

IN THE COURT OF APPEALS OF IOWA

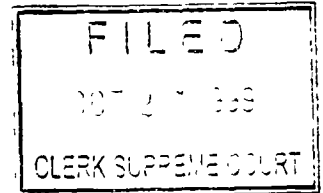
No. 1999-140 (9-356) / 98-1794

Filed October 27, 1999

ROBERT HEATHMAN and THERESA HEATHMAN,
Plaintiffs-Appellants,

vs.

TERRY HEATHMAN and GLORIA HEATHMAN,
Defendants-Appellees.



Appeal from the Iowa District Court for Mitchell County, John S. Mackey and
Gilbert K. Bovard, Judges.

Plaintiffs appeal a district court order denying their motion to amend their petition and a district court order granting the defendants' motion for summary judgment. Plaintiffs contends the district court erred in: (1) granting the motion for summary judgment because there were genuine issues of material fact regarding whether the defendants continued to be liable on a loan; and (2) denying their motion to amend their petition to claim the existence of a written contract. **REVERSED AND REMANDED.**

Brian R. McPhail of Gross & McPhail, Osage, for appellants.

Craig N. Mershon of Mershon Law Office, Cedar Falls, for appellees.

Considered by Huitink, P.J., and Mahan and Hecht, JJ.

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HECHT, J.

Plaintiffs, Robert Heathman and Theresa Heathman, appeal from the district court's rulings on their motion for leave to amend their petition and on defendants' motion for summary judgment. We reverse and remand to the district court.

I. Factual and Procedural Background. In May of 1983, plaintiffs Robert Heathman ("Robert") and Theresa Heathman ("Theresa"), and their son, Terry Heathman ("Terry"), executed a promissory note through which they borrowed \$128,469.80 from Thorp Loan and Thrift Company ("Thorp"). The loan was secured by a mortgage on farm real estate owned by Robert and Theresa. One of the purposes of the loan was to obtain \$60,000 which was used by Terry to purchase a one-half interest in Modern Farm Equipment, Ltd., in Osage, Iowa. The remaining proceeds of the loan went to Robert and Theresa. The parties do not dispute Terry orally promised to repay his parents the principal sum of \$60,000 plus interest at the rate of 7.875 percent, the amount charged by Thorp on the note.

While engaged in the farm implement business, Terry made semi-annual payments to Robert and Theresa from May of 1983 until May of 1991. These principal and interest payments totaled \$78,060. In June of 1993, Robert and Theresa sued Terry and his wife, Gloria Heathman ("Gloria"), claiming they were still owed \$33,657 plus interest pursuant to the oral agreement. Terry died on July 22, 1993, and his estate was substituted as a party.¹

¹ The record indicates substitution of parties occurred during the litigation. However, the case caption subsequently utilized in the trial court and by the parties on appeal

In their petition at law filed June 14, 1993, Robert and Theresa alleged a claim based upon oral contract. In their answer, Terry and Gloria denied the oral contract and alleged the statute of frauds as an affirmative defense. In their counterclaim, Terry and Gloria alleged Terry was owed money for services he performed for Robert and Theresa. On January 25, 1995, the parties appeared for trial. At that time, Terry's estate and Gloria moved to amend their answer to assert the defense of usury. The district court granted them leave to amend, and continued the trial date.

Terry's estate and Gloria moved for summary judgment. During the April 7, 1995, hearing on the motion, Robert and Theresa made an oral motion to amend their petition to add a claim based upon written contract. The district court denied Robert and Theresa leave to amend their petition and sustained the defendants' motion for summary judgment on the grounds the interest rate on the loan agreement exceeded five percent and violated Iowa Code section 535.2 (1993), and the loan had been fully paid. Robert and Theresa appealed.

This court reversed and remanded the case to the district court. In our decision filed April 30, 1997, we held the usury defense was not available under the circumstances of this case. With respect to further amendments to the pleadings on remand, we observed, "There should be sufficient time between the filing of this opinion and the trial date whereby both parties should be afforded the opportunity to make such amendments that are proper under the circumstances. . . ." Gloria and

does not reflect this change.

Terry's estate sought further review before the Iowa Supreme Court, but it was denied.

