

IN THE COURT OF APPEALS OF IOWA

**FILED**

OCT 22 1986

CLERK SUPREME COURT

Filed October 22, 1986

**RICHARD D. GARMER and  
GARMER CONSTRUCTION COMPANY,**

Plaintiffs-Appellants,

vs.

**WASTE MANAGEMENT OF IOWA, INC. d/b/a  
CONTAINER HAULAWAY CORPORATION;  
ED GARNER'S AUTORAMA RV CENTER,  
INC.; and KENNETH DEAN HOEKMAN; and  
FOREST ALLEN WHITE,**

Defendants-Appellees.

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Appeal from the Iowa District Court for Polk County (No. CL 51-30171)

- Richard A. Strickler, Judge.

Plaintiffs appeal from judgment in a negligence action ordering enforcement of a settlement agreement. **AFFIRMED.**

I. John Rossi, of Woodward, Davis & Rossi, Des Moines, for plaintiffs-appellants.

Wade R. Hauser III, of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines, for defendants-appellees Waste Management and White.

Claude H. Freeman, of Grefe & Sidney, Des Moines, for defendants-appellees Autorama and Hoekman.

Joseph S. Cortese II, of Jones, Hoffman & Davison, Des Moines, for Maryland Casualty Co.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

**SACKETT, J.**

Plaintiffs Richard D. Garmer and Garmer Construction Company appeal from a judgment in a negligence action ordering enforcement of a settlement agreement. Plaintiffs contend the trial court erred because (1) the judgment affected two other proceedings outside the trial court's jurisdiction and was therefore too broad in scope; (2) there was insufficient evidence to establish a meeting of the minds rendering the settlement unenforceable; (3) there was insufficient evidence to establish plaintiff's counsel had authority to settle for the amount stated in the agreement; and (4) the trial court should have considered newly discovered evidence pursuant to Iowa R. Civ. P. 252(f) consisting of material's found in the files of plaintiff's former counsel. We affirm.

Plaintiff Richard Garmer was involved in a multi-vehicle accident in 1983. He filed a negligence action for personal injuries and property damage in Polk County District Court, a workers' compensation claim with the Iowa Industrial Commissioner and an uninsured motorist claim in Minnesota.

A compromise settlement of all of Garmer's claims was reached for the total sum of \$31,000. Pursuant to the settlement agreement, defendants sent releases, dismissals and checks to plaintiffs' attorney, David Moskal, for processing. Garmer refused to sign the papers.

Thereafter defendants by motions sought enforcement of the agreement. Plaintiffs resisted the motions, asserting that counsel then representing them, David Moskal and Ronald Pogge, had not been authorized to agree to the terms of the settlement. At the hearing on the motions Moskal testified he had been expressly authorized by Richard Garmer to settle for \$30,500 or more.

Following hearing the trial court found there was sufficient evidence to establish a valid settlement offer and acceptance of it prior to any attempt by plaintiffs to revoke settlement authority. The trial court entered an order

sustaining defendants' motion to enforce the settlement and the action was dismissed with prejudice. Plaintiffs moved to reconsider. In ruling upon the motion to reconsider, the trial court reaffirmed its previous order. The trial court modified the order to reflect the \$31,000 settlement offer settled all three cases with the defendants to the negligence action contributing \$16,000.

Plaintiffs appealed and the Iowa Supreme Court remanded the case for the limited purpose of obtaining a ruling on plaintiffs' motion for relief pursuant to Iowa R. Civ. P. 252(f). The trial court determined plaintiffs' newly discovered evidence, consisting of materials from the file of plaintiffs' former counsel, was deemed to have been discoverable with reasonable diligence prior to hearing on defendants' motion to enforce settlement. Accordingly, the trial court dismissed plaintiffs' petition for relief under Iowa R. Civ. P. 252 and 253.

## I.

Our scope of review on actions at law is on assigned error only. 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). The trial court is vested with wide discretion and its findings are entitled to the same weight as a jury verdict. H. & S. Ltd. v. Andreola, 363 N.W.2d 592, 595 (Iowa App. 1984). The trial court decision will be upheld if any proper ground appears in the record. Id.; Williamsen v. Casey, 220 N.W.2d 638, 639 (Iowa 1974).

## II.

Plaintiffs contends the trial court erred in enforcing settlement of all three claims since the trial court did not have jurisdiction over plaintiffs' workers' compensation and uninsured motorist claims pending in other courts. As a result, plaintiffs contend the trial court's order was too broad in scope.

It is well settled in Iowa that in the absence of an express reservation of rights, a settlement agreement disposes of all claims between the parties

arising out of the event to which it related. Casey v. Koos, 323 N.W.2d 193, 198 (Iowa 1982); Brown v. Hughes, 251 Iowa 444, 448-49, 99 N.W.2d 305, 307-08 (1960).

