

IN THE COURT OF APPEALS OF IOWA

No. 7-939 / 06-1878
Filed March 14, 2008

**KRISTEN NEINER, f/k/a
KRISTEN GUILFORD,**
Plaintiff-Appellant/Cross-Appellee,

vs.

**TIMOTHY E. GARDNER and
GARDNER CROP INSURANCE, INC.,**
Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Monroe County, James Q. Blomgren (trial, motion for new trial) and Daniel P. Wilson (motion to reconsider), Judges.

Plaintiff appeals a district court ruling granting defendants' motion for new trial. **REVERSED AND REMANDED WITH DIRECTIONS.**

Verle W. Norris, Corydon, for appellant.

John A. Pabst of Pabst Law Firm, Albia, for appellee.

Heard by Huitink, P.J., and Zimmer and Miller, JJ.

HUITINK, P.J.

I. Background Facts and Prior Proceedings

On April 14, 2005, the plaintiff, Kristen Neiner, f/k/a Kristen Guilford, filed a petition at law claiming Timothy Gardner and Gardner Crop Insurance, Inc., owed her commissions for her role in the sale of federal crop insurance. The matter proceeded to a bench trial in March 2006. A key part of the plaintiff's case was that the defendants acknowledged the existence of some of these commissions because they had received a notice of assignment of her commissions to a bank and agreed to remit her commissions directly to that bank. At the close of evidence, the defendants made a motion for directed verdict arguing, among other things, that the plaintiff was not the real party in interest because she had assigned her interest in the disputed commissions. In an off-the-record discussion, the court indicated it would be interested in receiving written argument and authorities on the parties' position on the issue of whether the plaintiff was the real party in interest.

Weeks later, the plaintiff filed a motion to reopen the record to allow additional evidence regarding payment of the indebtedness that led to the assignment.¹ Sometime after the motion was filed, a member of the court's staff inadvertently faxed counsel an unsigned ruling granting judgment to the plaintiff for \$45,063.44. This unsigned ruling contained the following language dismissing the defendants' argument that the plaintiff was not the real party in interest:

¹ The motion also erroneously stated that an exhibit confirming payment of the debt was attached to the motion. No such exhibit was attached to the motion.

Defendant further asserts plaintiff is not the real party in interest with regard to at least \$28,430 of the commissions claimed because she had assigned payment to the bank in Missouri and therefore was not the real party in interest. *After the initial trial, the court reopened the record in this matter and plaintiff demonstrated the debt had been paid, and the bank no longer was interested in the assignment of the commissions.* The real import of the acknowledgment of assignment in any event by the defendant was his understanding that the debt was owed.

(Emphasis added.)

Once the judge discovered the proposed ruling had been sent, he spoke with counsel for both parties and then filed an order setting a hearing on the motion to reopen the record. The defendants filed a resistance to the motion to reopen, contending the plaintiff had sufficient notice of this issue prior to trial and ample opportunity to present evidence that the assignment was no longer applicable. The defendants also claimed the judge had acted as an advocate for the plaintiff when he suggested that plaintiff's counsel provide authority addressing the real-party-in-interest issue.

After the contested hearing, the judge entered an order granting plaintiff's request to reopen the record and arranged a separate hearing to receive the new evidence. The judge also addressed the defendants' "advocacy" argument and concluded he would not disqualify himself from the proceeding. The judge eventually entered judgment for the plaintiff for \$45,063.44.

On September 5, 2006, the defendants filed a combined motion for new trial/motion to enlarge and amend. The motion set forth numerous arguments as to why a new trial was necessary in this case. It stated that the judge's actions constituted an irregularity that prevented the defendants from receiving a fair trial. The motion also accused the judge of acting as an advocate for the plaintiff. The

accompanying brief pointed to the draft ruling and claimed that the judge had “prejudged” the real-party-in-interest issue before he had even received evidence to support his ruling on the subject. The motion also claimed that the judge had asked counsel to act unethically when he personally told them not to tell their clients about the earlier draft decision. Finally, the motion claimed the decision to grant judgment for the plaintiffs was contrary to law.

On October 20, 2006, the judge entered a brief ruling granting the defendants’ motion for a new trial and recusing himself from further participation in the case. In so ruling, the court stated

The Court is prohibited by its rules from becoming a witness in this matter despite the inaccurate and incomplete assertions of the [defendants’] motion.

Nonetheless, the unfortunate distribution of the preliminary draft presents the appearance of an unfair trial for the defendants. Under these circumstances, Defendant’s Motion for New Trial must be sustained.

The plaintiff filed a motion for reconsideration. Because the original judge had recused himself from the case, a different district court judge, Judge Daniel P. Wilson, ruled on the motion. Judge Wilson denied the motion for reconsideration based on the prior judge’s conclusion that the trial appeared unfair for the defendants.

The plaintiff now appeals, arguing the district court applied the improper legal standard and abused its discretion in granting the defendants’ motion for new trial. She also claims the original district court judge should have ruled upon her motion for reconsideration.

