

IN THE COURT OF APPEALS OF IOWA

No. 0-433 / 09-1538
Filed July 28, 2010

BERNADETTE UNTERBERGER,
Plaintiff-Appellee,

vs.

**LEE BRESNAHAN and
JACKY BRESNAHAN,**
Defendants-Appellants.

Appeal from the Iowa District Court for Allamakee County, Bradley J. Harris,
Judge.

Defendants bring an interlocutory appeal from the district court's denial of their
objections to interrogatories seeking detailed information about their income and assets.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Matthew B. Moore and Dustin D. Hite of Heslinga, Heslinga, Dixon & Moore,
Oskaloosa, for appellants.

Heather A. Prendergast of Roberts, Stevens, & Prendergast, P.L.C., Waterloo,
for appellee.

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

TABOR, J.

In this interlocutory appeal, we must decide whether our discovery rules allow a plaintiff—who is suing to rescind a real estate installment contract based on allegations of fraud and breach of fiduciary duty—to seek detailed information about the income and assets of the would-be purchasers. Because the bulk of the personal financial information requested by the plaintiff’s interrogatories is not relevant to the subject matter of the pending action, we reverse in part the district court’s discovery order.

I. Facts and Procedural History

In the late 1980s, Lee and Jacky Bresnahan (defendants) approached Benadette Unterberger (plaintiff) about buying some of her land. Between 1989 and 1994, the plaintiff sold 120 acres of woodland and farmland to the defendants on contract for approximately \$48,000. The plaintiff, who is an elderly widow without children of her own, executed a power of attorney in 2004, designating the defendants as her attorneys-in-fact.

The plaintiff’s health started declining in January of 2008. In June of 2008, the defendants offered to buy her remaining 160 acres of land in northeastern Iowa. That same month, the defendants moved the plaintiff from her farm house in Allamakee County to their home in New Sharon. In July of 2008, the plaintiff underwent surgery in an Oskaloosa hospital and recuperated at care centers in Oskaloosa and Waukon into that fall.

On September 26, 2008, the defendants drove the plaintiff from the Waukon Living Center, where she was convalescing from her surgery, to a local attorney’s office where she signed a real estate installment contract. Under the contract, she agreed to

sell her 160 acres for ten annual payments of \$20,000, for a total purchase price of \$200,000, plus interest set at a rate of 4.32%. An appraisal completed in January of 2009 valued the property at \$395,000.

On May 15, 2009, the plaintiff filed a petition seeking to rescind the real estate installment contract. She alleged the buyers engaged in “fraud, undue influence and self-dealing,” and asked for damages to compensate for lost rent, costs incurred from appraising the property and updating the abstract, and attorney fees.

The plaintiff propounded fifteen interrogatories to the defendants on July 17, 2009. On August 27, 2009, the defendants objected to Interrogatories 5(d), 6(f)-(l), 7(a)-(k), and 8(a)-(h). Interrogatory 5(d) asked for the defendants’ gross annual income for the past five years. Interrogatory 6 sought their current employment information, including their weekly gross and net income, bonus or raise information, life insurance, and retirement benefits. Interrogatory 7 solicited information about pension or profit-sharing plans at their current and past places of employment. Interrogatory 8 asked the defendants to list all assets in which they had an interest, including their homestead, other real estate, automobiles, mortgages, household contents, and money owed them by any other person, as well as the date of acquisition, cost of each asset, the source of the funds used to purchase the asset, its location, and their best estimate of the current market value of the assets. The defendants argued the information sought was irrelevant and not reasonably calculated to lead to admissible evidence.

The plaintiff responded to the objections, asserting the defendants’ financial situation was “relevant to determining what their motive would be in acquiring and purchasing a farm at far below market value.” The plaintiff also stated: “This discovery

is relevant to determine whether or not any judgment is recoverable from the Defendants in the event Plaintiff would be successful.”

The district court denied the defendants’ objections, limited the required disclosure of personal property in Interrogatory No. 8 to items valued at more than \$1000, and ordered the parties to reach a confidentiality agreement regarding the discovery. The defendants sought permission to appeal the discovery order in advance of final judgment. The Iowa Supreme Court granted the application for interlocutory review and transferred the appeal to this court.

