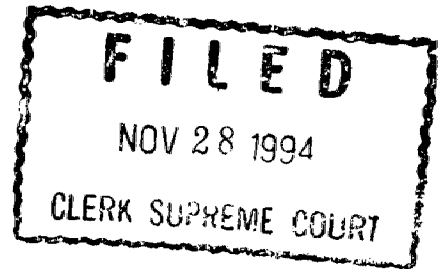


IN THE COURT OF APPEALS OF IOWA

No. 4-353 / 93-1802



WILFRED YEGGY,

Plaintiff-Appellant,

vs.

DONALD KOHOUT,

Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County,
Lynne E. Brady, Judge.

Yeggy contends the district court erred in granting
Kohout's motion for summary judgment on all counts in
Yeggy's action for perjury, breach of contract and fraud.

AFFIRMED.

Wilfred Yeggy, Iowa City, pro se.

Charles T. Traw of Leff, Hauptert & Traw, Iowa City, for
appellee.

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

PER CURIAM

Beginning December 1, 1988, Wilfred Yeggy lived in a house owned by Donald Kohout. The Iowa City Housing Authority, a public housing agency, had agreed to pay \$254 of the \$350 monthly rent for a year. When the year expired, Yeggy and Kohout agreed to continue the arrangement until May 31, 1989 when Yeggy's subsidy from the housing authority ran out. On that date the tenancy was to terminate and Yeggy was to vacate the premises.

Yeggy continued to occupy the premises, however, and Kohout instituted a forcible entry and detainer action. After trial, the court found termination was valid. Kohout was put in possession of the premises on August 21.

Kohout then filed a petition in the small claims division of the district court against Yeggy seeking \$2000 for back rent and damages to the premises. After trial, judgment was entered for Kohout for \$2000 plus interest. On appeal, the district court affirmed the magistrate's decision.

Subsequently, Yeggy filed this claim against Kohout. He sought damages for (1) Kohout's alleged perjury, (2) breach of contract, (3) fraud, and (4) deprivation of constitutional rights. In ruling upon an unresisted motion, the district court struck the constitutional claim from the pleading.

Kohout filed a motion for summary judgment. Yeggy resisted. After a hearing, when both parties were

represented by counsel, the district court granted Kohout summary judgment on all counts. Yeggy appeals.

In his brief, Yeggy makes it clear that he is not challenging the magistrate's decision in the small claims action. He states, "I agree with the decision that the magistrate made because I did not produce any evidence."

To further emphasize his position he repeats on several occasions in his brief to this court that this is a separate and distinct action from the small claims case. He requests that we treat it as such. We, of course, are obliged to resolve this matter in the manner he asserts error in his appellate briefs. He claims the district court erred when it granted defendant's motion for summary judgment for there are genuine issues of material fact as to his claims of perjury, fraud, and breach of contract. We will take up his grounds of appeal in this manner.

I.

The question for the court under a motion for summary judgment is whether the moving party has demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. Suss v. Schammel, 375 N.W.2d 252, 254 (Iowa 1985). A court must examine the record in the light most favorable to the party opposing the motion to determine the movant's burden has been met. Sandbulte v. Farm Bureau Mut. Ins. Co., 343 N.W.2d 457, 464 (Iowa 1984). With these principles in mind, we conclude the defendant is entitled to judgment on

the separate claims of the plaintiff as a matter of law. Accordingly, we affirm the decision of the district court in granting the motion for summary judgment.

II.

Regarding Yeggy's claim of perjury (before the filing of the small claims action and during the course of the trial), our supreme court has stated there is no civil action recognized for perjury. Beeck v. Kapalis, 302 N.W.2d 90, 97 (Iowa 1981). The rationale for this rule is to end litigation and to encourage parties to resolve their claims in court. Id. We affirm a finding of summary judgment on this issue.

Yeggy claimed Kohout breached the rental contract by failing to give a thirty-day notice of eviction and failing to give notice of damage to the property. In addition, he claims a breach took place before the small claims suit was filed.

The district court found this claim was barred by the doctrine of res judicata. We agree.

The issues involved in this claim were either dealt with or should have been submitted in the small claims court. We view this claim as an attempt to relitigate the issues decided or what should have been decided in small claims court. Yeggy's breach of contract claim is barred by res judicata. See, e.g., Palmer v. Tandem Management Services, 505 N.W.2d 813, 816 (Iowa 1993); B & B Asphalt Co. v. T.S. McShane Co., 242 N.W.2d 279, 286 (Iowa 1976);

Gail v. Western Convenience Stores, 434 N.W.2d 862, 863 (Iowa 1989).

Yeggy claimed Kohout committed fraud before and during the small claims action, which resulted in Kohout receiving a favorable ruling in small claims court. The district court found this claim was also barred by res judicata. While Iowa Rules of Civil Procedure 252 and 253 may not be used in small claims actions, there is an independent action for vacation of small claims judgments procured by fraud. Severson v. Peterson, 364 N.W.2d 212, 214 (Iowa 1985). Yeggy, however, is not directly attacking judgment. Rather, Yeggy is making an impermissible collateral attack. See City of Chariton v. J.C. Blunk Construction Co., 253 Iowa 805, 112 N.W.2d 829 (1962).

[Collateral attack] is ". . . an attack made by or in an action or proceeding that has an independent purpose other than by impeaching or overturning of the judgment, although impeaching or overturning the judgment may be necessary to the success of the action."

. . . . A collateral attack upon a judgment is not ordinarily permitted. Finality of solemn adjudications of the courts requires that they be not set aside lightly or except for cogent reasons. If this were not so, there would be no end to litigation; and this is true even when the original judgment has been obtained by perjury or, generally, through other forms of fraud. If the court had jurisdiction of the parties and of the subject matter, the general rule is that the judgment entered may not be collaterally attacked on the ground of fraud or collusion or false testimony.

City of Chariton, 253 Iowa at 816, 112 N.W.2d at 835

(citations omitted). We find this is an improper collateral attack. We affirm the district court's finding of summary judgment on this issue.

We affirm the district court's granting of summary judgment on all claims in this case. Costs to the appellant.

AFFIRMED.

Hayden, P.J., and Habhab, J., concur; Sackett, J., specially concurs without opinion.