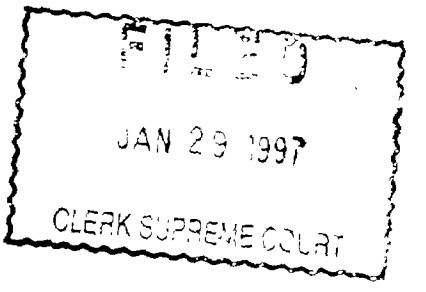
IN THE COURT OF APPEALS OF IOWA

No. 6-433 / 95-418

000221



IN THE MATTER OF THE ESTATE OF DOLORES LAW, Deceased,

DOUGLAS and KAREN ALTMAN,
Plaintiffs-Appellants,

vs.

GERALD DUNN, Fiduciary of the Estate of Dolores Law,
Defendant-Appellee.

Appeal from the Iowa District Court for Humboldt County, William C. Ostlund, Judge.

Douglas and Karen Altman filed a claim against the Estate of Dolores Law for breach of contract. They appeal the district court's ruling sustaining the estate's motion for summary judgment. **AFFIRMED.**

C. Joseph Coleman, Jr. of Coleman & Enke, Fort Dodge, for appellant.

Mark R. Crimmins of Bennett, Crimmins & Yung, Fort Dodge, for appellee.

Considered by Huitink, P.J., Vogel, J., and Peterson, S.J.*

*Senior judge from the First District serving on this court by order of the Iowa Supreme Court.

PETERSON, S.J.

Douglas and Karen Altman filed a claim against the estate of Dolores Law. They contend the court erred by granting the motion for summary judgment to the estate and absolving the estate from liability under a five-year farm lease. They also contend the trial court erred by dismissing a claim in probate and the court's ruling did not address the issue of the amended claim.

I. Scope of Review. Our review of the court's summary judgment ruling is for correction of errors at law. Iowa R. App. P. 4. Summary judgment is appropriate only when the entire record before the court shows there is no genuine issue of material facts in dispute and the court correctly applied the law. Iowa R. Civ. P. 237(c); *see Hoefer v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 338 (Iowa 1991). It is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material facts and that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *see Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). The defendants, as the moving parties, carry the burden of showing that no issue of material fact exists. *Hoefer*, 470 N.W.2d at 338. "An issue of fact is 'material' only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law." *Fees v. Mutual Fire & Auto Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists

only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne*, 424 N.W.2d at 423. The party resisting a summary judgment may not rest upon mere allegations or denials of his pleadings. The resistance must set forth specific facts which constitute competent evidence showing the prima facie claim. *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989).

II. Background Facts and Proceedings. In 1989, Douglas and Karen Altman entered into a farm lease with Dolores Law. This covered 410 acres and was in three parcels. Two of them were 160 acres in area and one was 90 acres in area. It was a "fifty-fifty" type of lease and was for a period of five years.

One year prior to the expiration of the 1989 lease, the parties entered into a second lease on September 13, 1993. This was the same type lease and for the same period of time. Dolores Law wanted to enter into this lease because she did not want to be bothered by other farmers in the area approaching her about renting her land.

On March 26, 1994, Dolores Law died unexpectedly. At the funeral, Douglas and Karen Altman found that Dolores Law only owned a life estate in one parcel of property. The remaindermen served a notice of termination of the farm tenancy effective the 1st day of March, 1995, for that parcel of property.

On August 12, 1994, the Altmans filed a claim in probate requesting $100,000 for "breach of contract for rental of farmland." On August 30, 1994, the fiduciary of the estate of Dolores Law filed a notice of disallowance of claim. On September 13,

1994, the Altmans filed a request for a hearing, and on September 21, 1994, the estate filed an answer and a counterclaim.

A civil trial setting conference was held on October 11, 1994, and the matter was set for trial on February 14, 1995, at 9:00 a.m. That order setting the matter for trial also provided that pleadings shall be filed thirty days before the trial.

On December 15, 1994, the estate filed a motion for summary judgment, and on December 27, 1994, the Altmans filed a resistance to that motion. On January 12, 1995, the Altmans filed a motion to amend their claim alleging a cause of action based on promissory estoppel. On January 26, 1995, the estate filed a resistance to that motion. The record does not contain a ruling on Altmans' motion to amend their claim.

Both attorneys filed statements of disputed facts and supporting statements with respect to the motion for summary judgment. These were not supported by affidavits and were signed by the attorneys involved.

The matter came before the court for hearing on the motion for summary judgment on January 30, 1995, and the order sustaining the motion was entered on February 9, 1995. The trial court, in ruling on the motion, acknowledged that the claimants filed an amendment to their petition alleging promissory estoppel and indicated that it appeared to be within the time constraints set by the trial setting conference. However, the merits of the promissory estoppel issue were not ruled upon.

000225

III. Liability of a Life Tenant to the Tenants Under a Farm Lease. It is the contention of the Altmans that they can maintain an action against the estate of the life tenant for the loss of profits they would have generated had they been able to farm the land in question for the period of the lease. They support their contention by citing *In re O'Donnell*, 147 N.E. 541, 240 N.Y. 99 (1925). Based on New York law, the estate of the life tenant would be responsible for damages under circumstances similar to this case.

However, under Iowa law, it is well settled that a lease entered into with a life tenant expires immediately upon the death of the life tenant and all rights acquired under the lease are destroyed except the right to remove improvements unless the remaindermen, by their acts or conduct, confirm the lease. *Scurry v. Anderson*, 191 Iowa 1058, 1059, 183 N.W. 585, 586 (Iowa 1921); *Egbert v. Duck*, 239 Iowa 646, 650, 32 N.W.2d 404, 406 (1948). The exceptions do not apply in this case.

We find that under the undisputed facts in this case all rights of the Altmans in the contract they entered into for the lease of the farmland involved in 1993 terminated upon the death of the life tenant, and the entry of summary judgment was correct.

IV. Failure of the Trial Court to Address the Issue of the Amended Claim. The Altmans contend the matter should be reversed because the court failed to address the issue of promissory estoppel.

We find that the Altmans failed to preserve error on this issue. The preservation rule requires that all issues must be presented to and passed upon by the trial court before they can be raised and decided on appeal. *State v. Manna*, 534 N.W.2d 642, 644 (Iowa 1995). The Altmans filed a motion to amend their claim, which was resisted by the estate. The record does not contain a ruling on that motion, and we assume it was not ruled upon as required by Iowa Rule of Civil Procedure 88. The burden is on a party filing a motion to see that it is ruled upon. A motion never decided or ruled on in the trial court presents nothing for review in the appellate court.[1] *Harper v. Cedar Rapids Television Co.*, 244 N.W.2d 782, 786 (Iowa 1976).

In summary, we find that the motion for summary judgment was appropriately granted because the rights of the Altmans in the lease entered into with Dolores Law expired upon her death and that they failed to preserve any error with respect to the issue of the amended claim.

Finding no error, we affirm the trial court.

AFFIRMED.

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[1]It is well settled a rule 179(b) motion is essential to preserve error when a trial court fails to resolve an issue, claim, defense, or legal theory submitted to it for adjudication. *Donald Newby Farms, Inc. v. Stoll*, 543 N.W.2d 289, 292 (Iowa App. 1995).