

IN THE COURT OF APPEALS OF IOWA

No. 1-294 / 90-108

MOORE'S BUILDER AND CONTRACTOR, INC.,

Appellee,

vs.

ELIZABETH J. HOFFMAN,

Appellant.

FILED

DEC 31 1991

CLERK SUPREME COURT

475

Appeal from the Iowa District Court for Fayette County,
Dennis D. Damsgaard, Judge.

Hoffman appeals from the district court's ruling which
granted Moore's motion for directed verdict. **REVERSED AND
REMANDED.**

Jeffrey E. Clements, West Union, for appellant.

Robert J. Hearity, Oelwein, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden,
JJ.

OXBERGER, C.J.

476

In July of 1982, Moore's Builder and Contractor, Inc., through its president Dennis F. Moore, entered into a contract with Elizabeth Hoffman to perform extensive remodeling on her home in Oelwein, Iowa. We will refer to Moore's Builder and Contractor, Inc. and Dennis F. Moore collectively as Moore. Moore performed most of the work and received periodic payments totaling \$34,500. Hoffman returned to Oelwein from California in September 1982. She had several complaints about Moore's work. She refused to make the fifth scheduled payment of \$5,000. Moore stopped working and filed a mechanic's lien against Hoffman's property.

Moore then filed an action to foreclose the mechanic's lien. Hoffman filed a counterclaim alleging breach of express or implied warranties of fitness. The equitable foreclosure action of the mechanic's lien was tried to the court. Hoffman's counterclaim was tried to the jury, which returned a verdict for Moore.

Hoffman appealed. The court of appeals affirmed the equity judgment enforcing the mechanic's lien. Moore's Builder and Contractor, Inc. v. Hoffman, 409 N.W.2d 191, 194 (Iowa App. 1987). The court found Moore had substantially complied with the construction contract. Id. The court concluded Moore's work was not legally defective. Id. The court deducted from the contract for work which had not been completed. Id.

The court reversed the judgment for Moore on Hoffman's counterclaims based on a finding that the district court had improperly instructed the jury that substantial compliance was a defense to Hoffman's warranty claims. Id. at 195. The court found that the district court had blurred the two separate causes of action. Id. Substantial compliance is not a defense in a suit against a building contractor for damages. Id. The court remanded for a new trial on Hoffman's claim of breach of express and implied warranty. Id.

Following remand, Hoffman amended her counterclaim to increase her claim for damages to \$30,000. The matter was again submitted to the jury. At the close of Hoffman's evidence, Moore dictated into the record a motion for directed verdict which the district court sustained. The court held that the principles of res judicata in the first trial defeated Hoffman's counterclaim. Additionally, the court found that there was insufficient evidence to submit the question of the terms of the alleged contract to the jury. Accordingly, the court dismissed Hoffman's actions.

Hoffman appealed. She contends the doctrine of res judicata should not bar her claims. She also contends she presented sufficient evidence to submit her claims to the jury.

I. In a law action our review is for correction of errors of law. Iowa R. App. P. 4. Findings of fact in a law action are binding upon the appellate court if

supported by substantial evidence. Iowa R. App. P. 14(f)(1). Our deference to the trial court's findings of facts does not extend to its determinations of law. R.E.T. Corp. v. Frank Paxton Co., Inc., 329 N.W.2d 416, 419 (Iowa 1983).

When considering a motion for a directed verdict, the district court must view the evidence in the light most favorable to the party against whom the motion is directed. Johnson v. Dodgen, 451 N.W.2d 168, 171 (Iowa 1990). In reviewing the propriety of the district court's ruling on such a motion, we also view the evidence in the same manner. Id. Simply put, we ask, was there sufficient evidence to generate a jury question? Id. Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. Id.

II. We first consider the district court's finding that Hoffman's claims are barred by the doctrine of res judicata. The district court concluded that because there was a set-off for unfinished work against Moore's claims, this should act as a final adjudication of all of Hoffman's claims for damages.

Res judicata is the generic term used to refer to a doctrine which embraces both the concepts of claim preclusion and issue preclusion. Selchert v. State, 420 N.W.2d 816, 818 (Iowa 1988). The district court did not state whether it was relying upon claim preclusion or issue preclusion. However, the cases it relied upon deal with claim preclusion.

Res judicata as claim preclusion applies when a litigant has brought an action, an adjudication has occurred, and the litigant is thereafter foreclosed from further litigation on the claim. Israel v. Farmers Mutual Insurance Association, 339 N.W.2d 143, 146 (Iowa 1983). An adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination. B & B Asphalt Co., Inc. v. T. S. McShane Co., Inc., 242 N.W.2d 279, 286 (Iowa 1976). A party must litigate all matters growing out of his or her claim at one time and not in separate actions. Id. Identity of cause of action is established when the same evidence will maintain both actions. Id. at 287.

We hold that the doctrine of res judicata should not bar Hoffman's claims in this action. To the contrary, under the doctrine of the law of the case, Hoffman should be allowed to proceed with her counterclaim. Generally, an appellate court decision becomes the law of the case and is controlling on the trial court and on any further appeals in the same case. Springer v. Weeks & Leo Co., Inc., 475 N.W.2d 630, 632 (Iowa 1991).

The previous Moore's case specifically stated that the counterclaims were a separate cause of action. 409 N.W.2d at 195. Furthermore, the purpose of claim preclusion would not be advanced by denying Hoffman the opportunity to bring her counterclaims. The doctrine is based on the principle

that a party may not split or try a claim piecemeal. Selchert, 420 N.W.2d at 818. Hoffman brought her claims in the original action. However, a misstatement of law in the jury instructions denied her a fair trial. Moore's, supra.

There is also no basis under the doctrine of issue preclusion to bar Hoffman's counterclaims. The doctrine of issue preclusion prevents parties to a prior lawsuit from relitigating in a subsequent action issues raised and resolved in the previous suit. Selchert, 420 N.W.2d at 818. Hoffman's claims were not resolved in the previous suit.

III. Hoffman also contends the court erred in finding that she did not present sufficient evidence to present her claims to the jury.

In construction contracts it is implied that the building will be erected in a reasonably good and workmanlike manner and will be reasonably fit for the intended purpose. Busker v. Sokolowski, 203 N.W.2d 301, 303 (Iowa 1972). In Busker the court found that with the exception of exterior concrete work and minor interior flaws, the builder employed proper materials and workmanship. Id. The court went on to find there was sufficient evidence to show breach of contract. Id.

In the present case Hoffman did not claim Moore used improper materials. She did claim that he improperly installed a fire-burning stove so that it would not light and it caused a leak in her roof. Her other claims

involved allegations that Moore did not follow the contract. She claimed she asked for an open stair and Moore built a semi-enclosed stair. She asked for cabinets of specific measurements in the kitchen and bathroom and Moore built cabinets with different measurements. Hoffman asked for a solar room and Moore built a room with no heat retaining qualities. Hoffman also had other complaints about the new bathroom Moore built.

We hold that Hoffman presented sufficient evidence for her claims to be submitted to the jury. The weight to be given to this evidence is for the jury to decide. It is for the jury to decide the believability of testimony and determine the facts based on conflicting evidence. McCracken v. Edward D. Jones & Co., 445 N.W.2d 375, 382 (Iowa App. 1989). We make no findings regarding the merits of her claims.

IV. We reverse the decision of the district court dismissing Hoffman's claims. We remand for a new trial.

REVERSED AND REMANDED.