FILED
MAY 3 1 1983
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Plaintiff,

vs.

HENRY E. SCHEMMEL, et al.,

Defendants,

HENRY E. SCHEMMEL, DOUGLAS HENRY SCHEMMEL, ROBERT EDGAR SCHEMMEL and MARY SCHEMMEL, husband and wife, and **MARY LEAH PERSONS,**

Cross-Petitioners/Appellants,

vs.

HAROLD MITCHELL and VERONA MITCHELL, husband and wife, **GLEN E. MITCHELL and ALICE MITCHELL,** husband and wife,

Defendants to Cross-Petition-Appellees.

Filed May 31, 1983

2-344
2-67719

Appeal from Fremont District Court, Leo F. Connolly, Judge.

Defendants Schemmels and Persons appeal from trial court's order granting defendants Mitchells' motion to dismiss in this Missouri River land title dispute. REVERSED AND REMANDED.

Edwin Clarke Getscher of Getscher & Getscher, Hamburg, for cross-petitioners/ appellants.

Robert F. Leonard, Sidney, for defendants to cross-petition/appellees.
Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ. Hayden, J., takes no part.

SNELL, J.

This is an appeal from the trial court's sustaining of a motion to dismiss filed by defendants Mitchells. The continuing saga of ownership of these Missouri River lands flows like the river that created them. In 1963 the state of Iowa laid claim to them, ultimately losing its grip in the United States Supreme Court decision, Nebraska v. Iowa, 406 U.S. 117, 92 S. Ct. 1379, 31 L. Ed. 2d 733 (1972). A follow-up proceeding in the Iowa district court in 1973 determined that the lands, generally referred to as Schemmel Island, described in the case caption and in Exhibit A, were owned by Douglas Henry Schemmel, Robert Edgar Schemmel and Mary Leah Persons. The State of Iowa and defendants Mitchell were defaulted. The court did, however, reserve jurisdiction as to any issues there might be between Schemmels and Mitchells.

In 1977 Schemmels asked the court to permanently determine the boundary between their land and Mitchell's. The district court in 1979 decided that most of the disputed land was owned by the Mitchells. Schemmels' appeal was dismissed by the Iowa Supreme Court as untimely.

The 1979 decree is now attacked by Schemmels in their 1981 petition for declaratory judgment. They claim in Division I that the land decreed to be Schemmels in the 1973 cases, in which Mitchells defaulted, cannot be taken away by the 1979 decision which is void as to that part because it is accretion land to Nebraska riparian owners. In Division II they assert the 1979 decree is void as being outside the confines of the Windenburg survey to which the court stated it was limited in jurisdiction. In Division III they claim the 1979 findings of fact and conclusions of law were void because of inconsistency with parts of the 1973 decree.

The trial court, in sustaining Mitchells' motion to dismiss, ruled that:

1. The matters presented by Schemmels were fully tried in the 1979 action to which they submitted to establish the boundary. We deem this a holding that res judicata applies.

2. Schemmels' claim is barred by the ten-year statute of limitations. Iowa Code section 614.1(5)(1981).

We address only the validity of the motion to dismiss. The effects of the motion to dismiss is to admit the well-pleaded facts of the petition. Berger v. General United Group, Inc. 286 N.W.2d 630, 634 (Iowa 1978). Viewed thusly, the petition must nevertheless fail to state a claim on which relief can be granted.

Plaintiffs Schemmels assert, inter alia, the court in the 1979 decree actually decided matters outside its own stated jurisdiction, i.e., the Windenburg survey which therefore leaves for decision their 1981 claims against Mitchell. They also state that the lack of subject matter jurisdiction of the court renders its 1979 decree invalid. See Lloyd v. State, 251 N.W.2d 551, 558 (Iowa 1977). Schemmels further claim that ownership of much of the disputed land was established by the 1973 decree and that the court in 1979 could only fix where that boundary is, not who owned the land. While we do not suggest any finding on the merits of these claims,we do find that taken as true for purposes of the motion to dismiss, a claim is stated on which relief might be granted.

The ten-year statute of limitations does not apply since the claims are based on what the courts held in 1973 and 1979, not on what formed the basis for those claims. We have also examined the motion to dismiss in light of the rule that if any ground asserted in the motion is good the ruling sustaining it will be affirmed even though the ground the trial court relied on is not good. Rich v. Boegel, 205 N.W.2d 713, 716 (Iowa 1973). No other ground is asserted that will support the ruling.

The motion to dismiss should not have been sustained.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT HEREWITH.