

IN THE COURT OF APPEALS OF IOWA

No. 6-673 / 05-1355
Filed November 30, 2006

**KIRK GROSS CO. AND
UNITED FIRE GROUP,**
Plaintiff-Appellees,

vs.

TERRY SCHWAB,
Defendant-Appellant.

Appeal from the Iowa District Court for Mahaska County, Dan F. Morrison,
Judge.

The defendant appeals from the district court's order granting the petition
for specific performance of a settlement agreement. **AFFRIMED.**

Thomas J. Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for
appellant.

Chris Scheldrup and Charles A. Blades of Scheldrup Law Firm, P.C.,
Cedar Rapids, for appellees.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

Terry Schwab appeals from the district court's order that granted the petition in equity to enforce specific performance of a settlement agreement between the parties. We affirm.

I. Background Facts and Proceedings.

Schwab was employed by Kirk Gross Co. in December 2000, when he alleges he suffered a work-related injury to his back on his second day of work. Schwab subsequently hired attorney Jason Neifert to represent him before the Iowa Workers' Compensation Commission. In February 2002, Neifert filed a petition for arbitration before the Commission. The record reflects that there were serious issues with Schwab's ability to prove he suffered a work-related injury as alleged, due to Schwab's history of back injury and an unfavorable independent medical examination. Neifert fully admits that he initiated settlement discussions beginning in December 2002 with Chris Scheldrup, the attorney representing Kirk Gross Co. and United Fire Group (the plaintiffs), without first obtaining Schwab's permission to do so. However, Neifert testified at hearing and in deposition that as negotiations continued, he always conveyed any settlement offers back to Schwab. Neifert's correspondence in the record is consistent with his testimony on taking offers to Schwab. On February 11, 2004, the day they were to appear before the Commission, Neifert met with Schwab and a friend for approximately three hours, as negotiations continued. Eventually, Scheldrup offered to settle the claim for \$6500. Neifert testified that he told Schwab it was a favorable settlement offer in light of their proof problems going into the hearing. Before accepting, Schwab went outside to smoke a

cigarette but then returned and expressly accepted the offer and authorized Neifert to convey the acceptance to Scheldrup. Neifert did so, and the parties then agreed that Scheldrup would draw up the settlement agreement for the parties to sign. Schwab claims that he never authorized Neifert to accept the \$6500 offer, and that Neifert had accepted the offer before Schwab arrived at Neifert's office.

On February 12, 2004, the day after the \$6500 settlement agreement was reached, Schwab wrote a letter to Neifert and one to the Commissioner expressing his dissatisfaction with Neifert's level of representation. In the letter to the Commissioner he stated, "We had discussed a settlement offer but the more [I] have to think about it this is not right." Schwab refused sign the settlement agreement and terminated Neifert's representation. Neifert gave Schwab at least two complete copies of his file between June 2004 and December 2004, cautioning him to obtain a new attorney to protect his interests on his claim before the Commissioner and to defend the action by the plaintiffs for specific performance of the settlement agreement. Neifert also informed Schwab that he could contact another attorney to discuss a potential malpractice action or pursue an ethics complaint against Neifert. Schwab did not retain another attorney. The plaintiffs filed their action for specific performance of the settlement agreement in district court in October 2004. Schwab answered the petition, proceeding pro se, and denied that he agreed to settle his workers' compensation claim. Schwab appeared for the trial setting conference in March 2005, which set the date of trial for July 6, 2005. In May 2005, the plaintiffs filed discovery motions, including a motion to compel Neifert's deposition and

documents related to his representation of Schwab. Neifert gave his deposition with accompanying documents and the motion to compel was voluntarily withdrawn by the plaintiffs on June 6, one month prior to trial. As with all filings throughout the pendency of the case, notice of the withdrawal of the motion to compel was sent to Schwab.

