IN THE COURT OF APPEALS OF IOWA

No. 0-094 / 09-1011
Filed April 21, 2010

DEBRA K. STREAM, f/k/a DEBRA K. KNIGHT,
Plaintiff-Appellee/Cross-Appellant,

vs.

DARWIN GROW, PAMELA GROW and CORY GROW,
Defendants-Appellants/Cross-Appellees.

Appeal from the Iowa District Court for Greene County, William C. Ostlund, Judge.

The defendants appeal and the plaintiff cross-appeals in a declaratory judgment action to determine the parties' rights under a lease for agricultural land. **REVERSED IN PART AND AFFIRMED IN PART.**

DuWayne J. Dalen of Finneseth, Dalen & Powell, P.L.C., Perry, for appellant.

Matthew J. Hemphill of Hefner & Bergkamp, P.C., Adel, for appellee.

Heard by Vogel, P.J., Mansfield, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

I. Background Facts and Proceedings.

In 2003, Debra Stream[1] and her former husband, John Knight, owned a home on an acreage along with 126 acres of farmland in Greene County, Iowa. They listed the home for sale with a realtor, but not the adjoining 126 acres. At that time they were renting the 126 acres to a tenant for $115 per acre. Darwin and Pamela Grow made an offer to purchase the house for their son, Cory Grow, with the offer contingent on Darwin and Pamela's right to cash rent the 126 acres. Subsequently, Debra and John and Darwin and Pamela entered into an agreement, "Offer For Real Estate," whereby Darwin and Pamela would purchase the house for $125,000. The agreement also specified that the parties would enter into a lease agreement for the 126 acres within ten days.[2] Subsequently, an attorney for the Grows drafted a "Farm Lease–Cash or Crop Shares," with tenants listed as "Darwin, Pamela and Cory Grow." Debra and John met with their attorney to discuss the lease prior to signing the lease.

The parties signed the lease on November 3, 2003. The lease contained the following provisions:

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[1] Debra was formerly known as Debra Knight, but changed her name to Debra Stream when she remarried.

[2] The purchase agreement contained the following additional provision, which was handwritten by Debra and John's realtor:

> This offer is contingent on buyer's right to cash rent 126 acres from John Knight and Marion Knight beginning March 1, 2005 and continuing until buyers no longer wish to cash rent the 126 acres or until such time as they wish to purchase the land from the Knights at a price both parties agree upon after receiving counsel from an appraiser that both parties agree upon. Buyers are given first right of refusal on said property. Cash rent is agreed upon at $115 per acre. Legal document shall be drawn within 10 business days of signed purchase agreement to replace the temporary agreement. Realtors shall not be held liable.

> 1. PREMISES AND TERM. Landlord leases Tenant the following real estate situated in Greene County, Iowa . . . and containing 126 (total) (tillable) acres, more or less, with possession by Tenant for a term of ___ years to commence on 03/01/05 and end on ____, ____. The Tenant has had or been offered an opportunity to make an independent investigation as to the acres and boundaries of the premises. In the event that possession cannot be delivered within fifteen (15) days after commencement of this Lease, Tenant may terminate this Lease by giving the Landlord notice in writing.
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> . . . .
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> 9. TERMINATION OF LEASE. The Lease shall automatically renew upon expiration from year-to-year, upon the same terms and conditions unless either party gives due and timely written notice to the other of an election not to renew this Lease. If renewed, the tenancy shall terminate on March 1 of the year following, provided that the tenancy shall not continue because of an absence of notice in the event there is a default in the performance of this Lease. All notices of termination of this Lease shall be as provided by law.
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> . . . .
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> 20. ATTORNEY FEES AND COURT COSTS. If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees.
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> . . . .
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> 25. ADDITIONAL PROVISIONS. The lease shall continue until such time as the tenants no longer wish to rent the farm ground or until such time as they purchase the property from the landlords. The cash rent is $115.00 per acre.
>
> In consideration for entering into this Lease Agreement, the landlords give the tenants the first right to purchase the property from the landlords at such a price as set by the average price as determined by an appraiser hired by the landlords, and appraiser hired by the tenants, and an independent appraiser approved by both parties, or such a price as agreed upon by the parties.

The lease was written on an Iowa State Bar Association official form. Under paragraph two, the blank for the beginning date of the lease was filled in, but the blanks for the duration and termination date were not filled in. Additionally, the terms included in paragraph twenty-five, "Additional Provisions," were not part of the original form, but were written by the Grows' attorney.

