead review the record as necessary to decide the scope of our mandate on remand. Where it seems proper we will exercise our discretion to remand for compliance with rule 118 rather than new trial.

207 N.W. 2d at 15.

Cases involving violations of rule 118 will ordinarily be reversed and remanded for specific rulings. Turner v. Thorp Credit, Inc., 228 N.W. 2d at 87; Oak Leaf Country Club, Inc. v. Wilson, 257 N.W. 2d at 743.

We are concerned with imposing unreasonable burdens on counsel and the parties. It seems proper, according to the dictate of Ruby v. Easton, to remand this case for compliance with rule 118 rather than for a new trial.

The appellants should not complain, because they have requested the action. The appellees resisted the application for specific ruling. They should have been mindful of the admonition given by Justice Hayes in Melsha v. Tribune Publishing Co. of Cedar Rapids, 243 Iowa 350, 355, 51 N.W. 2d 425, 428 (1952), when, in discussing his personal view that failure to comply with rule 118 should ordinarily be held to constitute reversible error, he said:

> Under such a view, the successful party in the trial court, if he would protect the fruits of his victory in the event of an appeal, would see to it that such rule was complied with, or make an effort to such effect. There is an old saying "a word to the wise is sufficient."

In accordance with the policy enunciated in Ruby v. Easton, this case will be remanded because of trial court's noncompliance with rule 118. We exercise our

discretion to remand for compliance with rule 118 rather than a new trial. On remand, the trial court shall rule separately on each of the five divisions of defendants' motion for directed verdict. Because of our ruling, we need not address the remaining four arguments advanced by the appellants.

REMANDED.