In the instant case the settlement proposal was made by all the defendants plaintiffs had brought suit against for claims arising out of the accident in question. Maryland Casualty Company was defendant and insurance carrier in plaintiffs' actions before the Iowa Industrial Commissioner and in the Minnesota district court. Maryland Casualty was not a defendant in the Polk County negligence action. As such, the settlement proposals made by Maryland Casualty would have been for other than the negligence action. In accepting the settlement proposal made by all defendants, plaintiffs did not indicate they were accepting a settlement only as to the negligence action. In fact there is substantial evidence to show that plaintiffs knew the settlement proposals were to settle all three claims and that plaintiffs accepted a settlement resolving all their claims arising out of the accident. The Minnesota district court reached the same result. The Minnesota district court held the \$15,000 contribution by Maryland Casualty to the \$31,000 settlement agreement discharged plaintiffs' claims and dismissed with prejudice plaintiffs' uninsured motorist suit.

We therefore determine plaintiff's argument on this issue is without merit.

### III.

Plaintiffs next contend the settlement agreement was not accepted or enforceable because an attorney's lien had not been resolved and should be construed as a counter offer in the settlement process.

Plaintiffs argue a settlement cannot be consummated until liens are resolved and there is a meeting of the minds by all parties. Plaintiffs cite no authority to support their contention. Moreover, the facts in the instant case do not support plaintiffs' contention.

There is substantial evidence the attorney's lien, raised by a former attorney for plaintiffs, was not first claimed until after the settlement had been accepted. Plaintiffs authorized the settlement before February 8, 1985. The settlement was accepted and all parties notified by February 11, 1985. The attorney's lien was not raised until a February 14, 1985 letter. Therefore, the lien only presented a potential issue regarding allocations of the settlement proceeds. The attorney's lien was not an issue concerning the settlement agreement itself. In addition, since the former attorney was not a party to the settlement negotiations, his asserted lien was never part of the negotiated agreement. See Hemingway v. Adrian State Bank, 206 Iowa 1308, 221 N.W. 920, 922 (1928).

#### IV.

Plaintiffs argue the trial court erred in enforcing the settlement because plaintiffs' attorney did not have authority to settle the case. We disagree.

A settlement made with authority by an attorney is binding on the client. Iowa Code §610.16(2) (1985). When an offer of settlement is accepted the agreement can be specifically enforced. Linn County v. Kindred, 373 N.W.2d 147, 150 (Iowa App. 1985). Under Iowa law there is an assumption an attorney acts with the authority of the client. Dillon v. City of Davenport, 366 N.W.2d 920, 923 (Iowa 1985). This presumption can only be overcome by clear and satisfactory proof the attorney did not have such authority. Sloan v. Jepsen, 217 Iowa 1082, 1084, 252 N.W. 535, 536 (Iowa 1954).

Since an attorney acts in the position of an agent, agency principles guide our determination of authority:

A fundamental principle of agency law is that whatever an agent does, within the scope of his actual authority, binds his principal. Grismore v. Consolidated Products Co., 232 Iowa 328, 335, 5 N.W.2d 646, 651 (1942); 3 Am.Jur.2d Agency §261 (1962); see Restatement (Second) of Agency §§144, 145 (1958). Actual authority to act is created when a principal intentionally confers authority

on the agent either by writing or through other conduct which, reasonably interpreted, allows the agent to believe that he has the power to act. Restatement (Second) of Agency §26; 3 Am.Jur.2d Agency §69. Actual authority includes both express and implied authority. Newberry v. Barth, Inc., 252 N.W.2d 711, 714 (Iowa 1977); Grismore, 232 Iowa at 335, 5 N.W.2d at 651. Express authority is derived from specific instructions by the principal in setting out duties, Newberry, 252 N.W.2d at 714, while implied authority is actual authority circumstantially proved, Grismore, 232 Iowa at 335, 5 N.W.2d at 651.

Plaintiffs did not present any convincing evidence they revoked their attorney's authority to settle plaintiffs' claims. Plaintiff Richard Garmer had conversations with attorney Moskal in which Garmer specifically agreed to extend Moskal's authority to settle plaintiffs' claims for \$30,500 or more. Specific authority to act as an agent may be conferred orally. 2A C.J.S. Agency §43 (1972).

We therefore determine there is sufficient evidence plaintiffs' attorney did have authority to settle plaintiffs' claims.

#### V.

Finally, plaintiffs contend the trial court erred on remand in not considering evidence that was newly discovered under Iowa R. Civ. P. 252 and 253.

After receiving a limited remand from the Iowa Supreme Court, plaintiffs filed a petition to vacate the trial court judgment enforcing settlement based on newly discovered material evidence. Iowa R. Civ. P. 252(f). The trial court denied plaintiffs' petition.

Plaintiffs did not file a notice of appeal from that ruling. Iowa R. App. P. 5(a). Thus, this issue is not properly before us and we do not consider it.

We therefore reject plaintiffs' contentions on appeal and affirm the trial court on all counts.

**AFFIRMED.**