In 2007, Debra and John's marriage was dissolved. Debra received 26.32 of the 126 acres of farmland in the divorce proceedings. In 2008, Debra wanted to sell her land. In a letter dated July 16, 2008, Debra's attorney informed Cory's attorney of Debra's desire to sell her land, stating that she was offering the land to Cory to purchase under his right of first refusal and that both parties were to obtain an appraisal, Cory's due within fourteen days. In an email sent August 8, 2008, Debra offered that Cory either (1) litigate; (2) purchase the land at a price of $5150 per acre; or (3) obtain an appraisal and purchase the land for an average of the appraisals each would receive. Cory spoke to two appraisers, who ultimately did not perform an appraisal because of the difficulty of appraising the land with the lease existing after the purchase. Without obtaining a commitment from Cory to proceed with either option (2) or (3), Debra did not have her own appraisal completed.

On August 14, 2008, Debra served Darwin, Pamela, and Cory with notice of termination of farm tenancy. On August 21, 2008, Debra filed a petition for declaratory relief requesting the district court declare certain provisions of the farm lease satisfied, terminated, and unenforceable. A trial was held on March 27, 2009. At trial, Debra testified,

> Q. Okay. . . . [C]ould you just, please, give the Court some background as far as what you recall about the negotiations of the lease terms, please. A. On the negotiation of the lease terms, when we got right down to it was Cory requested a five-year commitment. We flat out refused that. He also requested the first right of refusal. If we ever wanted to sell the farm land, we were in agreement with that. That was fair.
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> Q. Do you know why he wanted a five-year lease? Do you recall? A. Yes. So he could build up some equity, save up some money to buy the farm land if we were going to sell at that point or thereafter.

> Q. Was—Was your recollection that Mr. Cory Grow was concerned about purchasing the ground at some point? A. Yes. He wanted to purchase the ground at some point. That's why it was his idea and his suggestion to put that first right of refusal in there. That was very important to him.
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> . . . .
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> Q. Instead of a five-year lease, what were you and John wanting. Do you recall? A. Yes. A year-by-year lease, one year at a time that would be automatically renewable if no changes were made in writing by September 1st. . . .
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> . . . .
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> THE COURT: You signed a document that was as clear as could be. You were agreeing to $115 for as long as they wanted to farm it. [DEBRA]: The agreement was, yes, they could farm it as long as they wanted to, which included up to the time we were ready to sell, they were free to farm it, clear up to that point.
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> THE COURT: But it doesn't say that there. [DEBRA]: She didn't word it that way. I know. I know.

Cory testified that he originally offered $117,000 to purchase the house, but agreed to the price of $125,000 because he was getting the right to farm the 126 acres and ultimately purchase the land. He was just beginning to farm, and planned on farming the land and establishing some equity in order to ultimately purchase the 126 acres.

On April 15, 2009, the district court issued its ruling. It found that paragraph twenty-five attempted to create a perpetual lease that could only be terminated by the Grows. However, paragraph nine, permitting either party to terminate the lease, and paragraph twenty-five, allowing the Grows to rent the land for as long as they desired, were conflicting clauses. The court discussed that (1) sufficiently clear language was not used to create a perpetual lease; (2) a potential buyer, other than Grows, would not be able to terminate the Grows' lease, causing the land to be "unmarketable"; and (3) perpetual leases for agricultural land are not allowed under the Iowa Constitution. As a result of these

factors, the court concluded that paragraph twenty-five went beyond being a "bad bargain" and was an unconscionable term, which could not be enforced. Therefore, the court found paragraph nine was the only valid and enforceable provision regarding termination of the lease, under which Stream could terminate the lease.

Stream filed a motion to enlarge pursuant to Iowa Rule of Civil Procedure 1.904. On June 3, 2009, the district court found that Stream had satisfied the Grows' right of first refusal. As to Stream's request for attorney fees, the district court stated:

> The plaintiff has further requested attorney fees. There were no offers of proof on behalf of either party as to the amount of attorney fees requested. Further, the plaintiff is not without fault or at least oversight in the process that resulted in this lawsuit. Each party shall be responsible for their own attorney fees.

The Grows appeal asserting the district court should have reformed the lease to reflect a twenty-year term. *See* Iowa Const. art. I, § 24 (prohibiting a lease of agricultural land for a period longer than twenty years). Stream cross-appeals the denial of her request for attorney fees and also requests attorney fees on appeal.

II. Standard of Review.

"We review declaratory judgment actions according to the manner [in which] the case was tried in the district court. If tried in equity, as in this case, our review is de novo." *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000); *see also Van Sloun v. Agans Bros., Inc.*, 778 N.W.2d.174, 178-79 (Iowa 2010). We give weight to the factual findings of the district court, but are not bound by them. *Owens*, 610 N.W.2d at 865.

