

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 REPLY BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. THE DISTRICT COURT ERRED IN GRANTING SUMMARY
JDUGMETN AGAINST THE MCNEALS AND FINDING
THERE WAS NO GENUINE ISSUE OF MATERIAL FACT**

Cases

Midwest Management Corp. V. Stephens, 291 N.W.2d 896 (Iowa 1980)

Statutes

Iowa Code § 331.384

ARGUMENT

I. THE IOWA DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT

In justifying the granting of summary judgment in this case, Wapello County provides a perfect example as to why the courts are hesitant to interpret a contract to give absolute right to one party in a contract. *See, Midwest Management Corp. v. Stephens*, 291 N.W.2d 896, 913 (Iowa 1980) (“An agreement will not be given an interpretation which places one party at the mercy of another unless the contract clearly requires that result.”). It appears that Wapello County takes the position that the only way in which the McNeals may challenge a breach of the parties’ agreement is if Wapello County failed to provide the required ninety (90) days to clean the property or did not comply with the notice requirements following the forty-five (45) day inspection. This is an improper interpretation of the law and the terms of the contract.

The McNeals only waived their rights to challenge “the County’s right to enter the Property and to conduct clean up activities.” (APP – 21, Settlement Agreement). Indeed, the agreement was that the McNeals would only dismiss their pending action against Wapello County “without prejudice.” (APP – 21, Settlement Agreement). By only

agreeing to dismiss the case without prejudice provides an indication that the McNeals did not intend to forgo a future opportunity to challenge Wapello County's actions. Most importantly, the McNeals did not give up their rights to challenge the actions against Wapello County if they exceeded its statutory authority "in accordance with Iowa Code § 331.384. Yet, that is exactly what the McNeals have alleged occurred in this case.

Central to the McNeals' claims is the argument that Wapello County exceeded the terms of the contract and that Wapello County acted arbitrarily in removing the McNeals' property. *See, Midwest Management Corp.*, 291 N.W.2d at 913 (holding that a "sole discretion" clause in a contract does not mean "that such discretion could be exercised arbitrarily"). The McNeals have created a genuine issue of material fact to establish that the property removed from the McNeals' real property was done in an arbitrary manner. The McNeals have asserted that many of the vehicles removed from the property, by Wapello County, were not derelict. (APP – 26, Affidavit of Cliff McNeal; APP – 46, Affidavit of Rita McNeal). Pursuant to the terms of the contract, the McNeals were only required to remove "derelict" vehicles. As such, by removing the non-derelict vehicles from the property, the County may be

in violation of the parties' agreement. Viewing these facts in the light most favorable to the McNeals, this Court should reverse the district court's grant of summary judgment.

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.

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 Reply Brief and Argument was \$0.00, as it was electronically filed.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

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November 2, 2021

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CERTIFICATE OF SERVICE AND CERTIFICATE OF FILING

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.

I further certify that on November 2, 2021 I will electronically file this document with the Clerk of the Iowa Supreme Court.

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