IN THE COURT OF APPEALS OF IOWA

FILED
DEC 22 1988
CLERK SUPREME COURT

106

GLEN O. HANCOCK,

Plaintiff-Appellant,

vs.

CITY OF DAVENPORT, an Iowa Municipal Corp. and ALDERMAN ROGER BLECHER, ALDERMAN FLORIEAN KEEN, ALDERMAN KENNETH WELZENBACH, ALDERMAN DONALD COSTELLO, ALDERMAN JOHN HALDEMAN, ALDERMAN KARL RHOMBERG, ALDERMAN LARRY d'AUTREMONT, ALDERMAN ROBERT BINA, BRUCE TOMER, JAMES CONWAY and PHILLIP TESTA,

Defendants-Appellees.

8-461
87-1022

Appeal from the Iowa District Court for Scott County (70078), J.L. Burns, Judge.

Plaintiff appeals from a judgment in his favor on a jury verdict in the district court. **AFFIRMED.**

Glen O. Hancock, Davenport, pro se.

John R. Martin, Corporation Counsel, and Michael J. Melroy, City Attorney, Davenport, for defendants-appellees.

George B. Norman of Dircks, Ridenour, Norman & Macek, Davenport, for defendnat-appellee James Conway.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

PER CURIAM

The plaintiff appeals from a jury verdict in his favor against the City of Davenport, eight members of the city council, two city officials, and one private individual, for damages suffered when he did not receive adequate notice or a hearing prior to a decision that his property be declared a public nuisance and should be demolished. For the reasons set out below, we affirm the decision of the trial court.

I. The plaintiff owned a building in downtown Davenport known as the Vale Apartments. The building was built in about 1875 and is currently listed in the National Register of Historic Places. The building at one time was an elegant hotel which could apparently boast President Ronald Reagan as an occupant when he worked for a Davenport radio station. The City vacated the building in 1982 because of numerous housing and fire code violations. It now sits vacant and boarded up. Plaintiff purchased the building with plans to refurbish it to its original splendor. Beginning in 1983 the City took various actions to get the Hancock family to repair the building or demolish it. In 1984 the city council passed a resolution finding the building substandard to the extent it should be demolished as a public nuisance.

Hancock filed this suit seeking damages and another suit seeking a writ of certiorari and injunctive relief.

The latter case was the subject of Hancock v. City Council of the City of Davenport, 392 N.W.2d 472 (Iowa 1986). The supreme court concluded the City did not provide Hancock meaningful opportunity to be heard which its ordinances contemplated and constitutional due process requires. Id. at 479. Following the supreme court decision, Hancock went forward with his damages action pursuant to 42 U.S.C. section 1983, which alleged violations of his constitutional rights. Prior to the trial date, Hancock's attorney sought permission to withdraw as counsel because he believed he would have to appear as a witness at the trial. Plaintiff then hired another attorney after the court allowed his previous attorney to withdraw. Also, prior to the trial, Hancock had requested a change of venue because of adverse press coverage of his struggle with the city council. This request was denied. The jury ultimately returned a verdict against all the defendants except James Conway, awarding Hancock $17,235 in compensatory damages, but no punitive damages. The court awarded Hancock's attorneys $13,000 for attorney fees. Hancock then filed this pro se appeal.

II. As grounds for appeal Hancock claims he was denied a fair trial because the district court did not grant his request for change of venue; that he was denied equal protection under the law due to the questionable methods of the judiciary and the attorneys in this case; and he argues

numerous theories as to why the damages determined by the trial court were not sufficient to make him whole.

This case was initially filed as a petition in equity. However, the plaintiff filed a jury demand which was captioned as a law action. Apparently all or most subsequent documents filed and proceedings were at law. A case is generally reviewed as tried in the court below. Schroeder v. Buegel, 371 N.W.2d 178, 179 (Iowa App. 1985). Therefore, our review of this case is on assigned error. Iowa R. App. P. 4.

III. A. Change of Venue. Plaintiff first asserts, he was not given a fair trial because local media attention to the case biased jurors, thus he argues the trial court incorrectly denied his motion for change of venue.

Iowa Rule of Civil Procedure 167 outlines circumstances under which a venue may be changed:

> (c) Prejudice or Influence. If the trial judge, or the inhabitants of the county, are so prejudiced against the moving party, or if an adverse party has such undue influence over such inhabitants, that the movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit if the movant and three disinterested persons, none being his agent, servant, employee or attorney, nor related to him by consanguinity or affinity within the fourth degree. The other party shall have a reasonable time to file counter affidavits. Affiants may be examined pursuant to R.C.P. 116.