III. Analysis.

A. Term of the Lease.

Our first task is to determine what the stated term of the lease is—Stream contends that paragraph twenty-five is unconscionable and the lease has a year-to-year term, and the Grows contend the lease is open ended, but should be reformed under the Iowa Constitution to reflect a term of twenty years.

> Our goal in interpreting a lease is to ascertain the meaning and intention of the parties. Unless the contract is ambiguous, the court determines the parties' intent from the language of the contract. Consequently, where the intent of the parties is expressed in clear and unambiguous language, we enforce the contract as written.

Petty v. Faith Bible Christian Outreach Ctr., Inc., 584 N.W.2d 303, 305 (Iowa 1998).

> Ambiguity exists when, after application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty exists concerning which of two reasonable constructions is proper. The test for ambiguity is an objective one: "Is the language fairly susceptible to two interpretations."

Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents, 471 N.W.2d 859, 863 (Iowa 1991). Where an ambiguity exists, it is strictly construed against the drafter. *Id*.

The lease form clearly allowed for the duration and expiration of the leasehold to be written into the blanks in paragraph two. The parties failed to do so. Paragraph nine states that the "Lease shall automatically renew upon expiration from year-to-year . . . unless either party gives due and timely written notice to the other of an election not to renew this Lease." This language does not set forth an expiration date or otherwise define "upon expiration" as that date was to be provided in the blanks contained in paragraph two. Rather, paragraph

nine provides that upon expiration of the lease, it will automatically renew for a year's term. It does imply that the lease has a term that will ultimately expire rather than continue in perpetuity.

Next, we turn to paragraph twenty-five, which was typed in as an "additional provision" and states:

> The lease shall continue until such time as the tenants no longer wish to rent the farm ground or until such time as they purchase the property from the landlords. The cash rent is $115.00 per acre.
>
> In consideration for entering into this Lease Agreement, the landlords give the tenants the first right to purchase the property from the landlords at such a price as set by the average price as determined by an appraiser hired by the landlords, and appraiser hired by the tenants, and an independent appraiser approved by both parties, or such a price as agreed upon by the parties.

At trial, both parties' testimony indicated that this provision was created so that Cory would be allowed to farm the land until he could build enough equity in order to purchase it. On appeal, Stream argues that we should find this provision unconscionable and therefore unenforceable. The Grows argue that this provision as a whole is not unenforceable, but rather under *Casey* the contract should be reformed such that the term would be limited to twenty years. *Casey v. Lupkes*, 286 N.W.2d 204, 207 (Iowa 1979) (holding that an agricultural lease for an indefinite term, either forty-five years or the death or disability of the tenants, was "valid for twenty years from its effect date and invalid only as to the excess").

An agreement is unconscionable at law if it is "'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.'" *Id*. (quoting *Hume v. United States*,

132 U.S. 406, 411, 10 S. Ct. 134, 136, 33 L. Ed. 393, 396 (1889)). Due to its equitable nature, the courts and legislature have not provided a precise definition of unconscionability. *In re Marriage of Shanks*, 758 N.W.2d 506, 514 (Iowa 2008); *Smith v. Harrison*, 325 N.W.2d 92, 94 (Iowa 1982). In considering a claim of unconscionability, we examine factors such as "assent, unfair surprise, notice, disparity of bargaining power[,] and substantive unfairness." *C & J Fertilizer, Inc. v. Allied Mut. Ins. Co.*, 227 N.W.2d 169, 181 (Iowa 1975). We will not find a contract to be unconscionable in order to relieve a party of a "bad bargain" or an "unreasonable" contract. *Shanks*, 758 N.W.2d at 515.

Further, the concept of unconscionability contains both procedural and substantive elements. *Id*.

> Procedural unconscionability generally involves employment of sharp practices, the use of fine print and convoluted language, as well as a lack of understanding and an inequality of bargaining power. A substantive unconscionability analysis focuses on the harsh, oppressive, and one-sided terms of a contract.

Id. (citations and quotations omitted); *see also* Richard A. Lord, Williston on Contracts § 18:10 (4th ed. 2009) (discussing that there must be a showing that the contract was both procedurally and substantively unconscionable when made). "[A]bsent an unconscionable bargaining process, a court should be hesitant to impose its own after-the-fact morality judgment on the terms of a voluntarily executed [contract]." *Shanks*, 758 N.W.2d at 516.

