

IN THE SUPREME COURT OF IOWA

SAMIR M. SHAMS,

Appellee,

vs.

SONA HASSAN,

Appellant.

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S.C. NO. 15-1344

APPEAL FROM
THE IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE JEANIE KUNKLE VAUDT, JUDGE

APPELLEE'S BRIEF AND
REQUEST FOR ORAL ARGUMENT

Andrew B. Howie, AT0003716
HUDSON, MALLANEY, SHINDLER
& ANDERSON, P.C.
5015 Grand Ridge Drive, Suite 100
West Des Moines, Iowa 50265
515-223-4567; Fax: 515-223-8887
ahowie@hudsonlaw.net
ATTORNEY FOR APPELLEE

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Statement of Issues Presented for Review

- 1. Standard of review and preservation of error on Hassan's alleged error in the district court's failure to give a jury instruction proffered by Hassan.**

Anderson v. Webster City Community Sch. Dist., 620 N.W.2d 263 (Iowa 2000)

Lockard v. Carson, 278 N.W.2d 871 (Iowa 1980)

Iowa R. App. P. 6.907

- 2. The district court did not err by refusing to give Hassan's proposed instruction regarding the statute of limitations.**

Anderson v. Webster City Community Sch. Dist., 620 N.W.2d 263 (Iowa 2000)

Brenneman Martin & Co. v. Edwards, 55 Iowa 374, 7 N.W. 621 (1880)

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Thavenet v. Davis, 589 N.W.2d 233 (Iowa 1999)

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Iowa Code § 614.1(4) (2015)

Routing Statement

Appellee, Samir Shams, agrees with Appellant, Sona Hassan, that this case should be transferred to the Court of Appeals. *See* Iowa R. App. P. 6.1101.

Statement of the Case

This case derives from a judgment entry for Shams against Hassan in the amount of \$148,501.60 based upon a jury's verdict for conversion, breach of contract, and breach of fiduciary duty. (App. at 173-176, 199-201.) The parties tried the case in Polk County, presided by the honorable Jeannie Vaudt, from March 30 through April 13, 2015. (App. at 212:all.) This verdict-based judgment entry is a final order giving rise to this appeal. *See* Iowa R. App. P. 6.103(1).

Statement of the Facts

Though Hassan accurately describes in her brief some of the facts of the case and how this case progressed through trial, Shams offers this supplement.

Shams and Hassan are siblings. Around 2003, Shams left the United States for work in Iraq. (App. at 213:9-220:7, 8¶6, 9¶12.) Prior to his departure from the United States, Shams and Hassan entered an oral agreement whereby Hassan would have access to Shams' bank account to provide for

Shams' personal and his children's expenses. (App. at 213:9-220:7, 242:22-243:12, 8¶3, 8¶6, 9¶9.) Shams opened a checking account in a bank located in Des Moines, Iowa, to deposit the income he earned while he was abroad. (App. at 243:13-19, 8¶6.) Shams then gave Hassan signed blank checks that she would use to draw money as needed. (App. at 243:20-22, 9¶7-8.) The parties agreed that any money drawn by Hassan would be used solely for the needs and expenses of his three children and to pay Shams' bills. (App. at 243:7-12, 9¶9.) From 2003 through 2006, Hassan breached their agreement by using the money for her personal desires. (See App. at 244:2-277:4, 9¶11.) Hassan wrote checks to herself for thousands of dollars. (*Id.*) Hassan fraudulently concealed her actions and/or intent to use Shams' money and not return it to him. (App. at 224:16-24, 225:3-226:21.) Demonstrating her concealment, Shams asked for \$50,000 in 2009, which Hassan forwarded to him. (App. at 227:25-228:23.) In 2010, Shams discovered Hassan's self-serving actions and demanded his money from her. (App. at 227:25-231:23, 232:3-24.) She refused to return any of it. (App. at 228:24-231:23; see App. at 232:3-24.) On July 26, 2011, Shams filed a petition against Hassan, in the Iowa District Court, seeking compensatory and punitive damages from Hassan based upon several

counts including breach of contract, conversion, bad faith, fraud, and breach of fiduciary duty. (App. at 8-13.)

At virtually every stage of this case after the Iowa Supreme Court remanded the case for further proceedings¹, Hassan sought to dismiss Shams' case on the grounds of that the statute of limitations barred his claims against her. Each time, Hassan argued the same point. In summary, Hassan claimed that Shams discovered Hassan misused his money as early as June 2006. Shams did not sue Hassan until July 26, 2011. Asserting the applicable statute of limitations established by Iowa Code section 614.1(4) required Shams to sue within five years (by June 2011), Hassan argued Shams' claims were time-barred. In resistance, Shams claimed that he did not discover Hassan's wrongdoing until 2010 when he demanded the return of his funds from Hassan and she refused. Upon her refusal, he filed suit. Because he did not discover Hassan's actions until she refused to return the money to him in 2010, he was well within the five-year limitations statute when he sued.