On the date of the trial, Schwab did not appear. The plaintiffs presented their evidence pertaining to the workers' compensation case, the settlement negotiations, and the final agreement. Neifert testified that Schwab gave him express permission to settle his claim for \$6500. With Schwab's failure to appear and present evidence to the contrary, the district court found the settlement agreement valid and ruled in the plaintiffs' favor by ordering specific performance of the agreement and compelling Schwab to sign the necessary documents. Schwab filed a motion to reconsider, stating among other things, "The court needs to hear the things which I have had to deal with from these attorneys." The district court denied the motion, and Schwab appeals.

II. Scope of Review.¹

Kirk Gross Co. and United Fire Group requested the court order Schwab to sign the settlement agreement and to fulfill the obligations according to the terms of the agreement. Specific performance is a form of equitable relief. *Passehl Estate v. Passehl*, 712 N.W.2d 408, 414 (Iowa 2006). Because this matter was tried by the district court wholly in equity, we review this appeal de

¹ Schwab submits that the scope of review on his appeal is for correction of errors at law. However, Schwab misstates the nature of the case on appeal, as the proceedings at district court were not a judicial review of an agency action, but a separate equitable action to enforce the settlement agreement.

novo. Iowa R. App. P. 6.4

III. Enforcement of the Settlement Agreement.

Schwab argues on appeal that his claims have been properly preserved and that there are material issues of fact concerning whether Schwab gave Neifert authority to accept the settlement agreement. We first note that the petition for specific performance of the settlement agreement was not before the district court on a motion for summary judgment, but for a hearing on the merits. Therefore, the question is not whether there are material issues of fact in dispute, but whether the evidence presented at hearing supports the district court's ruling. To this extent, Schwab refers to evidence which was apparently not before the district court at hearing due to his failure to appear and present evidence on his behalf. We may only consider the evidence presented at trial as to whether the record supports the district court ruling. See Iowa R. App. P. 6.10.

Agreements for special case settlements are not binding unless approved by the workers' compensation commissioner pursuant to Iowa Code section 85.35. *City of Ottumwa v. Poole*, 687 N.W.2d 266, 269 (Iowa 2004). If an agreement has been reached for the submission of a special case settlement to the commission, it may be specifically enforced to the extent of ordering a party to sign the documents necessary for that purpose. *Dillon v. City of Davenport*, 366 N.W.2d 918, 925-26 (Iowa 1985). In such specific enforcement actions, the court does not act to influence the decision of the commissioner under section 85.35. *Poole*, 687 N.W.2d at 269.

Schwab's main contention on appeal is that Neifert did not have authority to settle his workers' compensation claim for \$6500. The making of a settlement

offer is an act generally within the scope of authority of an attorney handling personal injury litigation for a client. *Strong v. Rothamel*, 523 N.W.2d 597, 600 (Iowa Ct. App. 1994). However, an attorney cannot settle or compromise a claim of his or her client without special authority. *Id.* Although an attorney is presumed to act with authority, the presumption is not conclusive and may be rebutted. *Gilbride v. Trunnelle*, 620 N.W.2d 244, 251 (Iowa 2000). The presumption is overcome only by clear and satisfactory proof. *Id.* (citing *Lonning v. Lonning*, 199 N.W.2d 60, 62 (Iowa 1972)).

The only proof submitted at trial supports Neifert's position and the district court's conclusion that Schwab consented to the \$6500 settlement agreement and gave Neifert permission to accept the offer. Because he was acting pro se before the district court, Schwab claims he misinterpreted the dismissal of the motion to compel as a complete dismissal of the case against him and that was why he failed to appear for trial. It has long been the rule that procedural rules apply not only to parties who are represented by counsel but also those who are not. Pro se parties receive no deferential treatment. See *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000). The law does not judge by two standards, one for lawyers and another for lay persons. *Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa App. 1995). Rather, all are expected to act with equal competence. *Id.* If lay persons choose to proceed pro se, they do so at their own risk. *Id.* With his failure to appear for trial and submit any contrary evidence whatsoever, Schwab failed to rebut the presumption and the evidence offered that Neifert was acting with his authority when he accepted the offer to settle. We therefore affirm the district court's order for specific performance compelling

Schwab to sign the settlement agreement and govern himself accordingly.

AFFIRMED.