

FILED

FEB 23 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**INTERNATIONAL CONSTRUCTION)
SERVICES, LTD., and)
NATHANIEL GRADY,)**

Plaintiff-Appellants,)

vs.)

**DES MOINES INDEPENDENT)
COMMUNITY SCHOOL DISTRICT,)**

Defendant-Appellee.)

8-234
87-1315

224

Appeal from the Iowa District Court for Polk County
(No. 063-37328), Gene Needles, Judge.

Plaintiffs appeal a district court judgment following a jury verdict rejecting plaintiffs' claim that they were discriminated against on the basis of race in violation of 42 U.S.C. section 1981 and section 1982 by virtue of defendant's rejection of their bid to buy school property.

AFFIRMED.

Thomas Mann, Jr., of Mann & Mann, Des Moines for plaintiffs-appellants.

Elizabeth Gregg Kennedy of Ahlers, Cooney, Dorweiller, Haynie, Smith & Allbee, Des Moines, for defendant-appellee.

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

OXBERGER, C.J.

Plaintiffs appeal a district court judgment following a jury verdict rejecting plaintiffs' claim they were discriminated against on the basis of race in violation of 42 U.S.C. sections 1981 and 1982, by virtue of defendant's rejection of their bid to buy school property. We affirm.

In 1976, Irving Junior High School was closed. Since 1976, Tiny Tot Child Care and Intersectional United Advanced Planning have occupied the property at various times. As of 1985, the school building was in a deteriorated condition and the defendant began to again consider demolition of the school building.

After the initial approval of bids for demolition, the school board was approached by plaintiffs' attorney concerning a proposal by the plaintiffs to buy the school site for \$20,000. Nathaniel Grady, president of the plaintiff company, is black. The school board decided to advertise for bids on the property, attaching several conditions and terms for sale. Plaintiffs' bid was the highest. However, the school board rejected plaintiffs' bid claiming the responses to the school board's conditions for sale were inadequate to inform the board as to plaintiffs' financing and intended use. The school board eventually decided to demolish the building.

Plaintiffs filed suit claiming they were discriminated against based on race. Plaintiffs argued at trial the

special conditions imposed on the sale of Irving were not made in attempting to sell Cowles School to a white individual at approximately the same time. The jury found plaintiffs did not prove their prima facie case.

The dispositive challenge in this case is plaintiffs' contention that the jury verdict that plaintiffs failed to prove their prima facie case is contrary to the evidence. However, plaintiffs did not move for a directed verdict at any point during the trial on this issue. Nor did plaintiffs move for a judgment notwithstanding the verdict pursuant to Iowa Rules of Civil Procedure 243. Iowa Rule of Civil Procedure 243(b) provides:

Any party may, on motion, have judgment in his favor despite an adverse verdict, or the jury's failure to return any verdict:

(b) If the movant was entitled to have a verdict directed for him at the close of all the evidence, and moved therefor, and the jury did not return such verdict, the court may then either grant a new trial or enter judgment as though it had directed a verdict for the movant.

The purpose of Rule 243(b) is to give the trial court an opportunity to correct its error in failing to sustain a motion for directed verdict. Miller v. Young, 168 N.W.2d 45, 50 (1969) (quoting Friedman v. Colonial Oil Co., 236 Iowa 140, 145, 18 N.W.2d 196, 199 (1945)). The court in Friedman held that the denial of a judgment notwithstanding the verdict was properly denied as it was not based on the same grounds as the parties' motion for directed verdict. Friedman at 199. The court said:

Here the motion for judgment was based upon a proposition not raised in plaintiff's motion for directed verdict. The situation was the same as though plaintiffs had made no motion for directed verdict. Under the circumstances, plaintiff had no right to the remedy which Rule 243(b) affords to a litigant whose motion for directed verdict had been erroneously overruled.

Id.

Likewise, review by an appellate court is limited to those same previously-raised grounds. Watson v. Lewis, 272 N.W.2d 459, 461 (Iowa 1978). See also Allbee and Kincaid, "Error Preservation in Civil Litigation: A Primer for the Iowa Practitioner," 35 Drake L. Rev. 1, 16 (1985-1986). As the plaintiff in this case did not move for a directed verdict or a judgment notwithstanding the verdict on the issue of plaintiffs' prima facie case and has raised this issue for the first time on appeal, we find plaintiffs have failed to preserve error on this issue. We deem this issue waived as it is raised for the first time on appeal. Because we deem this issue waived and affirm the jury verdict that plaintiffs did not prove their prima facie case, we do not reach the remaining issues.

AFFIRMED.