¹ *Shams v. Hassan*, 829 N.W.2d 848 (Iowa 2013).

Hassan first raised the issue in a motion for summary judgment. (App. at 20-34.) Shams resisted. (App. at 35-37, 38-39, 40-142.) The district court denied the motion. (App. at 143-147.)

Hassan raised the issue again in her motion for directed verdict when Shams rested. (App. at 281:9-284:5 (referencing that a statute of limitations is one to be decided as a matter of law), 283:8-13.) Shams resisted. (App. at 284:8-304:10.) The trial court never expressly ruled on Hassan's motion, but had Hassan proceed with her defense, signaling the court denied Hassan's motion. (App. at 304:11-305:19.)

At the close of the evidentiary record, Hassan renewed her motion to dismiss/directed verdict. (Tr. 1065:16-1069:8.) Hassan provided to the court Connecticut and California legal authority supporting her claim for a jury instruction based on the statute of limitations, but provides no specific citations to the court. (App. at 310:20-314:8; *see* App. at 315:24-317:25.) Hassan refers the court back to the "authority cited to the Court initially in the initial motion for summary judgment", but that motion fails to cite any authority other than Iowa cases. (App. at 313:1-16; *see generally* App. at 20-34.) During the argument, Hassan states: "I think, as a matter of law, based on that, that he was

on notice in June.” (App. at 312:4-5.) The court denied Hassan’s motion for a directed verdict. (App. at 316:2-317:7.)

Hassan then asked for a specific instruction to be given regarding the statute of limitations. (App. at 319:9-322:3.) That proposed instruction stated:

The defendant has raised as a defense to the plaintiff’s claims of oral contract, conversion, fraud and breach of fiduciary duty that the plaintiff cannot prevail on that claim with the time allowed by [the] law. There are state statutes that specify how much time a person has to bring certain kinds of claims. These are called statutes of limitation. A person cannot recover on a claim that is brought after the time period that applies to a particular claim, even if it is only one day late. The statute of limitation that applies to each of the above claims provides that the claim must be brought within 5 years of the date the incident occurred. The plaintiff brought his suit against the defendant on July 26, 2011. A claim for oral contract, conversion, fraud, and breach of fiduciary duty, based on acts or occurrences that took place more than 5 years before the date is barred by the statute of limitation. You must decide when each act or occurrence on which bases his claim occurred. If any of these acts or occurrences took place more than 5 years before the plaintiff brought suit, then a claim based on that act or occurrence is barred by the statute of limitation.

(App. at 211; *see* App. at 320:10-321:17.) Shams objected to the proposed instruction because it misstated Iowa law, particularly since the proposed instruction was more akin to a personal injury action and it gave no mention to when Shams discovered Hassan’s bad acts leading to the lawsuit – when Hassan converted the money to her own personal use rather than when the parties

entered into the contract regarding the funds. (Tr. 1283:6-19.) After considering the arguments, Judge Vaudt ruled:

The Court notes that the Court has previously denied the motion to dismiss in this matter that was essentially premised upon the same argument. Mr. Shams is contending that there was a breach of agreement, and the other claims that roll along with that that he has pled, as a consequence of conversation that was had allegedly between him and the defendant concerning the return of his money after there had been, again allegedly, some investment in real estate, and that occurred later than a date that would trip the statute of limitations that [Hassan] is arguing is applicable.

So on that basis, because I have granted the – because I did not grant the motion to dismiss because I didn't feel that there was an issue there, I am going to let the case go to the jury without the instruction that [Hassan] has proposed for the reasons that, A, it's not a stock; B, I don't think it applies; and C, as it is drafted, I believe the jurisdictions that [Hassan] found the instruction located in, used it for purposes that were not associated with the kinds of claims we have asserted here.

So for all of those reasons, I am going to not submit that instruction to the jury. But we've made a record for the benefit of counsel on why [Hassan] thinks it should be submitted, when [Shams] believes it is not to be submitted, and why the Court has ultimately concluded that that instruction should not be submitted.

(Tr. 1284:9-1285:10.) The court then submitted the case to the jury.