Decision to grant or deny a motion for change of venue rests in the sound discretion of the trial court. Locksley v. Anesthesiologists of Cedar Rapids, 333 N.W.2d 451, 454

(Iowa 1983). In civil cases the trial court's decision is reviewed for an abuse of discretion. Id. Despite the difference in the court's review, cases discussing the impact of publicity in criminal cases are instructive, the supreme court has stated:

> "Exposure to news accounts does not establish ipso facto substantial likelihood of prejudice in the minds of prospective jurors. Examination of the pretrial publicity discloses that it was, on the whole, objective, factual reporting. The media expressed no view on defendant's guilt or innocence, nor was the pretrial coverage inaccurate, misleading, or unfair . . . no attempts were made to inflame the public mind or to sensationalize the event (citations omitted).

State v. Johnson, 318 N.W.2d 417, 422 (Iowa 1982).

Plaintiff provides us with only excerpts from a pair of articles and a list of other stories which allegedly prejudiced the jury against him. There is no evidence the articles were inaccurate, misleading or unfair. We do not believe these articles even remotely inflame the public senses or sensationalize the event to the extent prejudice could befall a juror's mind. We find no prejudice to the plaintiff as a result of the newspaper articles shown in the record here. Thus, we find no abuse of discretion.

We also determine plaintiff's allegation that he could not get a fair trial because as taxpayers, the jury would have to foot part of the bill for any judgment he may receive. The trial court denied plaintiff's motion stating no proof existed showing plaintiff could not select an impartial jury. As we have stated, a decision to grant a

change of venue lies in the sound discretion of the trial court. Locksley, 333 N.W.2d at 454. There was no abuse of discretion.

B. Equal Protection. Plaintiff asserts he was denied equal protection of the law because of the actions of the trial court and attorneys in this matter. His argument apparently hinges on complaints the bar and the district court of Scott County are inextricably tied to the whims of the Davenport City Council, thus plaintiff at the very least was not given a fair trial.

We observe plaintiff did not raise, in the trial court, any equal protection arguments under the state or federal constitutions. Although the argument is attempted on appeal, it is too late. The question was not preserved. Lennon v. City of Muscatine, 272 N.W.2d 429, 430 (Iowa 1978). However sympathetic we may be, we will not address issues, even of constitutional magnitude, not presented to the trial court. In re Staros, 280 N.W.2d 389, 410 (Iowa 1979).

Plaintiff's primary grounds for making his allegations stem from his attorney's failure to object to certain evidence. Also, he complains his attorney failed to present evidence which plaintiff believes was necessary for the proper adjudication of this case. Even if we believe plaintiff's assertions are valid, we cannot now involve ourselves in the second-guessing of plaintiff's attorney's

trial strategy. Plaintiff here is bound by the tactical or strategic decisions made by his trial counsel. State v. Jackson, 387 N.W.2d 623, 625 (Iowa App. 1983). Plaintiff did not raise this issue in the trial court and thus we are foreclosed from addressing it here.

C. Damages. Plaintiff argues numerous errors regarding damages. In abridged form, plaintiff alleges he was damaged in a myriad of ways which he was not compensated for by the jury's award. Plaintiff asks this court to circumvent the jury's determination regarding replacement value of the Vale Apartments and the jury's refusal to award him punitive damages. Plaintiff's arguments are without merit.

The trial court did not err to the detriment of the plaintiff in its instructions to the jury. Plaintiff believes he was not properly compensated for both the taking of his property and for unfair treatment by the City. We do not agree. The trial court propounded instructions which adequately informed the jury as to damages which could be awarded to plaintiff. The court issued instructions which made it clear the jury could award damages for: depreciation of the building; emotional distress; loss of earnings from the developmental potential of the building; the City violating the plaintiff's constitutional rights; and punitive damages could be awarded against individual defendants.

Paring plaintiff's argument to its simplest form, he claims he should have been awarded greater damages. The determinative question posed is whether under the record, giving the jury its right to accept or reject whatever portions of conflicting evidence it chose, the verdict affects substantial justice between the parties. Kaufman v. Mar-Mac Community Schools, 255 N.W.2d 147, 148 (Iowa 1977). We hold in this case the jury obtained substantial justice and we do not disturb its verdict.

AFFIRMED.