Subsequently, on December 21, 2009, the district court settled a dispute over the record pursuant to Iowa Rule of Appellate Procedure 6.806(3). The order summarized the plaintiff’s argument in support of the relevancy of the interrogatories in two parts:

(a) If the defendants had significant sums and assets, that would indicate the ability to be fiscally wise and informed as to dealings in both real and personal property. In a nutshell, if the defendants possess significant sums of cash and/or assets, it would indicate that they had financial knowledge and an ability to determine fair market values of real property.

(b) If, on the other hand, the interrogatory answers indicated that the defendants possessed little, if any, assets, that would indicate a motive and intent and purpose in plaintiff’s fraud case against the defendants inasmuch as defendants would have a purpose in obtaining real property at far below market value due to their inability to purchase according to their assets.

II. Scope of Review

We review the district court’s discovery ruling for an abuse of discretion. *Mediacom Iowa, L.L.C. v. City of Spencer*, 682 N.W.2d 62, 66 (Iowa 2004) (explaining an abuse of discretion will be found when the district court exercises its discretion on grounds or for reasons that are clearly untenable or to an extent that is clearly unreasonable); see also *Baker v. City of Iowa City*, 750 N.W.2d 93, 97 (Iowa 2008). We

review interpretation of our rules of civil procedure for errors of law. *Hasselmann v. Hasselman*, 596 N.W.2d 541, 543 (Iowa 1999). Iowa's district courts are expected to liberally construe the discovery rules based on the philosophy that "litigants are entitled to every person's evidence, and the law favors full access to relevant information." *State ex rel. Miller v. Nat'l Dietary Research, Inc.*, 454 N.W.2d 820, 822-23 (Iowa 1990).

III. Analysis

Parties may obtain discovery regarding any non-privileged matter which is relevant to the pending action. Iowa R. Civ. P. 1.503(1). A party may not object to a discovery request on the ground that the information sought will not be admissible at trial if the information appears reasonably calculated to lead to the discovery of admissible evidence. *Id.* A party seeking to defeat discovery must show the information sought is privileged or irrelevant. *AgriVest P'ship v. Cent. Iowa Prod. Credit Ass'n*, 373 N.W.2d 479, 482 (Iowa 1985).

The defendants do not allege the information sought concerning their income and assets is privileged. Rather, they dispute the relevancy of their financial information to any issue in the action to rescind the real estate contract. They characterize the interrogatories as a "pre-judgment debtor's exam" and cite cases from other jurisdictions holding that inquiries concerning a defendant's assets generally fall outside the scope of the discovery rules. See, e.g., *Lothspeich v. Sam Fong*, 711 P.2d 1310, 1314 (Haw. Ct. App. 1985); *Sawyer v. Boufford*, 312 A.2d 693, 694-95 (N.H. 1973).

The plaintiff counters that the challenged interrogatories were reasonably calculated to lead to admissible evidence concerning the defendants' intent and motives underlying the breach of fiduciary duty and fraud claims. The plaintiff asserts her suit is

“at its core a case involving financial matters and the appropriateness of the financial relationship between parties.” She rejects the defendants’ characterization of the interrogatories as a “pre-judgment debtor’s exam.” Her appellate brief omits her trial court argument that one purpose for the interrogatories was to determine if any judgment was recoverable from the defendants.

Under Iowa law, a defendant’s pecuniary condition is admissible where the plaintiff seeks and evidence supports exemplary damages. *Hall v. Montgomery Ward & Co.*, 252 N.W.2d 421, 424 (Iowa 1977). Where the plaintiff is seeking only compensatory damages, the income and assets of a defendant may be discovered under Iowa Rule of Civil Procedure 1.503 if they are relevant to the subject matter involved in the pending action. See *Wheatley v. Heideman*, 251 Iowa 695, 703, 102 N.W.2d 343, 348-49 (1960). Iowa courts do not preclude interrogatories on irrelevancy grounds unless they are clearly outside the scope of the case. *Id.* Relevancy to the subject matter of the lawsuit is broader than relevancy to the precise issues in the pleadings because the rule allows discovery of inadmissible information as long as it leads to the discovery of admissible evidence. *Mediacom Iowa, L.L.C.*, 682 N.W.2d at 66.