In the present case, Stream does not assert any claim of procedural unconscionability. The evidence demonstrated that the bargaining process was fair. The contract was a result of arms-length negotiations, after which Stream met with her attorney to review the contract before signing it. Nor does Stream

contend the rent was too low. Rather, Stream argues that paragraph twenty-five attempts to create a perpetual lease and as a result, it is unconscionable. We agree with Stream that if the parties attempted to create a perpetual lease, paragraph twenty-five failed to do so. However, we disagree with Stream that the result of such failure is an unconscionable contract provision. Paragraph twenty-five does not create a perpetual lease for two reasons. First, perpetual leases are not favored and in order to be valid, "the intent to create one must appear in clear and unequivocal language." *Id*. The Stream-Grow lease did not use the required and unequivocal language. *See id*. (discussing that generally courts require the intent to create a perpetual lease be demonstrated by using terms such as "perpetual," "in perpetuity," or "forever"). More importantly, a perpetual lease for agricultural land is prohibited by the Iowa Constitution. Article I, section 24, of the Iowa Constitution provides: "No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years."

Although not allowed for agricultural land, a lease is not unconscionable simply because it is perpetual. *See Howard v. Schildberg Constr. Co.*, 528 N.W.2d 550, 555 (Iowa 1995) ("[W]here the intent of the parties to create a perpetual contract is clear, the contract is enforceable."). Similarly, we find that if the lease attempted to create a perpetual term but failed, the lease is not unconscionable simply for this reason. In the present case, this lease, which had no elements of procedural unconscionability, is not unconscionable simply because it did not contain an ending date.

We must next examine the conflict between paragraph nine (indicating the lease contained a term that would expire) and paragraphs two and twenty-five (indicating the lease did not have an ending term). As discussed above, paragraph nine indicates that the lease has a term that expires, whereas paragraph twenty-five provides for an open-ended term. Two rules of construction are helpful in this instance. First, when a contract contains general and specific terms, the specific term controls. *Iowa Fuel & Minerals, Inc.*, 471 N.W.2d at 863; *Small v. Ogden*, 259 Iowa 1126, 1131, 147 N.W.2d 18, 21 (1966). Additionally, where parties use a form contract and add a clause to the form contract, the additional clause controls. *See Low v. Young, Mullarky & Long*, 158 Iowa 15, 15, 138 N.W. 828, 829 (1912); *see also* 17A C.J.S. *Contracts* § 325. Paragraph nine was a general provision that became effective upon expiration, which was also part of the form contract. In contrast, paragraph twenty-five was a specific provision regarding the term of the contract, which was written by the parties following negotiations. We find that the parties' failure to specify a term in paragraph two and the language added in paragraph twenty-five control over paragraph nine. As a result the lease provides for a term that continues until the Grows no longer wish to rent the land or the Grows purchase the land, which could possibly violate the constitutional provision prohibiting agricultural leases longer than twenty years.

The Grows argue that the lease should be reformed and enforced for a term of twenty years, similar to the result in *Casey*. In *Casey*, the parties had agreed to a lease that terminated upon the death of both tenants, the total disability for one year of both tenants, or the expiration of forty-five years. *Casey*,

286 N.W.2d at 206. The court found that because the lease terminated upon the death or disability of the tenants, the lease was for an indefinite term. *Id*. The fact that the lease would terminate in any event after forty-five years did not make it a definite term. *Id*. The court held that the lease was valid under article I, section 24 of the Iowa Constitution for twenty years from its effective date and invalid only as to the excess. *Id*. As a result, the lease terminated upon the earliest of three events: the death of both tenants, the full disability for one year of both tenants, or the expiration of twenty years from its effective date. *Id*.

As discussed above, the Stream-Grow lease provided that the lease was to continue until either the Grows no longer desired to rent the farmland or the Grows purchased the farmland. This creates an open-ended term—an indefinite term. Like the court in *Casey*, we find that term provided for in the lease sets forth the possibility for the lease to continue in excess of twenty years and that is not allowed under the Iowa Constitution. We therefore reform the lease so that it is valid for a term of twenty years from its effective date and invalid only as to the excess.

B. Attorney Fees.

Stream cross-appeals the district court's denial of her request for attorney fees. There is no common-law right to recover attorney fees, but rather it must be authorized by contract or statute. *Van Sloun*, 778 N.W.2d.at 182. "In order [for fees to be] taxed the case must come clearly within the terms of the statute or agreement." *Id*.; *see also W.P. Barber Lumber Co. v. Celania*, 674 N.W.2d 62, 66 (Iowa 2003) (discussing that attorney fees are generally not allowable unless authorized by contract or statute). In this case, the lease contained a provision

that stated: "If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees." However, the district court denied Stream's request finding she was not "without fault" in the process that resulted in the lawsuit and there were no offers of proof as to the amount of attorney fees requested. We agree with the district court. Further, Stream did not prevail on appeal. Therefore, we affirm the district court's denial of fees and deny Stream's request for attorney fees on appeal.

REVERSED IN PART AND AFFIRMED IN PART.