Robert and Theresa filed their motion for leave to amend petition on May 30, 1997. In their proposed amendment, they sought to alternatively plead oral and written contract, tortious interference with contract, and unjust enrichment. Counsel for Gloria and Terry's estate resisted the motion for leave to amend in August of 1997. In an order filed September 15, 1997, the district court denied Robert and Theresa's leave to amend on the grounds "the proposed amendment substantially changes the issues . . . and to allow the same would prejudice the defendants herein." A scheduling order entered on March 10, 1998, established August 10, 1998, as the deadline for amendments to pleadings and completion of discovery. Trial was scheduled for September 10, 1998.

Meanwhile, the defendants filed another motion for summary judgment. On September 1, 1998, the district court again granted the motion and dismissed this action. The court concluded (1) Gloria had no contractual liability to Robert and Theresa, (2) Gloria could not be a guarantor because no writing existed to take the claim outside the statute of frauds, and (3) the usury statute limits the claim of Robert and Theresa to \$60,000, an amount less than that which had already been paid to them pursuant to the agreement. Robert and Theresa appeal both from the district court's denial of leave to amend, and from the adverse ruling on the motion for summary judgment.

II. Standard of Review. We review a district court's ruling granting summary judgment for errors at law. Iowa R. App. P. 4; *First Nat'l Bank v. Fidelity & Deposit*, 545 N.W.2d 332, 334 (Iowa App. 1996). On review, we determine whether a genuine issue of fact exists and whether the law was applied correctly. *Id.* The court upholds summary judgment when the moving party shows there is no genuine issue of material fact and it is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); see *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). The record is reviewed in the light most favorable to the nonmoving party. *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994). We review rulings on motions for leave to amend for abuse of discretion. *Porter v. Good Eavespouting*, 505 N.W.2d 178, 180 (Iowa 1993).

III. Summary Judgment. This Court previously decided the usury defense cannot be used in the circumstances of this case. *Heathman v. Heathman*, 567 N.W.2d 661 (Iowa App. 1997). The doctrine of the law of the case represents the practice of courts to refuse to reconsider what has once been decided. *In re Hermence's Estate*, 235 Iowa 745, 748, 15 N.W.2d 905, 907 (1944). It is a rule which provides the legal principles announced and the views expressed by a reviewing court in an opinion, right or wrong, are binding throughout further progress of the case upon the litigants, the trial court, and this court in later appeals. *Springer v. Weeks & Leo Co., Inc.*, 475 N.W.2d 630, 632 (Iowa 1991); *State v. DePaglia*, 248 Iowa 97, 99, 78 N.W.2d 472, 472-73 (1956); *Des Moines Bank & Trust Co. v. Iowa Southern Utilities*

Co., 245 Iowa 186, 189, 61 N.W.2d 724, 726 (1953). Thus, the district court erred on remand when it again held the usury law is applicable in this case.

IV. Ruling On Motion For Leave To Amend. This court ordered the remand of this case in our decision filed April 30, 1997. *Heathman*, 567 N.W.2d at 663. In that decision, we indicated both parties should, on remand, be afforded the opportunity to amend their pleadings because there would be sufficient time prior to trial to do so. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires. Iowa R. Civ. P. 69(d).² The district court is strongly encouraged to allow amendments in usual situations and is discouraged from denying permission to amend except in exceptional cases. *In re Marriage of Fields*, 508 N.W.2d 730, 732 (Iowa 1993); *Ackerman v. Lauver*, 242 N.W.2d 342, 345 (Iowa 1976).

On remand, Robert and Theresa promptly served their motion for leave to amend petition on May 30, 1997. The scheduling order filed March 10, 1998, set trial for September 10, 1998. Notwithstanding the fact there was a "window" of approximately sixteen months between the motion for leave to amend and the trial date, the district court denied leave to amend on the ground the proposed amendment would substantially change the issues and cause prejudice to defendants. Though the trial court has discretion to deny leave to amend where the issues would be

² As of the time of the district court's September 11, 1997 ruling on the motion for leave to amend petition, the substance of this rule was set forth in Iowa Rule of Civil Procedure 88.

substantially changed by a proposed amendment, such discretion is not unlimited. *Doerring v. Kramer*, 556 N.W.2d 816, 819 (Iowa App. 1996). In this case, trial was more than fifteen months away when Robert and Theresa sought leave to amend their petition. There was ample time for the parties to pursue discovery as to the new theories of action asserted by Robert and Theresa in their proposed amendment and no cognizable prejudice would be suffered by defendants as a result of the amendment. Under these circumstances, we hold the district court clearly abused its discretion when it denied plaintiffs leave to amend their petition.

REVERSED AND REMANDED.