

IN THE COURT OF APPEALS OF IOWA

No. 0-380 / 08-1740
Filed June 30, 2010

INDIAN CREEK CORPORATION,
Plaintiff-Appellee,

vs.

CURT N. DANIELS,
Defendant-Appellant.

Appeal from the Iowa District Court for Lucas County, Carla T. Schemmel,
Judge.

Curt N. Daniels appeals from judgment entered against him in a forcible
entry and detainer action brought by Indian Creek Corporation. **AFFIRMED.**

Curt N. Daniels, Chariton, pro se.

David L. Wetsch of Wetsch & Abbott, P.L.C. and John C. Conger of
Conger Law Firm, P.L.C., Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

This is but another in a seemingly endless line of appeals¹ Curt Daniels has filed, all of which in one way or another stem from a 2001 assessment of a \$95,000 civil penalty for violations of waste handling requirements, which resulted in a judgment against Indian Creek Corporation, the owner of a hog confinement facility, and Daniels, its only shareholder. Here, Daniels appeals from judgment entered against him in a forcible entry and detainer action brought by Indian Creek Corporation. We affirm.

I. Background Facts and Proceedings.

The agricultural land at issue, located in Lucas County, Iowa, is owned by Indian Creek Corporation. Curt Daniels was its sole stockholder until 2006, when the stock was sold by sheriff's sale to a third party, Hunters Retreat, L.L.C. Daniels exercised possessory control over the land following the sale of the stock, claiming he held an oral lease. In August 2007, Indian Creek served Daniels with a notice of termination of farm tenancy. The notice provided for an effective termination date of March 1, 2008. Daniels remained in possession of

¹ Related appeals decided to date of which we are aware include: *WSH Props., L.L.C. v. Daniels*, No. 09-0703 (Iowa Ct. App. Mar. 10, 2010) (dismissing untimely appeal from third motion for new trial); *Daniels v. Holtz*, No. 08-1729 (Iowa Ct. App. Nov. 25, 2009) (affirming in part and reversing in part summary judgment concerning sheriff's sale) (currently on further review by supreme court); *WSH Props v. Indian Creek Corp.*, No. 08-1723 (Iowa Oct. 1, 2009) (summarily affirmed, finding the issues raised to be frivolous and/or not preserved for review); *WSH Props., L.L.C. v. Daniels*, 761 N.W.2d 45 (Iowa 2008) (affirming replevin award); *Navajo Assocs., L.L.C. v. Daniels*, No. 09-0694 (Iowa Ct. App. Oct. 21, 2009) (affirming foreclosure); *Daniels v. State*, No. 07-1275 (Iowa Ct. App. Oct. 15, 2008) (upholding the dismissal of Daniels's lawsuit in which he claimed the civil penalty was void); *WSH Props., L.L.C. v. Daniels*, No. 04-1874 (Iowa Dec. 1, 2004) (denying application for interlocutory appeal). Additionally, the following cases are still on file with the appellate clerk: *WSH Props., L.L.C. v. Daniels*, No. 10-0229, and *Daniels v. District Court*, No. 10-0223. Also, tangentially related is *Navajo Assocs., L.L.C. v. Daniels*, No. 09-0694 (Iowa Ct. App. Oct. 21, 2009).

the land after March 1, 2008, and as a result, Indian Creek served Daniels with a three-day notice to quit. After Daniels continued to remain in possession of the land, Indian Creek filed a petition for forcible entry and detainer.

A contested hearing was held in July 2008. Daniels argued he held a personal oral lease with Indian Creek giving him a right to possession of the land. He claimed his oral “continuing tenancy” was “ratified through the years” by Indian Creek, but provided no evidence of its terms. The district court concluded Daniels wrongfully remained in possession of the property, specifically rejecting his arguments that he held a personal oral lease with Indian Creek giving him a right to possession. Indian Creek was granted and put in possession of the property to the exclusion of the possessory rights of Daniels. Daniels appeals.²

II. Scope and Standard of Review.

Our review of a forcible entry and detainer action, which is tried in equity, is de novo. Although we are not bound by the factual or legal findings of the district court, “we give them weight, especially when considering the credibility of witnesses.” The defendant has the burden to prove the affirmative defenses [he] raises.

Capital Fund 85 Ltd. P’ship v. Priority Sys., L.L.C., 670 N.W.2d 154, 156-57 (Iowa 2003) (internal citations omitted).

III. Discussion.

There is no dispute that Indian Creek owns the agricultural land at issue. Nor is it disputed that Indian Creek timely served a proper notice for the

² Daniels, an attorney, has been a frequent pro se litigant and also an attorney of record before our appellate courts. We note he failed to insert, at the top of each appendix page, the name of each witness whose testimony is included in the appendix in violation of Iowa Rule of Appellate Procedure 6.905(7)(c) (2009). Compliance with the rule makes our job of navigating an appendix much easier, thus promoting judicial efficiency and aiding this court in meeting its mandate to achieve maximum productivity in deciding a high volume of cases. See Iowa Ct. R. 21.30(1).

termination of any farm tenancy that would have commenced on March 1, 2008.³ Absent a viable defense by Daniels, Indian Creek had a legal right to assert exclusive possessory control over the property. It was Daniels's burden to prove a defense. *Id.* at 157. He claims his "continuing tenancy" trumps Indian Creek's possessory right to the property.

Daniels admitted he had no written lease with Indian Creek. There being no written lease, Daniels had the burden to prove the claimed oral lease by clear, satisfactory, and convincing evidence. *Ehlinger v. Ehlinger*, 253 Iowa 187, 192, 111 N.W.2d 656, 659 (1961). Daniels's "position" is that he had a multi-year farm tenancy based on an oral contract between himself personally and Indian Creek. He testified the agreement was made sometime in 2000,⁴ at a time when Daniels owned one hundred percent of Indian Creek's stock. Daniels proffered no corporate documents confirming the existence of such an agreement. As a practical matter, Daniels asks us to affirm an agreement he claims he made with himself.

Daniels testified his tenancy was a "continuing tenancy" that "was ratified through the years." A review of Daniels's self-serving affidavit does not establish the term of the alleged tenancy agreement, nor does it even establish the existence of such an agreement. To be sure, the documentary evidence Daniels presented at trial established he was engaged in farming activities, but the

³ Iowa Code section 562.5 (2007) provides: "In the case of a farm tenancy, the notice must fix the termination of the farm tenancy to take place on the first day of March." Section 562.7 provides that the notice is to be served on or before September 1.

⁴ In his brief, Daniels claims Indian Creek entered into the tenancy agreement with him "in or about 1996."

documents do not in any way establish the existence of a farm tenancy with Indian Creek. Daniels presents no other evidence that a farm tenancy actually existed. Just saying a cow has three legs does not make it so. Daniels's proof of a continuing farm tenancy was woefully short of clear, satisfactory, and convincing evidence. We reject, as the district court did, Daniels's argument that he held a personal oral lease with Indian Creek on the property at issue giving him a right to possession.

Having failed in his burden to establish a defense to the forcible entry and detainer, we affirm the district court's order and ruling. Costs of the appeal are assessed to Daniels.

AFFIRMED.