The jury returned a verdict in favor of Shams on his claim and for Hassan on her counterclaim. The jury ordered Hassan to pay Shams \$148,501.60 based upon a jury's verdict for conversion, breach of contract, and breach of fiduciary duty; it also awarded \$14,566.25 in Hassan's favor based on Shams' libel, and

also found Shams responsible for \$15,000 for punitive damages. (App. at 173-176.)

Both parties filed motions for new trial and motions for judgment notwithstanding the verdict. (App. at 177-180, 181-183, 184-185, 186-188.)

Both parties resisted the other's motions. (App. at 192-194, 189-191, 197-198.)

The court denied both parties' post-trial motions. (App. at 202-208.)

Germane here, the court ruled:

The statute of limitations instruction [Hassan] proposed was properly withheld from the jury as to all of [Shams]'s claims she asserts it applied to. This proposed instruction is not the law in Iowa and does not include the discovery rule. Furthermore, the evidence presented was sufficient for the jury to conclude that [Shams] and [Hassan] entered into a new oral agreement in June of 2006, and his claims for breach of contract, conversion, and breach of fiduciary duty occurred in 2010 when [Hassan] declined to return additional money to [Shams].

(App. at 203-204.) After denying both parties post-trial motions, the court entered judgment based on the jury's verdict. (App. at 199-201.) Hassan appealed, Shams did not.

Argument

1. Standard of review and preservation of error on Hassan's alleged error in the district court's failure to give a jury instruction proffered by Hassan.

Notably, Hassan does *not* allege error in the district court's denial of her motion for summary judgment, motion for directed verdict, motion for new trial, or motion for judgment notwithstanding the verdict which all asserted that Shams' claims were time-barred under the applicable statute of limitations. Rather, Hassan asserts the district court erred by failing to give an instruction to the jury regarding the applicable statute of limitations. Appellate review of a challenge to jury instructions is for errors of law. *Anderson v. Webster City Community Sch. Dist.*, 620 N.W.2d 263, 265 (Iowa 2000); *see* Iowa R. App. P. 6.907. Hassan preserved the error by offering a proposed instruction, and the district court refused to permit the instruction before the court gave the instructions to the jury. (Tr. 1280:9-1285:14; App. at 211); *see Lockard v. Carson*, 278 N.W.2d 871, 873 (Iowa 1980).

2. The district court did not err by refusing to give Hassan's proposed instruction regarding the statute of limitations.

An error in refusing to give jury instructions does not warrant reversal without prejudice to the complaining party. *Thavenet v. Davis*, 589 N.W.2d 233,

236 (Iowa 1999). Prejudice results when the trial court's instruction materially misstates the law, confuses or misleads the jury, or is unduly emphasized. *Anderson*, 620 N.W.2d at 268 (citing 88 C.J.S. *Trials* §§ 371, at 950); see *Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565, 575 (Iowa 1997)). Instructions are not considered in isolation, rather the appellate court considers the instructions in their entirety and will not reverse if the instructions have not misled the jury. *Thavenet* at 236. Further, appellate courts "will not reverse for marginal or technical omissions, but the instructions must thoroughly and fairly convey the law applicable to the issues presented." *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994).

In her brief, Hassan argues the district court erred by failing to give the jury a specific instruction as offered in Court Exhibit A. (App. at 211.) Hassan argues she was entitled to the instruction because there were disputed facts as to when Shams discovered Hassan's wrongdoing. (*See generally* Br. arg. II.) Citing the five-year statute of limitations per Iowa Code section 614.1(4) (2015), Hassan claims the court should have instructed the jury to consider that Shams learned of Hassan's wrongdoing in June 2006, and, as the argument goes, because Shams did not file suit until July 2011, Shams' claim is time-barred. However, Hassan's proffered jury instruction, (Court Ex. A), is misleading and

misstates established law because the instruction failed to provide information on the discovery rule.

A key component of when the statute of limitations begins to run is when a plaintiff discovers the facts giving rise to the claim.

The discovery rule tolls the statute of limitations until the plaintiff has discovered ““the fact of the injury and its cause”” or by the exercise of reasonable diligence should have discovered these facts. [*K & W Elec., Inc. v. State*, 712 N.W.2d 107, 116 (Iowa 2006)] (citation omitted); *see also Nixon v. State*, 704 N.W.2d 643, 646 (Iowa 2005) (applying discovery rule to claim of fraudulent misrepresentation). Once a claimant learns information that would inform a reasonable person of the need to investigate, the claimant “is on inquiry notice of all facts that would have been disclosed by a reasonably diligent investigation.” *K & W Elec., Inc.*, 712 N.W.2d at 117 (citation omitted). A claimant can be on inquiry notice without knowing “the details of the evidence by which to prove the cause of action.” *Vachon v. State*, 514 N.W.2d 442, 446 (Iowa 1994).

