IN THE SUPREME COURT OF IOWA

RITA MCNEAL and CLIFF MCNEAL, Plaintiffs-Appellants, v. WAPELLO COUNTY, WAPELLO COUNTY BOARD OF SUPERVISORS Defendants-Appellee.	SUPREME COURT NO. 21-0215 WAPELLO COUNTY NO. LALA106019

APPEAL FROM THE IOWA DISTRICT COURT FOR WAPELLO COUNTY
THE HONORABLE SHAWN R. SHOWERS

APPELLANT'S FINAL BRIEF AND ARGUMENT

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ROUTING STATEMENT

Transfer to the Court of Appeals would be appropriate as this case presents issues that require the application of existing legal principles. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal by Rita and Cliff McNeal ("McNeals") following a hearing regarding a motion for summary judgment held virtually on January 11, 2021, in the District Court for Wapello County, Iowa, the Honorable Shawn R. Showers presiding. The District Court granted the motion for summary judgment in favor of Defendants Wapello County and Wapello County Board of Supervisors.

Course of Proceedings

On September 6, 2019, the McNeals filed a Petition and Request for Temporary Injunctive relief. (APP - 4; Petition). On August 17, 2020, Defendants Wapello County and Wapello County Board of Supervisors (collectively "Wapello County") filed a Motion for Summary Judgement. (APP - 9, Defendants Motion for Summary Judgement). The matter proceeded to a contested hearing that commenced on January 11, 2021.

(APP - 76, Order Setting Hearing). On January 20, 2021, the district court entered an order granting summary judgment. (APP - 78, Decree). On February 16, 2021, the McNeals filed a timely Notice of Appeal in this matter. (APP - 84, Notice of Appeal).

Statement of the Facts

The McNeals co-own and operate a business that buys, restores, repairs, and/or sells vehicles or takes salvaged vehicles to scrap for parts. (APP – 26, 46, McNeal Affidavits). Consequently, the McNeals have many old, damaged, or otherwise less-than-pristine vehicles on their property. On April 23, 2019, the McNeals and Wapello County entered into a Settlement Agreement ("the Agreement") concerning clean-up of the McNeals' property located at 6052 Madison Avenue, Ottumwa, Iowa 52501 ("the Property"). (APP – 21, Settlement Agreement). Prior to the Agreement, Wapello County issued a bid proposal for clean-up of the Property. (APP – 26, 46, McNeal Affidavits). The bid proposal expressly provided that "[a]ll vehicles and trailers [on the Property] shall not be moved for clean-up or debris removal." (APP – 26, 46, McNeal Affidavits). In response to the bid proposal, the McNeals filed a petition seeking declaratory judgment and injunctive relief. (APP – 26, 46, McNeal

Affidavits). In an attempt to resolve the matter, the parties entered into the Agreement that is currently at issue. (APP – 21, Settlement Agreement).

The McNeals agreed to dismiss their lawsuit without prejudice and in exchange, the Agreement required, among other provisions, "[t]he McNeals have 90 days from April 1, 2019, to clean the Property including the removal of debris and derelict vehicles and begin repairs on the residence located at 6052 Madison Avenue." (APP – 21, Settlement Agreement). The Agreement further stated, "the Parties have agreed to a procedure if the McNeals fail to clean the Property in accordance with Iowa Code § 331.384 and Wapello County Ordinances." (APP – 21, Settlement Agreement). Wapello County entered the Property on August 5, 2019, to remove vehicles and other items that they deemed were incompliant with the Agreement. (APP – 26, 46, McNeal Affidavits). Wapello County removed a total of sixteen (16) vehicles from the property, at least nine of which possessed current state and/or dealer licensure. (APP – 26, 46, McNeal Affidavits). Wapello County also removed a vehicle from an enclosed structure. (APP – 26, 46, McNeal

Affidavits). The term "derelict" was not expressly defined in the Agreement. (APP – 21, Settlement Agreement).

