

IN THE IOWA SUPREME COURT

NO. 18-0509

LOREN DANNER and PAN DANNER,

Plaintiffs/Appellants,

VS.

CARROLL COUNTY BOARD OF ADJUSTMENT OF CARROLL COUNTY, IOWA,

Defendant/Appellee

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR CARROLL COUNTY, IOWA
Case No. CVCV039749
THE HONORABLE KURT J. STOEBE

**FINAL REPLY BRIEF OF APPELLANTS
LOREN DANNER AND PAN DANNER**

STEVEN HAMILTON
Hamilton Law Firm, P.C.
P.O. Box 188
606 Ontario Street
Storm Lake, Iowa 50588
(712) 732-2842
(712) 732-6202 (FAX)
steve@hamiltonlawfirm.com
ATTORNEY FOR APPELLANTS

TABLE OF CONTENTS

Table of Contents..... 2

Table of Authorities..... 3

ARGUMENTS

I. APPELLEE HAS WAIVED ITS ARGUMENT THAT THE AGENCY RECORD BEFORE THE DISTRICT COURT IS LACKING BECAUSE APPELLEE DID NOT MAKE THAT ARGUMENT AT THE DISTRICT COURT LEVEL..... 5

II. APPELLEE IS INCORRECT ON ITS ARGUMENT THAT THE TWO DANNER CASES ARE DIFFERENT ISSUES AND PRESENT DIFFERENT GROUNDS..... 6

Conclusion..... 7

Certificate of Filing..... 8

Certificate of Service..... 9

Certificate of Compliance..... 9

TABLE OF AUTHORITIES

Cases:

Alvarez v. IBP, Inc.,
696 N.W.2d 1 (Iowa 2005) 5

Fennelly v. A-1 Machine & Tool Co.,
728 N.W.2d 163 (Iowa, 2006) 7

Stone Container Corp. v. Castle,
657 N.W.2d 485 (Iowa, 2003) 5, 6

Other Authorities:

Restatement (Second) of Judgments Sec. 16 @ 145 (1982)..... 7

ARGUMENT I

APPELLEE HAS WAIVED ITS ARGUMENT THAT THE AGENCY RECORD BEFORE THE DISTRICT COURT IS LACKING BECAUSE APPELLEE DID NOT MAKE THAT ARGUMENT AT THE DISTRICT COURT LEVEL.

Cases:

Alvarez v. IBP, Inc., 696 N.W.2d 1 (Iowa 2005)
Stone Container Corp. v. Castle, 657 N.W.2d 485 (Iowa, 2003)

ARGUMENT II

APPELLEE IS INCORRECT ON ITS ARGUMENT THAT THE TWO DANNER CASES ARE DIFFERENT ISSUES AND PRESENT DIFFERENT GROUNDS.

Cases:

Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 163 (Iowa, 2006)

Other Authorities:

Restatement (Second) of Judgments Sec. 16 @ 145 (1982)

ARGUMENT I

APPELLEE HAS WAIVED ITS ARGUMENT THAT THE AGENCY RECORD BEFORE THE DISTRICT COURT IS LACKING BECAUSE APPELLEE DID NOT MAKE THAT ARGUMENT AT THE DISTRICT COURT LEVEL.

Appellee argues that Petitioner Danners' appeal should fail because they did not produce the record of the Board of Adjustment hearing. The problem with this claim is it is made for the first time on appeal. Appellee has failed to preserve error on this issue.

Appellee submitted its Brief before the Trial Court on December 19, 2017. (App. Pp. 12-13) It made no argument that Appellants were without relief because of this claimed failure. Appellee cites case law to support the proposition that judicial review is improper without the entire record. For that proposition it cites Alvarez v. IBP, Inc., 696 N.W.2d 1 (Iowa 2005). However, that case cites Stone Container Corp, v. Castle, 657 N.W.2d 485 (Iowa, 2003) for the proposition that such an objection must be made at the judicial review level or it is waived.

