

**IN THE COURT OF APPEALS OF IOWA**

No. 0-869 / 09-1736  
Filed February 9, 2011

**TOM CONLEY, KAREN CONLEY, and  
THE CONLEY GROUP, INC.,**  
Plaintiffs-Appellants/Cross-Appellees,

**vs.**

**RHODA SHIRLEY**  
Defendant,

and

**PUBLIC SAFETY GROUP, INC., d/b/a  
CONLEY SECURITY AGENCY/PSG,**  
Defendant-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,  
Judge.

The plaintiffs appeal from the district court's order denying their request to  
enter an order on remand after appeal. **REVERSED AND REMANDED.**

Michael Mock of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des  
Moines, for appellants.

Rhoda Shirley, Des Moines, pro se.

Kathryn Barnhill of Barnhill and Associates, P.L.L.C., West Des Moines,  
for appellee Public Safety Group.

Considered by Mansfield, P.J., and Danilson and Tabor, JJ.

**MANSFIELD, P.J.**

As we said the last time, “[T]his case has been around for a while.” For the reasons set forth herein, we believe a limited remand is necessary.

In 1999, the Conleys, who managed a security company known as Public Safety Group, Inc. (PSG) had a falling-out with Rhoda Shirley, the owner of that company. The Conleys sued Rhoda Shirley and PSG, and PSG counterclaimed against the Conleys. Before trial in 2005, the Conleys purchased PSG’s counterclaims against them at a sheriff’s sale. The Conleys then filed a motion to dismiss the counterclaims, which the district court denied. The case proceeded to trial, and the district court ruled against the Conleys on their claims against Shirley and PSG, but found in favor of PSG on the counterclaims.

The Conleys appealed and asserted the district court (1) should not have dismissed their claims and (2) should have dismissed the counterclaims. On appeal, our court affirmed the dismissal of the Conleys’ claims against Shirley and PSG, but reversed the district court’s entry of judgment on the counterclaims, finding the Conleys had validly acquired the counterclaims at the sheriff’s sale and the district court should have therefore granted the Conleys’ pretrial request to dismiss them. Our decision concluded, “We reverse the judgment of the district court awarding PSG damages on its counterclaims against the Conleys. We affirm the district court’s denial of the Conleys’ affirmative claims for relief.” *Conley v. Public Safety Group, Inc.*, No. 9-135, 2009 WL 1492269 (Iowa Ct. App. May 29, 2009). PSG applied for further review with the supreme court. The application was denied, and procedendo issued on August 3, 2009.

On August 6, 2009, the Conleys filed a motion to modify and vacate judgment on remand, arguing that the counterclaim judgment entered against them and in favor of PSG should be vacated. A hearing was held, at which the Conleys specifically requested the factual findings, conclusions of law, and attendant judgment regarding the counterclaims be vacated as moot. The Conleys' counsel acknowledged that, "In terms of legal effect, I'm not sure it makes a practical difference." Nevertheless, he explained his clients wanted an order entered so the docket would reflect that part of the judgment had been vacated. The parties indicated their disputes were ongoing.

On October 20, 2010, the district court denied the Conleys' motion. It noted that our court had affirmed part of the judgment (the ruling against the Conleys on their claims) and reversed part of it (the ruling in favor of PSG on the counterclaims). It also observed that our court had not expressly vacated any of the factual findings or remanded for further proceedings. Rather, we indicated the findings relating to the ruling on the Conleys' affirmative claims were supported by substantial evidence. Thus, the district court concluded:

Since the Court of Appeals chose not to remand this case to the district court, it would not be appropriate for this court to enter an order that would modify its previous findings of fact. After the appeal is decided, it is not up to the district court to determine which findings of fact the Court of Appeals relied upon and which findings should be vacated. The record should stand as filed.

The opinion of the Court of Appeals speaks for itself. There is no need for the district court to modify or vacate its prior judgment beyond the action already taken by the Court of Appeals. Such an order by the district court would have no effect.

The Conleys appeal and assert the district court should have entered an order modifying and vacating the judgment previously entered against them with

respect to the PSG counterclaims, namely: (1) vacating the money judgment against the Conleys; (2) modifying the district court's judgment to reflect the Conleys' ownership of the PSG counterclaims; and (3) modifying the district court judgment to reflect the dismissal of the PSG counterclaims and to vacate as moot any related findings of fact and conclusions of law. Our review is for correction of errors at law. Iowa R. App. P. 6.907.<sup>1</sup>

“An appellate court must have some method of remanding a case to the lower court after the reviewing court has made its decision. In Iowa, remand is accomplished by the issuance of a procedendo.” *In re M.T.*, 714 N.W.2d 278, 281 (Iowa 2006). “Once procedendo has issued, the jurisdiction of the supreme court ceases. Indeed, the entire purpose of a procedendo is to notify the lower court that the case is transferred back to that court.” *Id.* at 282. Thus, here, the procedendo order stated, “[Y]ou are hereby directed to proceed in the manner required by law and consistent with the opinion of the court.”

While it would have been a clearer course of action for us to remand this case to the district court for further proceedings consistent with our decision, it was not necessary for us to do so. Once procedendo issued, the district court had jurisdiction of the case. In order to give effect to the appellate decision, the parties could request the district court to enter a further order. See *Sleeper v. Killion*, 182 Iowa 245, 257-58, 164 N.W. 241, 245 (1917). The question then is whether the district court erred in declining to do so.

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<sup>1</sup> PSG filed a notice of cross-appeal but has not filed a brief in this court. Any cross-appeal is therefore waived. Shirley has filed a pro se brief, but she lacks standing to participate in this appeal. Her brief is essentially an effort to reargue matters decided in the prior appeal. We grant the Conleys' motion to strike her brief.

We agree with the district court that our opinion “speaks for itself,” that the judgment in favor of PSG on the counterclaims has already been reversed, and that it is not necessary for the district court to sift through its fifteen pages of fact to determine which findings relate only to PSG’s counterclaims and should be vacated. Our reversal of the judgment in favor of PSG necessarily invalidates any findings that relate only to that judgment.

Having said that, the Conleys have established that “[s]omething more was necessary to be done.” *Miller v. Rosebrook*, 144 Iowa 194 195, 122 N.W. 837, 837 (1909). In *Miller*, the supreme court had originally reversed the district court in part and held the plaintiff as an assignee was entitled to a judgment. Yet it did not remand the case. Despite the absence of a remand, the supreme court later found upon the issuance of the writ of procedendo, the district court had authority to enter a new judgment in favor of the plaintiff, and should have done so. *Id.* at 196, 122 N.W. at 838.

Here the Conleys have demonstrated that the Iowa Courts Online records still reflect an unsatisfied district court judgment in favor of PSG. Since our prior decision has not been successful in clearing up that record, we reverse and remand with instructions to the district court to enter a judgment in favor of the Conleys on the counterclaims. See *City of Okoboji v. Iowa Dist. Court*, 744 N.W.2d 327, 331 (Iowa 2008) (“[O]ur judicial system is generally set up so the execution of an action needed to carry out the judgment of the appellate court is left to be done by the court in the best position to do so.”).

**REVERSED AND REMANDED.**