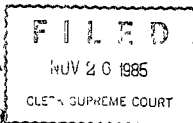


IN THE COURT OF APPEALS OF IOWA



NATIONAL BANK & TRUST COMPANY, )

Plaintiff-Appellee, )

vs. )

ORVILLE LUEDTKE, JOAN LUEDTKE,  
and KEVIN LUEDTKE, )

Defendants-Appellants. )

Filed November 26, 1985

5-494  
84-1344

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Appeal from the Iowa District Court for Lucas County - Van Wifvat, Trial  
Judge, Jack D. Levin, Judge granting Summary Judgment

Defendants appeal from summary judgment for plaintiff bank in a replevin  
action. **AFFIRMED.**

Alfredo G. Parrish, Des Moines, for defendants-appellants

Stephen Meyer, Chariton, for plaintiff-appellee

Considered by Donielson, P.J., and Hayden, and Sackett, JJ

SACKETT, J.

Defendants Orville and Joan Luedtke claim the trial court improperly granted plaintiff National Bank & Trust Company a summary judgment in the plaintiff's action for replevin of certain livestock.

The livestock in question were originally owned by the defendants subject to a security interest in plaintiff bank. When defendants began facing financial difficulties they entered into an agreement with plaintiff. A part of the agreement was the defendants were to execute and deliver to the plaintiff a bill of sale to the livestock in question. The defendants executed and delivered the bill of sale but refused to deliver the livestock.

The bank filed a petition in replevin seeking possession of the livestock. The defendants answered the petition and advanced certain affirmative defenses. The plaintiff filed a motion for summary judgment which the trial court granted.

Defendants have appealed contending there are facts in the record showing:

1. Plaintiff failed to comply with Iowa Code Chapters 163-65 and state statutes regarding the intrastate transfer of cattle.
2. Plaintiff failed to comply with a provision of the agreement requiring plaintiff bank to pay for the feed and care of the livestock prior to their transfer to the bank.

Defendants do not deny that they did in fact execute and deliver a bill of sale for the animals to the bank and the bank is the owner of the livestock.

A replevin action is enforcement of the plaintiff's right to immediate possession of the property wrongfully taken or detained. Flickinger v. Mark IV Apartments Ass'n, 315 N.W.2d 794, 796 (Iowa 1982). A wrongful detention occurs when the defendant wrongfully withholds or retains possession of the property sought to be recovered. Id. (citing 66 Am. Jur.2d Replevin § 24). The fact of ownership draws with it the right of possession. If nothing further appears, the law raises the presumption the owner is entitled to possession of it. Varvaris v. Varvaris, 255 Iowa 800, 804, 124 N.W.2d 163, 165 (1963). However, even if

defendants are not the owner of the livestock they may still have a right to possession. Haack v. Rodenbour, 234 Iowa 368, 374, 12 N.W.2d 861, 864 (1944).

Did defendants show a material fact that supported their entitlement to possession of the livestock? .A motion for summary judgment may be sustained only when the moving party shows there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). If the moving party has supported his motion, an adverse party may not rest upon the allegations or denials in his pleadings, but must show there is a genuine issue of fact. Iowa R. Civ. P. 237(e). It being established that plaintiff was the owner of the cattle, it was necessary for defendants to have pleaded or proved that there was a genuine issue of their right to possession of plaintiff's livestock. See Colonial Baking Co. of Des Moines v. Dowie, 330 N.W.2d 279, 282 (Iowa 1983).

Defendants first claim a factual issue of their entitlement to possession was generated because they showed plaintiff had not complied with Iowa Code Chapters 163-65, the agreement, and state statutes<sup>1</sup> regarding intrastate transfer of cattle. Chapters 163-65 of the Iowa Code are spread on approximately fifteen pages of the Code. The sections deal with a variety of subjects among other things animal health, the powers of the department of agriculture, and feeding garbage to animals. Defendants in their brief give us no clue as to the particular section or subsection they complain the plaintiff failed to comply with, nor do they advance any argument or cite any authority to support a contention that any noncompliance by the plaintiff with any alleged section or subsection would in any way affect the issue of the plaintiff's right to possession of the livestock.

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<sup>1</sup> The defendants have not directed us to any code section.

Defendants second contention is there is evidence the plaintiff did not comply with its agreement to feed and care for the livestock. They fail to direct us to where any of this alleged evidence appears in the record. Iowa R. App.P. 14(a)(5) with reference to brief provides in relevant part: "The argument shall contain . . . citations . . . to the pertinent parts of the record . . ." Defendants argue there is substantial evidence the plaintiff was not in compliance with the agreement. Again without directing us to the record, defendants argue the testimony showed the plaintiff understood it was required to fulfill the agreement before it was entitled to possession of the livestock. Defendants cite no authority for their argument other than a general reference to Drainage Dist. No. 119 v. Incorporated City of Spencer, 288 N.W.2d 493, (Iowa 1978). Drainage Dist. No. 119 at 499-501 provides an excellent discussion of the law on summary judgments but in no way addresses the issue of the effect of the feed question on the right of plaintiff to possession of the livestock. Iowa R. App. P. 14(a)(3) provides in relevant part: "Failure in the brief to state, to argue or cite authority in support of an issue may be deemed waiver of that issue."

There being no genuine issue of fact to show the defendants were entitled to possession of the livestock, we affirm the trial court's order granting summary judgment.

**AFFIRMED.**