Here the very same factual pattern exists. The Carroll County Board of Adjustment Brief filed December 19, 2017, (App. Pp. 12-13) invited the Trial Court to apply principles of res judicata. In Paragraph 5 of Page 1 of that document (App. P. 12), the Board cites the previous decision in Carroll Airport Commission

v. Loren W. Danner and Pan Danner and attaches a copy of that decree as Exhibit A. (App. Pp. 14-23). Given that pleading, the Danners rightfully assumed that was the issue to be resolved and the Trial Court obviously did as well. Therefore the lack of the full record was not made an issue at the Trial Court level by either Petitioner Danners or Respondent Board. There is therefore all the more reason to resolve the matter as was done in Stone Container supra, without the complete record of the Board of Adjustment hearing.

ARGUMENT II

APPELLEE IS INCORRECT ON ITS ARGUMENT THAT THE TWO DANNER CASES ARE DIFFERENT ISSUES AND PRESENT DIFFERENT GROUNDS.

In Argument II of its Brief, Appellee states that it is error to apply claim preclusion or res judicata principles to reach the conclusion that the outcome here is determined by Arthur Neu Airport Commission v. Danner, EQCV 039422 (Sup Ct. No. 17-1458). However, that is just what the Trial Court did here based upon the posture presented by the Board which is described in ARGUMENT I. (App. P. 25).

"The only difference between the two Danner cases is that the earlier nuisance action was brought against Danner and the present case is an effort to get a variance. . . . The issue is identical even though the context differs slightly. Thus the doctrine of collateral estoppel is applicable and the Court finds that there is no preemption."

Appellee claims this application by the Trial Court is incorrect and we can certainly agree with Appellee on that. However, this result was reached because of the position presented by Appellee.

Furthermore, if the Court finds that issue preclusion or res judicata principles apply here, and the appeal of Danners in Arthur Neu Airport v. Danner (Supreme Court No. 17-1458) is successful, the Ruling in this matter by the Trial Court should be reversed as well. Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 163 (Iowa, 2006). See also Restatement of Judgments (Second) Sec. 16 @ 145 (1982).

CONCLUSION

Appellee has failed to preserve error on its claim that a lack of full judicial record on hearing of petition for judicial review precludes resolution of this case on the merits. When the merits are reached, it becomes crystal clear that the Trial Court in this matter decided this case on principles of judicial review. If Danners are successful in the appeal of Arthur Neu Airport v. Danners, the judgment in this case must also fail under issue preclusion principles.

Respectfully submitted,

 /s/ Steve Hamilton
STEVE HAMILTON, AT0003128
HAMILTON LAW FIRM, P.C.
P.O. BOX 188
606 ONTARIO STREET
STORM LAKE, IOWA 50588
712-732-2842
712-732-6202 (FAX)
steve@hamiltonlawfirm.com
ATTORNEY FOR APPELLANTS

CERTIFICATE OF FILING

I, Steve Hamilton, hereby certify that I have filed the foregoing "Reply Brief of Appellants" with the Clerk of the Supreme Court of Iowa through the ECF/EDMS System on the 23rd day of January, 2019.

 /s/ Steve Hamilton
STEVE HAMILTON, AT0003128
ATTORNEY FOR APPELLANTS

CERTIFICATE OF SERVICE

I, Steve Hamilton, hereby certify that on this same date, I served the attached "Proof Reply Brief of Appellants" through the ECF/EDMS System on the following:

Mr. John C. Werden
Carroll County Attorney
823 N. Main Street
Carroll, Iowa 51401
jwerden@carrollcountyattorney.org
ATTORNEY FOR RESPONDENT/APPELLEE

 /s/ Steve Hamilton
STEVE HAMILTON, AT0003128
ATTORNEY FOR APPELLANTS

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs.App.P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

This brief has been prepared in a monospaced typeface using Courier New in 12 characters per inch and contains 79 number of lines of text, excluding the parts of the brief exempted by Iowa R.App.P.6.903(1)(g)(2).

 /s/ Steve Hamilton
STEVE HAMILTON, AT0003128
ATTORNEY FOR APPELLANTS