FILED
MAY 30 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 164

THOMAS A. MOUW and BERNICE A. MOUW,

Plaintiffs-Appellants,

vs.

O'BRIEN COUNTY BOARD OF SUPERVISORS OF O'BRIEN COUNTY, IOWA; LELAND BRUEGMANN; GEORGE CALLENIUS; HARRISON FISCH; THOMAS T. MANLEY; ARIE VAN NYHUIS; and CORRINE GILLESPIE, COUNTY AUDITOR OF O'BRIEN COUNTY, IOWA,

Defendants-Appellees.

Filed May 30, 1980

0-79
2-62179

Appeal from O'Brien District Court - Murray S. Underwood, Judge.

Plaintiffs appeal from trial court's decree dismissing their petition in equity seeking to enjoin defendant's vacation of a public road. APPEAL DISMISSED.

Earl T. Klay of Klay, Bastemeyer & Veldhuizen, P.C., Orange City, Iowa, for plaintiffs-appellants.

Thomas J. Whorley of Wolff & Whorley, Sheldon, Iowa, for defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

JOHNSON, J.

Plaintiffs, Thomas and Bernice Mouw, appeal from trial court's decree dismissing their petition in equity seeking to enjoin defendant, O'Brien County Board of Supervisors', vacation of a public road pursuant to section 306.16, The Code 1973. They allege trial court erred in ruling 1) all acts of defendants were statutorily valid and without fraud or bad faith and 2) the contingent order for vacation of the road by defendant was proper and not an unlawful delegation of authority. We are without jurisdiction and this appeal accordingly is dismissed.

I. Procedural Background. On March 18, 1974, the city of Sheldon, Iowa requested defendant to close a county road abutting plaintiff's farm and homestead to facilitate expansion of the Sheldon municipal airport. Defendant responded by scheduling a series of public hearings on the proposal. Prior to defendant reaching a final decision, however, plaintiffs, on May 9, 1974, brought this equity action to enjoin defendant from closing the road. On May 28, 1974, defendant, pursuant to section 306.16, The Code 1973, entered a final order declaring the road closed contingent upon the city's payment of $2,000 damages and expenses to plaintiffs, commencement of work on the airport, and approval of the airport improvement project by referendum if required by law.

On June 6, 1974, plaintiffs appealed this ruling of defendant board to district court. At hearing, before presentation of the evidence to trial court, defendant moved to dismiss plaintiff's petition. The request to dismiss was granted. Plaintiffs appealed alleging the proceedings were illegal because the true purpose of the proposed action was to assist the city of Sheldon in acquiring property not subject to municipal condemnation. On June 24, 1977, this court ruled plaintiffs were entitled to an evidentiary hearing on their petition and remanded the cause for further proceedings. See Mouw v. O'Brien County Board of Supervisors, No. 2-57988 (Iowa Ct. App., filed June 24, 1977).

Following hearing on the merits, trial court again dismissed plaintiffs' petition on February 24, 1978, finding the board acted legally and plaintiffs' allegations were unfounded. On March 7, 1978, plaintiffs filed a motion for new trial. Defendant resisted on March 18, 1978, arguing, among other deficiencies, the motion was not timely filed. Trial court, on May 17, 1978, overruled the motion on its merits, expressly declining to reach the timeliness issue. It is from trial court's February 24, 1978 dismissal of their petition and May 17, 1978 order overruling their motion for new trial which plaintiffs appealed on June 15, 1978.

II. Appellate Jurisdiction. We do not reach the merits of plaintiff's contentions trial court erred in ruling defendant acted legally and the contingent order for vacation of the road was proper. The procedural developments of the case subsequent to the February 24, 1978 ruling lead us to conclude this court has no jurisdiction to review plaintiffs' assignments of error.

It is well settled "[e]very court has inherent power to determine whether it has jurisdiction over the subject matter of the proceedings before it. It makes no difference how the question comes to its attention. Once raised, the question must be disposed of, no matter in what form or stage presented. The court on its own motion will examine grounds of its jurisdiction before proceeding further. . . . [citing authorities]." Qualley v. Chrysler Credit Corp., 261 N.W.2d 466, 468 (Iowa 1978) (quoting Walles v. International Brotherhood of Electrical Workers, 252 N.W.2d 701, 710 (Iowa 1977)). See also Recker v. Gustafson, 271 N.W.2d 738, 739 (Iowa 1978); City of Eldridge v. Caterpillar Tractor Co., 270 N.W.2d 637, 641 (Iowa 1978).

Iowa R. Civ. P. 247 requires motions for new trial be filed with trial court within ten days after the verdict, report or decision is filed. If not filed within that period, trial court may grant a party an additional period in which to file, up to thirty days, upon showing good cause. Schmitt v. Clayton County, 284 N.W.2d 186, 187 (Iowa 1979).

Appeals to this court are similarly regulated by definite time frames for filing. A party must file an appeal within, and not after, thirty days from entry of the final order, judgment or decree, unless a motion for new trial is filed, and then within thirty days after entry of the ruling on such motion. This requirement "is mandatory and jurisdictional and cannot be extended by the filing of an improper motion for new trial." Qualley, 261 N.W.2d at 471; Union Trust & Savings Bank v. Stanwood Seed & Grain, Inc., 158 N.W.2d 1, 3 (Iowa 1968).

A final judgment is "one which conclusively adjudicates all the rights of the parties . . ." placing it beyond the power of the court entering it to return the parties to their original position. Shoemaker v. City of Muscatine, 275 N.W.2d 206, 208 (Iowa 1979); Johnson v. Iowa State Highway Commission, 257 Iowa 810, 812, 134 N.W.2d 916, 918 (1965). Generally, there is no final disposition of a case "until a decree or order is entered dismissing the suit, or a judgment is entered for the . . . [parties] on the whole cause." Id. at 813, 134 N.W.2d at 918 (quoting 1 A.L.R. 2d 422, 431 (1948)). Although a

judgment may contain findings of fact and conclusions of law, it is only the decretal portion of the ruling that constitutes an adjudication which activates running of the filing period. Wolf v. Murrane, 199 N.W.2d 90, 95 (Iowa 1972).

Applying these standards, we hold the February 24, 1978 decree of trial court dismissing plaintiff's petition was a final order activating the time period for filing both plaintiffs' motion for new trial and for direct appeal. Plaintiffs had ten days after February 24, 1978 to file their motion for a new trial or, in the alternative, to file a motion requesting additional time to file a motion for new trial, but failed to do either. See 2 A. Vestal & P. Wilson, Iowa Practice § 43.02(1) (1974). They also had thirty days from February 24, 1978, to file a direct appeal, which they failed to do. By waiting eleven days, until March 7, 1978, to file a motion for new trial, their motion was not timely filed as to the February 24, 1978 order. Nor was plaintiffs' notice of appeal from the February 24, 1978 judgment timely made because they filed it thirty days after trial court filed its May 17, 1978 order denying their motion for new trial. Due to the untimeliness of plaintiffs' motion for new trial, the thirty day period for taking appeals was not tolled and jurisdiction was not preserved. Hogan v. Chesterman, 279 N.W.2d 12, 15 (Iowa 1979). For the above reasons, we are without jurisdiction and this appeal is dismissed.

APPEAL DISMISSED.