FILED
DEC 21 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HELMUT SUEHL, MARVIN SUEHL, and WARREN SUEHL,

Appellants,

vs.

ANTON JENSEN, WILLIAM JENSEN, and FREDERICK JENSEN,

Appellees.

739
2-61682

Appeal from the Clinton District Court - Charles H. Pelton, Judge.

Plaintiffs appeal trial court's denial of their motion to set aside a prior judgment. Affirmed.

Paul E. Pfeffer, of Clinton, for appellants.

Eric M. Core, of Holleran, Shaw, Murphy & Stoutner, of Clinton, for appellees.

Submitted to Oxberger, C.J., and Donielson, Snell, and Carter, JJ.

PER CURIAM

This appeal challenges the trial court's denial of plaintiffs' motion to set aside a prior judgment of that court. We affirm the lower court.

This controversy arises from the October 30, 1969 decision of the board of trustees of Hampshire Township, Clinton County, Iowa, acting as fence viewers pursuant to §§ 113.4, 359.17, The Code. That decision purported to determine a controversy between plaintiffs and defendants concerning maintenance of the partition fence between their respective properties. From that decision the plaintiffs took an appeal to the district court, as permitted by § 113.23, The Code. On January 4, 1972, the district court entered a decision and judgment on the merits denying plaintiffs any relief from the order of the township trustees. Plaintiffs attempted to appeal this decision and judgment to the supreme court but the notice of appeal was filed one day late and the appeal was dismissed as untimely on September 18, 1972. A subsequent effort by plaintiffs to secure review of the judgment by petition for writ of certiorari was denied by the supreme court on September 29, 1972.

The instant proceeding to vacate and set aside the January 4, 1972 order of the district court was commenced by motion filed in the district court on December 9, 1977. It is based upon the contention that the order of the township trustees exceeded the jurisdiction of that body by requiring the straightening of a creek and the cleaning out of a hedge in addition to dividing the maintenance of the partition fence. It is urged that this matter was never adjudicated in the court's order of January 4, 1972. The trial court held that the issue had been adjudicated and that the present attempt to collaterally attack the judgment is precluded by the doctrine of **res judicata**.

We conclude that the issue was previously adjudicated and that the trial court correctly denied the relief sought by plaintiffs. Paragraph 8 of the petition filed by plaintiffs, in their appeal to the district court from the decision of the township trustees, raised the issue of the authority of the trustees to grant the type of affirmative relief complained of in the present proceeding to vacate judgment. Although the district court's order of January 4, 1972 does not specifically discuss this contention, it does uphold the action of the trustees in all respects. It is not necessary that the court specifically discuss every issue in a case in order to adjudicate all issues necessary to the decision. The issue of the trustees' authority having been raised, said contention had to

be rejected by the court in order to arrive at the decision which followed. This circumstance supports a finding of issue preclusion in accordance with the elements stated in Schneberger v. United States Fidelity & Guaranty Co., 213 N.W.2d 913, 917 (Iowa 1973). Moreover, even the opportunity to have litigated the issue is sufficient to support a finding of **res judicata**. B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 279, 286 (Iowa 1976).

In addition to approving the trial court's application of the doctrine of **res judicata**, we also conclude that defendants' most recent attack on the judgment is precluded by the ground (raised by defendants in the trial court) that the motion to vacate judgment is untimely under R.C.P. 253. The judgment under attack is clearly not void. The court had jurisdiction to determine plaintiffs' appeal, including the claim that the actions of the trustees exceeded their authority. Accordingly, R.C.P. 253 precludes vacation of a judgment in a proceeding initiated more than one year after its rendition. Gibbons v. Belt, 239 Iowa 961, 33 N.W.2d 374, 376 (1948).

We have considered all issues presented and find no basis for reversal.

AFFIRMED.