Other necessary and relevant facts may be discussed in the argument section *infra.*

ARGUMENT

I. THE IOWA DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT

Preservation of Error

The issue of summary judgment was raised and presented before the district court. As such, error was preserved on this issue. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." (citing *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998)).

Standard of Review

The standard of review on a ruling on a motion for summary judgment is for correction of legal errors. *Wallace v. Des Moines Indep. Cmty. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008); *see also* Iowa R. App. P. 6.907. A district court may enter summary judgment only when the moving party shows there are no genuine issues of material of fact and thus is entitled to judgment as a matter of law. *See* Iowa R. Civ. P. 1.981(3). An issue of fact is "material" only when the dispute involves facts which might affect the outcome of the suit and a "genuine" issue of fact requires the evidence to be such that a

reasonable jury could return a verdict for the nonmoving party. *Junkins v. Branstad,* 421 N.W.2d 130, 132 (Iowa 1988).

Summary judgment may be granted only when the moving party is able to show there are no genuine issues of material fact and thus is entitled to judgment as a matter of law. *See* Iowa R. Civ. P. 1.981(3). In a motion for summary judgment, the nonmoving party receives the benefit of "every legitimate inference that [could] be reasonably deduced from the record." *Phillips v. Covenant Clinic,* 625 N.W.2d 714, 718 (Iowa 2001). An inference is legitimate if it is "rational, reasonable, and otherwise permissible under the governing substantive law," while an inference is not legitimate if it is "based upon speculation or conjecture." *Peak v. Adams*, 799 N.W.2d 535, 539 (Iowa 2011). If reasonable minds may differ when resolving an issue, a genuine issue of material fact exists. *Id.*

Discussion

In granting summary judgment, the district court ruled that the Agreement prohibited the McNeals from pursuing the breach of contract claim pursued in this action. The district court found that the determination of whether any vehicles were "derelict" was left within the

sole discretion of Wapello County. However, the district court did not give proper weight to caselaw and view all facts in the light most favorable to the McNeals. Accordingly, the McNeals respectfully request this Court reverse the district court's ruling on summary judgment and remand the case to proceed with trial.

A. The Agreement Does Not Prohibit the McNeals' Breach of Contract Claim

Contract interpretation is the process of determining the meaning of the words used in a contract. *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 435 (Iowa 2008). The cardinal principle of contract interpretation is determining the parties' intent at the time they entered into the contract. *Id.* at 436. The most important evidence of the parties' intentions is the words of the contract. *Peak*, 799 N.W.2d at 544. However, the court may look to extrinsic evidence to aid interpretation, including the "situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties." *Id.* Though contract interpretation is often a legal issue, when extrinsic evidence must be relied upon, interpretation of the parties' intent is determined by the finder of fact. *Id.* at 539.

Wapello County and the district court primarily relied upon paragraph 4 of the Agreement to justify granting summary judgment. This paragraph states as follows:

> *Other than the procedure set forth in this Settlement Agreement*, the McNeals waive and release any other statutory or common law right to challenge the County's right to enter the Property and *to conduct clean up activities*, including any rights against the County's employees, elected officials, or agents.

(APP – 21, Settlement Agreement) (emphasis added). Importantly, the McNeals claims are a breach of the Agreement and not claims that have been waived by this agreement. The McNeals submitted affidavits establishing that their claims are based upon the "clean up" activities and the actions of Wapello County in removing vehicles that were not derelict and as such, were beyond the scope of the Agreement's waiver section. This case does not involve a challenge of "the County's right to enter the Property" or a challenge to Wapello County's right "to conduct clean up activities." Instead, this case is about whether the Wapello County arbitrarily and improperly conducted the clean up activities. In another words, it was not a question if Wapello County "could" conduct the cleanup, but instead it is a challenge regarding "how" Wapello County performed the clean up and "what" Wapello County cleaned up.

