

IN THE COURT OF APPEALS OF IOWA

No. 1-12 / 90-340

FILED

JUL 26 1991

CLERK SUPREME COURT

STEVE DAVIS and JUDY DAVIS,

Plaintiffs-Appellants,

vs.

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UNITED FIRE AND CASUALTY COMPANY,

Defendant-Appellee.

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Appeal from the Iowa District Court for Scott County,  
Margaret S. Briles, Judge.

Plaintiffs appeal from the district court's refusal to  
certify their lawsuit as a class action. **AFFIRMED.**

Jack E. Dusthimer of Carlin, Hellstrom & Bittner,  
Davenport, for appellants.

John C. Stevens of Lewis & Stevens, Muscatine, for  
appellee.

Considered by Schlegel, P.J., and Sackett and Habhab,  
JJ.

SACKETT, J.

This appeal challenges the trial court's (1) refusal to certify plaintiffs-appellants Steve Davis and Judy Davis's case as a class action, and (2) refusal to award sanctions for an alleged Iowa R. Civ. P. 80 violation. We affirm.

Defendant-appellee United Fire and Casualty Co. wrote a homeowners policy insuring plaintiffs' home for a series of risks, including wind and hail damage. The controversy arose following an August 21, 1987 hail storm in the area of Davenport where plaintiffs' home is located. Plaintiffs advised defendant they suffered hail damage. A dispute resulted as to whether the policy would pay for replacement of plaintiffs' roof. Defendant argued the policy should not. Defendant claims the loss was the result of the breakdown of granular particles from plaintiffs' ten-year-old asphalt roof rather than from hail damage.

Plaintiffs sought class certification, contending defendant improperly interpreted its homeowners policy regarding hail damage claims. Class certification was denied by the trial court. The trial court determined the issue was a fact question not a legal question as plaintiffs alleged, and that plaintiffs had failed to establish their position by a preponderance of the evidence.

Defendant contends this issue is not reviewable, because the amount in controversy is below certifiable

limits. The defendant also contends this is an interlocutory appeal for which no permission has been granted. Iowa R. Civ. P. 42.4(c) allows this appeal. We consider the plaintiffs' arguments.

We review for an abuse of discretion. See Vignaroli v. Blue Cross of Iowa, 360 N.W.2d 741, 743-44 (Iowa 1985). To certify as a class action the common questions of law and fact must be substantial. See Lucas v. Pioneer, Inc., 256 N.W.2d 167, 178 (Iowa 1977). We find the trial court did not abuse its discretion in its refusal to certify.

Plaintiffs next contend the defendant should be sanctioned under Iowa R. Civ. P. 80(a), for setting forth in a motion to dismiss that the proposed representative party, Steve Davis, was an attorney. Defendant also asserted facts regarding the nature and circumstances of the loss. None of these allegations were supported by any affidavit.

Plaintiffs do not contest the allegations regarding the loss. Steve Davis is not an attorney. Plaintiffs contend sanctions should have been granted because (1) of untrue allegation that Steve Davis is an attorney, and (2) whether Steve Davis is an attorney is not an issue in a motion to dismiss.

Defendant contends the order denying plaintiffs' motion for sanctions was not a final judgment or decision of the district court and, therefore, is not appealable under Iowa

R. App. P. 1, and plaintiffs have failed to obtain permission to file an interlocutory appeal. Defendant also contends the maximum amount in controversy, i.e., \$1,410 is less than \$3,000, the amount required for an appeal to this court under Iowa R. App. P. 3. We elect to treat the matter as an interlocutory appeal.

Steve Davis works in a legal department but is not an attorney. We agree with plaintiffs that Steve Davis's occupation is not relevant to any of the issues before us. We do not understand why it was included in the motion to dismiss. The statement was a mistaken belief rather than a lie. We have no dispute with the trial court's finding this is not the type of conduct that should trigger the severe sanctions of Iowa R. Civ. P. 80(a). We affirm.

**AFFIRMED.**