The defendants contend the district court properly ordered the new trial, but also argue on cross-appeal that judgment be entered in their favor as a matter of law.²

II. Scope and Standard of Review

The scope of review in this appeal is for correction of errors of law. Iowa R. App. P. 6.4. We review a ruling on a motion for new trial for an abuse of discretion. Iowa R. App. P. 6.14(6)(c); *Kuta v. Newberg*, 600 N.W.2d 280, 284 (Iowa 1999).

III. Merits

We need not address plaintiff's specific arguments challenging the court's decision to grant a new trial because our supreme court's decision in *Taylor v. State*, 632 N.W.2d 891 (Iowa 2001), establishes that the original judge erred when he simultaneously recused himself and granted the motion for new trial.

In *Taylor*, the petitioner had been sentenced to prison for willfully failing to pay income taxes. *Taylor*, 632 N.W.2d at 892. He filed an application for postconviction relief in district court, and the district court denied the application. *Id.* at 892-93. Taylor filed a combined motion for reconsideration and new trial. *Id.* at 893. One of the arguments in this motion was that the presiding judge should recuse himself because he had developed an interest in the proceedings. *Id.* The judge responded by issuing an order simultaneously recusing himself

² Specifically, the defendants argue the district court erred in: (1) basing recovery on both a written and an oral contract; (2) granting the motion to reopen the record; (3) not finding that it was illegal to pay commissions to a non-licensed person; (4) finding the prior oral agreement did not merge into the written agreement; (5) finding that the plaintiff was the real party in interest; (6) accepting hearsay evidence at the hearing to reopen the record; and (7) not granting the defendants' motion for directed verdict.

from the case and granting Taylor's request for a new hearing on his postconviction application. *Id.* The judge stated that he did not have an interest in the proceedings, but felt it necessary to recuse himself "in order to avoid the appearance of any impropriety." *Id.* The judge went on to state

It is this Court's opinion that such a ruling on a [rule 1.904(2)] motion can only be made by the fact finder and/or the judge presiding in that matter. Therefore, due to the fact that the Court now recuses itself from this matter and cannot rule on the [rule 1.904(2)] motion, the Court grants motion for new trial

Id.

The State appealed, arguing that if the recusal was proper, the judge had no authority to grant a new trial. *Id.* The Iowa Supreme Court agreed. *Id.* at 896. The court found the judge did not abuse his discretion when he recused himself from the proceedings. *Id.* at 895. However, the court determined that "[w]hen a judge recuses himself, he no longer has the ability to perform and, thus, is disqualified" from that case. *Id.* at 896. "As such, it was error for the recusing judge to grant the motion for new trial, rather than leaving that decision to the new judge." *Id.* (citing Iowa R. Civ. P. 1.1802). The court reversed the decision granting the new trial and remanded the case back to district court so that a new judge could rule on the pending motion. *Id.*

The supreme court went on to instruct future courts facing similar situations:

As a matter of public policy, we note that we would not be well served if defendants could make accusations of impropriety, which when accepted, would result in an automatic new trial. *In future cases, when a [1.904(2)] motion is pending, but the presiding judge sees fit to recuse himself, it is the new judge who has the authority to decide if a new trial is required.* Otherwise, this new judge should rule on the pending motion.

Id. (emphasis added).

In the present case, the district court erred when it did not follow the aforementioned procedure. The original judge issued an order both granting a new trial and recusing himself from the case. The judge did not err when he decided to recuse himself from the case; however he did err when he simultaneously granted the defendants' request for a new trial. His authority to decide whether a new trial was appropriate expired once he determined he could no longer proceed with the case. That decision should have fallen to the judge assigned to replace him. Accordingly, we reverse the court's decision to grant a new trial and remand so that a new judge can address the defendants' combined motion for new trial/motion to enlarge and amend.³

IV. Cross-Appeal

The defendants' cross-appeal raises many arguments pertaining to whether the district court's original decision granting judgment for the plaintiff was contrary to law. It would be improvident for this court to consider these issues before the new judge has the opportunity to rule on the combined motion for new trial/motion to enlarge and amend. Therefore, we deny the defendants' cross-appeal.

³ We also reject any argument that Judge Wilson's denial of the motion to reconsider satisfied the procedure set forth in *Taylor*. The tenor of that ruling suggests that Judge Wilson did not consider the defendants' September 5, 2006 motion anew, but merely deferred to the prior judge's reasoning for granting the new trial. We find this is not the type of independent review our supreme court envisioned when it set forth the aforementioned procedure.

V. Conclusion

We reinstate this case to the status it held before the court granted the motion for new trial. Judge Blomgren is recused from the case, and, on remand, a different judge shall rule on the defendants' September 5, 2006 motion for new trial/motion to enlarge and amend.

REVERSED AND REMANDED WITH DIRECTIONS.