Further, as asserted in the affidavits, it was not the intent of the McNeals to waive their rights to challenge Wapello County's enforcement procedures or claims regarding the proper interpretation of the terms of the agreement as a whole. A central issue in this case is the interpretation of the word "derelict" and the actions of Wapello County in furtherance of the Agreement. Simply put, the McNeals must have the ability to challenge these items.

B. Genuine Issues of Material Fact Existed Regarding Whether the Vehicles were Derelict

The district court found that the Agreement gave absolute and complete authority to Wapello County to determine if a vehicle was derelict. (APP – 78, Order). However, this is not a correct interpretation of the Agreement, or the law.

The Agreement states as follows: "WHEREAS, the Parties have agreed to a procedure if the McNeals fail to clean the Property *in accordance with Iowa Code § 331.384 and Wapello County Ordinances*." (APP – 21, Settlement Agreement) (emphasis added). This language shows that the parties did not intend to give Wapello County complete, absolute, and arbitrary discretion to determine the meaning of "derelict" or which vehicles, if any, were "derelict."

Generally, when interpreting a contract, it "will not be interpreted [as] giving discretion to one party in a manner which would put one party at the mercy of another, unless the contract clearly requires such an interpretation." *Iowa Fuel & Mins., Inc. v. Iowa State Bd. Of Regents*, 471 N.W.2d 859, 863 (Iowa 1991). Here, Wapello County's interpretation of the parties' Agreement clearly requiring such an interpretation.

The McNeals have shown a genuine issue of material fact concerning the definition of "derelict" and the parties' intent for the scope of Wapello County's definitional discretion. In their affidavits, the McNeals state that at the time they entered into the Agreement, they did not believe the vehicles were "derelict," that Wapello County considered the vehicles "derelict," nor that Wapello County intended to classify the vehicles as "derelict." (APP – 27-28, (Cliff Affidavit ¶¶ 11–13); APP – 47-48, (Rita Affidavit ¶¶ 11–13)). Further, they both state they did not intend Wapello County to be given complete, absolute, and arbitrary discretion. (APP – 28, (Cliff Affidavit ¶¶ 14–15); APP – 48 (Rita Affidavit ¶¶ 14–15)).

The McNeals demonstrate their intent by first explaining that they co-own a vehicle repair and sale business and that as part of their

business, they purchase damaged vehicles to repair and sell, or to use for parts in repairing other vehicles brought to their business. Given the nature of the business it would have been detrimental to enter into an agreement under which Wapello County has absolute authority to qualify their business necessities as "derelict" and remove them from the property. (APP – 26-28, (Cliff Affidavit ¶¶ 2–8, 11–12); APP – 46-48, (Rita Affidavit ¶¶ 2–8, 11–12)). Accordingly, giving Wapello County absolute authority to make decisions impacting their business was never the intention of the McNeals.

In addition, the McNeals explain that because of the Wapello County's prior conduct, they did not believe Wapello County considered the vehicles to be derelict. The McNeals have engaged in their auto repair and sale business since 1982 without any questions or concerns from Wapello County regarding vehicles on the Property that were for the benefit of the business. (APP – 28, (Cliff Affidavit ¶ 13); APP – 48, (Rita Affidavit ¶ 13)). They also clarify Wapello County's conduct giving rise to the prior lawsuit—which the parties' Agreement was intended to resolve—involved a bid proposal for the clean-up of the Property that expressly provided vehicles on the Property were *not* to be removed for

clean-up. (APP – 27, (Cliff Affidavit ¶¶ 9–11); APP – 47, (Rita Affidavit ¶¶ 9–11)).

