

IN THE COURT OF APPEALS OF IOWA

No. 6-238 / 05-1011

Filed May 24, 2006

MARK DELANEY,
Plaintiff-Appellant,

vs.

EVERETT COOK and FIRST FEDERAL BANK,
Defendants-Appellees.

Appeal from the Iowa District Court for Jasper County, Dale B. Hagen,
Judge.

Mark Delaney appeals from the district court ruling granting First Federal
Bank's motion for summary judgment. **AFFIRMED.**

John J. Gajdel, Urbandale, for appellant.

Donna R. Miller of Grefe & Sidney, P.L.C., Des Moines, for appellee - First
Federal Bank.

Heard by Mahan, P.J., and Hecht and Eisenhauer, JJ.

EISENHAUER, J.

Plaintiff Mark Delaney appeals from the district court ruling granting defendant First Federal Bank's (the Bank) motion for summary judgment on his claims for negligent supervision, vicarious liability, intentional infliction of emotional distress, and breach of fiduciary duty. He contends the district court erred in relying on issue preclusion to dismiss his claims and in failing to apply the law of the case. We affirm.

I. Background Facts and Proceedings. Between September 25, 2000 and November 15, 2001, Delaney obtained fifteen loans from the Bank, totaling \$243,488.32. The Bank's representative in the relevant transactions was Everett E. Cook, a vice president and loan officer for the Bank. On numerous occasions, Cook entered false information on Delaney's loan applications. Most notably, Cook would inflate Delaney's income to increase the likelihood of approval. On one application, Cook overstated Delaney's annual income by over \$50,000. In the end, Delaney's monthly payments to the Bank exceeded his gross monthly income.

Delaney used the loan proceeds to purchase six motor vehicles, two boats, one travel trailer, and other property. He also used the loan proceeds to pay off other Bank loans as they came due. On multiple occasions, he also gave money, totaling \$50,000, to Cook.

The Bank terminated Cook in January of 2002. On May 17, 2002, Cook was charged with thirty-seven counts of theft and fraudulent practices. On October 28, 2002, Cook pled guilty to fourteen of the counts, and admitted he

knowingly falsified bank records which involved one or more loans to Delaney for a sum in excess of \$10,000.

On November 12, 2002, the Bank filed a petition for replevin, asserting it was entitled to immediate possession of the vehicles, boats, trailer, and personal possessions used to secure the loans. Delaney had defaulted on all of the loans and owed the Bank \$194,199.61. Delaney denied the allegations and alleged that Cook's actions made the loan contracts void and unenforceable. Following a bench trial, the court found in favor of the Bank. Delaney appealed and this court affirmed in *First Federal Bank v. Delaney*, No. 03-1246 (Iowa Ct. App. July 14, 2004). Our supreme court denied further review.

On April 17, 2002, Delaney and two others filed a petition seeking damages from Cook and the Bank. The petition was amended on April 11, 2003, adding ten more plaintiffs. On March 13, 2003, the Bank filed a motion for summary judgment. The motion was granted in part, and one of the plaintiffs was dismissed as a party to the suit. The Bank filed a second motion for summary judgment on November 25, 2003. The motion was again granted in part, and three additional plaintiffs were dismissed from the lawsuit. By January 27, 2004, all of the remaining plaintiffs except Delaney had settled with the Bank. On March 1, 2005, the Bank filed a third motion for summary judgment. The court granted the motion, dismissing Delaney's claims for negligent supervision, vicarious liability, intentional infliction of emotional distress, and breach of fiduciary duty.

II. Scope and Standard of Review. We review a ruling on a motion for summary judgment for correction of errors at law. *Otterberg v. Farm Bureau Mut.*

Ins. Co., 696 N.W.2d 24, 27 (Iowa 2005). A motion for summary judgment should only be granted if, viewing the evidence in the light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Id.* Thus, “we examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law.” *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997).