To determine if the posited interrogatories were relevant to the subject matter of Unterberger’s suit, we start by examining the elements of her causes of action: fraud and breach of a fiduciary duty. To prove fraud, the plaintiff must show the defendants made a material, false representation coupled with scienter and an intent to deceive, and that plaintiff relied upon the representation, resulting in her damages. See *Sinnard v. Roach*, 414 N.W.2d 100, 105 n.1 (Iowa 1987). To prove breach of a fiduciary duty,

the plaintiff must show a fiduciary relationship existed between the plaintiff and the defendants, the defendants breached that fiduciary duty, and the breach was a proximate cause of damage to the plaintiff. See *Kurth v. Van Horn*, 380 N.W.2d 693, 698 (Iowa 1986).

The plaintiff asserts that responses to Interrogatory No. 8 concerning the defendants' assets, especially recently acquired real estate, could lead to admissible evidence regarding the defendants' knowledge concerning fair market value of the land they purchased from her. We agree that establishing the defendants knew or should have known the going-rate for real estate could assist the plaintiff in proving the defendants breached their fiduciary duty or intended to deceive her by offering to buy the farm at a price substantially below its market value. The problem with the plaintiff's assertion, however, is that Interrogatory No. 8 seeks information about all of the defendants' assets, both personal property and real estate. The district court's order did narrow the personal property to be disclosed to items valued at more than \$1000. Despite that limitation, the inquiry remains overbroad. See *Kessler v. Wal-Mart Stores*, 587 N.W.2d 804, 808 (Iowa Ct. App. 1998) (finding plaintiff failed to narrow her discovery request to seek only Wal-Mart publications that would aid in determining credibility of defense witnesses). We do not find that discovery of information about the defendants' personal property valued at more than \$1000 would lead to admissible evidence concerning their knowledge as to land values. On remand, the district court should require the plaintiff to further tailor her request under Interrogatory No. 8 to information concerning the defendants' real property assets.

Moreover, we reject the plaintiff's over-arching assumption that answers indicating the defendants earned high incomes and possessed significant assets created a reasonable likelihood they were savvy enough to determine fair market values and answers indicating they earned less income and possessed fewer assets revealed a greater incentive to perpetrate a fraud. Well-heeled individuals may harbor the intent to take advantage of others, while insolvent citizens may comprehend the real estate market. Gathering information to use in perpetuating stereotypes about the rich and poor is not the same as seeking relevant evidence. See generally *State v. Roghair*, 353 N.W.2d 433, 435 (Iowa Ct. App. 1984) (holding evidence of defendant's financial status was irrelevant to any issue in a case involving burglary and theft). The information about the defendants' financial worth sought by Interrogatory Nos. 5(d), 6(f)-(l), and 7(a)-(k) is not relevant to the subject matter of the pending action.

We note the district court's written order denied the defendants' objections to the plaintiff's interrogatories without analysis. We find an abuse of discretion in the district court's tacit acceptance of the plaintiff's argument that the financial information would be relevant to the defendants' knowledge of the real estate market and their intent to deceive.

The liberal philosophy undergirding Iowa's discovery rules must be balanced with the competing policy interest in protecting litigants from an unwarranted invasion of their privacy interest in personal financial information. The district court recognized the sensitive nature of the information sought in the interrogatories and directed the parties to reach a confidentiality agreement. The plaintiff contends the "protective veil" of a confidentiality agreement strikes an appropriate balance between the policy favoring

discovery and the desire to protect a party's privacy. She backs her contention with citation to *National Dietary Research*, 454 N.W.2d at 823. However, the passage she cites involves the discovery of trade secrets or other confidential information. The defendants here challenge the interrogatories only on relevancy grounds. As such, we do not find that disclosure of the defendants' financial condition to the plaintiff is justified, even if the information is not further disseminated.

We reverse the district court's discovery order as to Interrogatory Nos. 5, 6, and 7. As to Interrogatory No. 8, we affirm the district court's order requiring the defendants to provide information about their real property assets, but reverse the requirement that they provide information about their personal property, regardless of its value. We remand the action to the district court for further proceedings.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.