Hallett Const. Co. v. Meister, 713 N.W.2d 225, 231 (Iowa 2006). The discovery rule applied to Shams’ claims. *See id.* Despite the discovery rule applying here, Hassan insisted on giving a misleading instruction, particularly:

A claim for oral contract, conversion, fraud, and breach of fiduciary duty, based on acts or occurrences that took place more than 5 years before the date is barred by the statute of limitation. You must decide when each act or occurrence on which bases his claim occurred. If any of these acts or occurrences took place more than 5 years before the plaintiff brought suit, then a claim based on that act or occurrence is barred by the statute of limitation.

(Court Ex. A (App. at 211.)) The instruction never mentions when Shams may have discovered “each act or occurrence on which bases his claim occurred”. Hassan was not entitled to have the court give the jury a misleading instruction – it is reversible error if the instruction misleads or confuses the jury or otherwise misstates Iowa law. See *Hendricks & Cooper v. Wallis*, 7 Clarke 224, 230-32 (Iowa 1858) (holding that a jury instruction given by the court that misrepresented Iowa’s law on the applicable statute of limitations justified a new trial); see *Brenneman Martin & Co. v. Edwards*, 55 Iowa 374, 7 N.W. 621, 622 (1880) (reversing trial court for a “clearly erroneous” jury instruction on the statute of limitations). Considering Hassan’s instruction, the district court expressly found as one of the grounds to reject it was the instruction’s failure to “include the discovery rule.” (App. at 202-203; see Tr. 1284:9-1285:10.)

Finally, Hassan coats her argument in general vague propositions that she was “entitled to have [her] legal theories submitted to the jury if they are supported by the pleadings and substantial evidence” but she fails to cite any authority that she was entitled to this specific instruction regarding the statute of limitations in this case. (Appellant’s Br. 10 (citing *Sonnek v. Warren*, 522 N.W.2d

45, 47 (Iowa 1994)). *Sonnek* had nothing to do with the statute of limitations.² *See generally Sonnek*, 522 N.W.2d at 47-48 (concerning whether the trial court properly denied an instruction on “proper lookout” in a negligence claim based on a car accident)). Whether a plaintiff’s claim is time-barred by the statute of limitations is a legal issue to be decided by the court, not the jury. *See Gabelmann v. NFO, Inc.*, 571 N.W.2d 476, 481 (Iowa 1997). Hassan offered no legal authority, other than a Connecticut case (which there is no citation in the trial record), that the statute of limitations was a jury question. Further, the error raised by Hassan in her appeal is the claim that the court should have given her proffered instruction. Any argument that another instruction should have been given is not properly preserved for appellate review. *Lockard*, 278 N.W.2d at 873 (“Objections to instructions must be sufficiently specific to alert the trial

² In *Sonnek*, after the jury ruled in favor of the defendant, the unsuccessful plaintiffs argued on appeal that the trial judge erred by refusing to instruct the jury about the defendant’s failure to maintain a “proper lookout” and duty to avoid a collision. *See id.* Specifically, the plaintiffs claimed the jury instruction “omitted a proposition of Iowa law which they were entitled to have the jury consider[, and to] omit this from the instruction, they assert, scuttled their case because that was the essence” of their claim. *Sonnek*, 522 N.W.2d at 47-48. The *Sonnek* Court disagreed holding the requested instruction “departed from the concept[s] . . . adopted in the uniform instruction and by our cases.” 522 N.W.2d at 49.

court to the basis of complaint so that, if error does exist, the court may correct it before placing the case in the hands of the jury.”); *see Meier v. Seneca*, 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.”).

Conclusion

The district court did not err in refusing to give the specific jury instruction Hassan offered. This court should affirm.

Request for Oral Argument

Counsel for Appellee respectfully requests to be heard in oral argument upon submission of this case.

Respectfully submitted,

/s/ Andrew B. Howie
Andrew B. Howie, AT0003716
HUDSON, MALLANEY, SHINDLER
& ANDERSON, P.C.
5015 Grand Ridge Drive, Suite 100
West Des Moines, Iowa 50265
515-223-4567; Fax: 515-223-8887
ahowie@hudsonlaw.net
ATTORNEY FOR APPELLEE

Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 12th day of October 2016, the Brief was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Andrew B. Howie
Andrew B. Howie

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 2,949 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Garamond.

/s/ Andrew B. Howie
Signature

October 12, 2016
Date