III. Summary Judgment. In granting summary judgment, the district court determined that the replevin court’s findings were binding under the doctrine of issue preclusion. The court then determined that the doctrine of in pari delicto and public policy barred Delaney’s claims. Finally, the court determined that even if the doctrine of in pari delicto and public policy did not bar his claims, the undisputed facts require summary judgment on the merits of the individual counts.

A. Issue preclusion. Issue preclusion bars relitigating in a subsequent action issues raised and fully litigated in a prior action. *Buckingham v. Fed. Land Bank Ass’n*, 398 N.W.2d 873, 875 (Iowa 1987). For issue preclusion to be applicable, however, four prerequisites must be met:

- (1) The issues concluded must be identical;
- (2) The issues must have been raised and litigated in the prior action;
- (3) The issues must have been material and relevant to the disposition of the prior action; and
- (4) The determinations made of the issues in the prior action must have been necessary and essential to the resulting judgment.

Id. Delaney argues the first prerequisite, whether the issues are identical, was not met.

In the replevin action, the court had to determine whether the loan contracts were enforceable, whether Delaney defaulted on the loans, and whether the Bank was entitled to possession of the collateral. Delaney's defense was that the loan contracts were illegal and thereby unenforceable. In considering whether the loan contracts were enforceable, the court determined Delaney acted knowingly and fraudulently when he entered the loan contracts. This determination went beyond merely finding Delaney was not a credible witness as argued by Delaney in this appeal.

The district court applied the holdings of the replevin court to the action at hand and concluded Delaney's claims were barred by the doctrine of in pari delicto and public policy. The doctrine of in pari delicto applies where a defendant proves (1) a material misrepresentation, (2) made knowingly, (3) with intent to induce another to act or refrain from acting, (4) upon which the other justifiably relies. *General Car & Truck Leasing Sys. Inc. v. Lane & Waterman*, 557 N.W.2d 274, 281 (Iowa 1996). The purpose of the in pari delicto doctrine is to deter future misconduct by denying relief to one whose losses were substantially caused by his own fraud or illegal conduct. *Id.* at 279. Likewise, the public policy of the State of Iowa generally denies relief to those injured in whole or in part because of their own illegal acts. *Pappas v. Clark*, 494 N.W.2d 245, 247 (Iowa 1992).

Because the replevin court has already litigated the issue of whether Delaney knowingly and fraudulently entered into the loan contract, issue

preclusion applies as to the doctrine of in pari delicto and public policy. We also note the replevin court determined that the Bank was not vicariously liable for Cook's actions, an issue raised in the case at bar by Delaney. Issue preclusion decides this issue on summary judgment as well.

Delaney argues, however, that issue preclusion should not apply because the replevin action was tried to the bench, whereas this action is to be tried to a jury. An exception to the rule of issue preclusion does apply where "[a] new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them." Restatement (Second) of Judgments § 28(3) (1982). Because there is no difference in the quality or extensiveness of the procedures of a bench trial versus that of a jury trial, we conclude that this exception does not apply.

We conclude issue preclusion was properly applied here to determine Delaney's claims were barred by the doctrine of issue preclusion and by the public policy of the State of Iowa.

B. Law of the case. Delaney next contends the district court's rulings denying the Bank summary judgment on his claims is the law of the case and, therefore, the Bank's third motion for summary judgment should have been denied.

The "law of the case" arises only after a ruling becomes final. *City of Ankeny v. Armstrong Co.*, 353 N.W.2d 864, 867 (Iowa Ct. App. 1984). Despite a change of judges, a court may correct its own error before final judgment. *Id.* at

868. The court's previous rulings on summary judgment were not final and therefore are not the law of the case.

IV. Summary. We affirm the district court's ruling granting summary judgment to the Bank on Delaney's claims. Because our ruling on the first two issues considered is dispositive, we need not consider the other issues advanced by Delaney on appeal.

AFFIRMED.