In interpreting agreements, the primary concern is the mutual intent of the parties: "[i]n searching for that intention, courts look to what the parties did and said, rather than to some secret, undisclosed intention they may have had in mind, or which occurred to them later." *Peak v. Adams*, 799 N.W.2d 535, 539 (Iowa 2011) (quoting *Waechter v. Aluminum Co. of Am.*, 454 N.W.2d 565, 568 (Iowa 1990)). The McNeals did not possess some secret, undisclosed intent when they entered into the Agreement. Due to the inherent nature of their business, the McNeals had a reasonable and predictable intent to not grant Wapello County absolute authority in valuing and removing their business assets. Furthermore, given the actions of Wapello County's prior to entering the Agreement, there is a fact question as to their intent in including the removed vehicles in the definition of "derelict." Wapello County never expressed any issues with the McNeals' business in its near 40-year history of operation and Wapello County had expressly refused to remove the vehicles in the bid proposal from the prior lawsuit. Based on Wapello County's actions prior to entering into the Agreement, there

is a genuine issue of material fact as to the intentions of Wapello County in classifying the vehicles as "derelict."

What is more, Wapello County did not establish, nor did the district court find that the vehicles removed by Wapello County were in fact "derelict" under Iowa Code § 331.384 or the Wapello County Ordinances. Iowa Code § 331.384 permits a county to "[r]equire the abatement of a nuisance, public or private, in any reasonable manner." Iowa Code § 331.384(1)(*a*). Although chapter 331 does not define nuisance, chapter 657 does:

> Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere unreasonably with the comfortable enjoyment of life or property, is a nuisance . . . .

Iowa Code § 657.1(1). Iowa Code § 657.2 enumerates several situations that constitute nuisances—none of which apply here. The Wapello County Ordinances' definition of "nuisance" is the same as the language quoted from section 657.1(1), above, and includes the situations in section 657.2. Wapello Cty. Ords. § 40.05(75), http://wapellocounty.org/wp-content/uploads/2013/05/Zoning-Ordinance.pdf.

In granting summary judgment, the district court found that it was "the intent of the parties that [Wapello County] be granted the discretion

to determine what constitutes derelict." (APP – 82, Order p. 5). However, this misses the central issue of the case. The McNeals have asserted in the summary judgment record that the vehicles were not derelict and therefore Wapello County abused its discretion in removing the vehicles arbitrarily. The Iowa Supreme Court has previously stated that a contract "will not be given an interpretation which places one party at the mercy of another unless the contract clearly requires the result. Accordingly, courts endeavor to construe contracts so as not to allow parties to terminate at will." *Midwest Management Corp. v. Stephens*, 291 N.W.2d 896, 913 (Iowa 1980) (citations omitted). In reversing the district court in the *Midwest Management Corp.* case, the Supreme Court expressly recognized that clauses which give "sole discretion" does not mean "that such discretion could be exercised arbitrarily." *Id.* Instead, the party with discretion must "exercise that discretion in a reasonable manner on the basis of fair dealing and good faith." *Id.*

In viewing the facts in the light most favorable to the McNeals, their affidavits generate a genuine issue of material fact as to whether Wapello County exercised their discretion arbitrarily and acted consistent with good faith and fair dealing. Based on the circumstances

giving rise to the Agreement, it can reasonably be inferred the parties did not intend "derelict vehicles" to include vehicles the McNeals intended to productively use in their repair and sale business but that were otherwise inoperable. Indeed, if Wapello County did in fact remove vehicles that were not "derelict," Wapello County would certainly be in violation of the Agreement. Based upon the issues of genuine material facts asserted by the McNeals, this Court should reverse the district court and remand the case so that it may proceed to trial.

CONCLUSION

The McNeals respectfully request that this Court reverse the district court's decision. Specifically, this Court should find that the district court erred in granting summary judgement in favor of Wapello County because genuine issues of material fact exist. This Court should find a question of fact in regard to if the McNeals' vehicles were in fact "derelict" and whether the County acted in an arbitrarily manner in removing the McNeals' property.

REQUEST FOR ORAL ARGUMENT

The McNeals respectfully request oral argument in this matter.

Respectfully Submitted,

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ATTORNEYS COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Final Brief and Argument was $0.00, as it was electronically filed.

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November 2, 2021

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I certify on November 2, 2021, I will serve this document on the Appellee's Attorneys Hugh Cain, Brent Hinders, Daniel Johnston and Eric Updegraff by electronically filing it.

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