

IN THE COURT OF APPEALS OF IOWA

No. 5-124 / 93-1661

FILED

MAY 30 1995

CLERK SUPREME COURT

RAYMOND CREES and LEOTA CREES,

Plaintiffs-Appellants,

vs.

EDWIN W. SKINNER,

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County,
Linda R. Reade, Judge.

Plaintiffs appeal from a district court judgment in favor of defendant holding there was no evidence defendant engaged in legal malpractice in his representation of plaintiffs in a forcible entry and detainer action.

AFFIRMED.

Leota and Raymond Crees, Des Moines, pro se.

Randy Duncan of Duncan, Green, Brown, Langeness & Eckley, P.C., Des Moines, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

CADY, J.

In 1976, Raymond and Leota Crees rented residential property on a monthly basis from the heirs of Sanford Pugh. On July 1, 1976, the Creeses and the Pughs entered into a contract for the purchase of the home. The Creeses, almost immediately, became delinquent in their payments under the terms of the contract, and the heirs' attorney, Timothy Rahm, served forfeiture notices on them. The parties subsequently entered into a modified contract and established a new payment schedule.

The Creeses again became delinquent in their payments resulting in additional forfeiture notices. One such notice was served in late Spring of 1989. At the time, the Creeses were seventeen months in arrears on their contract payments and delinquent on their property taxes. They failed to cure the delinquency within the statutory thirty-day period, prompting Rahm to serve them with a three-day notice to quit.

On June 28, 1989, Rahm, on the Pughs' behalf, filed a forcible entry and detainer action against the Creeses. The Creeses sought legal representation, and were ultimately referred to the defendant, attorney Edwin Skinner.

Skinner met with the Creeses and determined that the thirty-day forfeiture period had expired. Skinner informed the Creeses that there were no defenses available and the

only recourse was to seek injunctive relief from the forfeiture proceedings to buy time for a negotiated settlement.

On the day of the forcible entry and detainer hearing, Skinner expressed his opinion to the Creeses that they had validly forfeited their contract. Skinner, however, discussed the problems with Rahm, and Rahm agreed to refrain from enforcing the forcible entry and detainer and to allow the Creeses additional time to cure the deficiency amount of \$8450. The parties agreed the forcible entry and detainer order would issue on August 2, 1989 if the deficiency was not paid.

The Creeses failed in their efforts to obtain a loan to pay the deficiency amount. When it became clear they would not be able to obtain the money, Skinner offered to pay the deficiency amount of \$8450, but noted that he would have to withdraw as their attorney. The Creeses agreed to this arrangement, and Skinner personally made the payment. Skinner urged the Creeses to return to their original counsel.

The Creeses again became delinquent in their payments. To prevent the previous scenario from repeating, Skinner purchased the Pughs' interest in the property for \$18,000 and placed it in trust to be held for the benefit of the Creeses. Since 1989, the Creeses have not made any payments on the contract and have not paid the taxes on the property. The property was ultimately placed in receivership.

On December 2, 1991, the Creeses filed two separate legal malpractice actions against Skinner, one based on contract and the other based on negligence. The first alleged Skinner breached his representation agreement by failing to use all the care, skill, and knowledge available. The second action, virtually identical to the first, claimed that Skinner had failed to represent them zealously and failed to charge a reasonable fee.

The district court determined the claims were baseless. The court found the Creeses failed to sustain their burden of showing Skinner was negligent or that any damages resulted. The court observed that the Creeses lived in the house free for a considerable period of time due to Skinner's efforts.

The Creeses argue on appeal that the very process that enabled them to keep their house free for over four years constituted legal malpractice. They claim Skinner breached the attorney-client contract, and was negligent in telling them the money he advanced was obtained from a bank, when in reality the money was processed through his own investment company for his own personal gain. They further claim it was negligent for Skinner to pay the \$8450 delinquency. They additionally claim Skinner was negligent in his handling of the forcible entry and detainer action, including the failure to inform the district court that the Pughs had withheld \$850 in payments to prevent their forfeiture notice from becoming void.

Our review is for errors at law. Iowa R. App. P. 4. The findings by the trial court have the effect of a jury verdict and are binding on appeal if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Moreover, when a party has failed to sustain its burden of proof on an issue at a bench trial, we will not interfere on appeal unless the burden has been met as a matter of law. Schmitz v. Crotty, 528 N.W.2d 112, 114 (Iowa 1995). A party has carried its burden only when the evidence is so overwhelming that only one reasonable inference on each critical fact can be drawn. Id.

A prima facie claim of legal malpractice requires substantial evidence that: 1) an attorney-client relationship exists giving rise to a duty; 2) the attorney breached the duty; 3) the breach of duty proximately caused damage to the client; and 4) the client sustained actual damage. Dessel v. Dessel, 431 N.W.2d 359, 361 (Iowa 1988). We conclude substantial evidence supports the finding made by the trial court that Skinner did not breach his duty of care to the Creeses, and that no damages resulted to the Creeses as a result of Skinner's representation.

We first observe that many of the facts argued by the Creeses in support of their claim of negligence were a reflection of their testimony and contrary to the findings of the trial court. Furthermore, their claims that Skinner should have pursued a different course of action at the

forcible entry and detainer hearing clearly did not constitute negligence, but fell within the scope of professional judgment. See Baker v. Beal, 225 N.W.2d 106, 112 (Iowa 1975). Moreover, even though Skinner exercised poor judgment in paying the deficiency and subsequently acquiring an interest in the property, substantial evidence supports the trial court's conclusion that the Creeses failed to prove they sustained damages as a result. Skinner loaned the money to the Creeses as a last resort, after they failed to come up with the funds. As recognized by the trial court, the Creeses would have lost possession of the house had Skinner not paid the deficiency. Instead, they were able to remain in free possession for several years.

We have fully considered all claims raised by the Creeses. We affirm the district court.

AFFIRMED.