

**IN THE COURT OF APPEALS OF IOWA**

No. 1-928 / 10-0229  
Filed January 19, 2012

**WSH PROPERTIES, L.L.C.,**  
Plaintiff-Appellee,

**vs.**

**CURT N. DANIELS and INDIAN  
CREEK CORPORATION,**  
Defendants-Appellants.

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Appeal from the Iowa District Court for Lucas County, John D. Lloyd,  
Judge.

Curt Daniels and Indian Creek Corporation appeal the district court's  
denial of their petition for relief. **AFFIRMED.**

Curt N. Daniels, Chariton, appellant pro se and attorney for Indian Creek  
Corporation.

James E. Nervig of Brick Gentry, P.C., West Des Moines, for appellee.

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

**POTTERFIELD, J.****I. Background Facts and Proceedings**

This appeal stems from litigation that commenced in 2003. Indian Creek Corporation (ICC) owned a hog confinement facility that was sold to WSH Properties, L.L.C. at a tax sale. At the time, Curt Daniels was the sole owner of ICC.<sup>1</sup> After WSH obtained title to the hog confinement facility, it brought a replevin action against Daniels to recover hog equipment Daniels had removed from the property.

After trial, a jury found WSH was entitled to the possession of the property and damages for wrongful detention of the property. Daniels filed a motion for new trial, contending in part that the jury was prejudiced against him. The district court determined remittitur was the appropriate remedy and denied the other contentions raised in the motion for new trial. The district court entered judgment in favor of WSH for the reduced sums. Daniels appealed the district court's decision, which was ultimately conditionally affirmed by the supreme court on October 17, 2008, on the same remittitur conditions imposed by the district court. *See WSH Props., L.L.C. v. Daniels*, 761 N.W.2d 45, 53 (Iowa 2008).

Daniels filed a second motion for new trial on October 20, 2008. On January 16, 2009, the district court entered a ruling denying the second motion for new trial. Daniels asserts the clerk failed to provide the parties notice of the district court's ruling. Believing the court had not yet ruled on his second motion for new trial, Daniels filed a renewed motion for new trial on April 9, 2009. On

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<sup>1</sup> ICC's current ownership is disputed. For ease of discussion, we will refer to both appellants as "Daniels."

April 27, 2009, the district court denied Daniels's renewed motion for new trial. Daniels received notice of this ruling.

Daniels filed a notice of appeal on May 6, 2009. This court found Daniels's third motion for new trial did not extend the time for filing an appeal and therefore Daniels's appeal was untimely. *WSH Props., L.L.C. v. Daniels*, No. 09-0703 (Iowa Ct. App. Mar. 10, 2010). Accordingly, this court dismissed Daniels's appeal. *Id.* The Iowa Supreme Court denied further review of the case.

On November 24, 2009, while his appeal on the denial of his third motion for new trial was still pending, Daniels commenced a new action by filing a petition for relief under Iowa Rules of Civil Procedure 1.1012 and 1.1013. In his petition, Daniels acknowledged that his pending appeal was subject to dismissal because it had not been timely filed. Daniels asserted in his petition he "file[d] this petition to restart the time in which to file appeal" of the January 16, 2009 ruling on his motion for new trial.

On January 20, 2010, the district court dismissed Daniels's petition, finding the petition: (1) had not been filed in the proper action; (2) failed to state the grounds upon which relief was sought; (3) was not supported by an affidavit as required under the Iowa Rules of Civil Procedure; (4) was untimely; and (5) sought relief not available under Iowa Rule of Civil Procedure 1.1012. Daniels appeals.

## **II. Discussion**

On appeal, Daniels asserts his petition for relief properly invoked Iowa Rules of Civil Procedure 1.1012 and 1.1013, restoring timeliness to his appeal that was dismissed by this court on March 10, 2010 (case number 09-0703). Our

review of a petition to vacate a judgment under rule 1.1012 is for the correction of errors at law. *In re Marriage of Cutler*, 588 N.W.2d 425, 429 (Iowa 1999). Rule 1.1013 provides the procedure for vacating or modifying a judgment under rule 1.1012. Rule 1.1012 provides that a court may correct, vacate, or modify a final judgment or order or grant a new trial if any of six enumerated grounds apply.

Daniels's petition seems to state that he is entitled to relief on the ground that the clerk failed to send him notice of the district court's January 16, 2009 ruling until April 30, 2009. Daniels attached to his petition a copy of his motion for new trial filed October 20, 2008. This motion alleged Daniels was entitled to a new trial because of newly discovered evidence of false testimony given by WSH at trial.

Rule 1.1013 provides that a petition for relief under rule 1.1012 "must be filed and served in the original action within one year after the entry of the judgment or order involved." Given Daniels's allegations of false testimony at trial, it is clear that the order involved in this case is the original judgment. The court entered its final judgment after posttrial motions on August 5, 2005. See *Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 109 (Iowa 2011) (stating a district court's judgment is rendered final once the posttrial motions are resolved). Thus, Daniels's petition for relief, filed November 24, 2009, was not served within one year after entry of the original judgment and was untimely. We therefore affirm the district court's ruling dismissing Daniels's petition for relief.

The appellee requests that this court order Daniels to pay its appellate attorney fees incurred in defending against this appeal. In our discretion, we

decline to award appellate attorney fees or other sanctions as requested by appellee.

**AFFIRMED.**