IN THE COURT OF APPEALS OF IOWA

No. 8-1023 / 08-0024
Filed February 4, 2009

ALEXANDER TECHNOLOGIES EUROPE, LTD.,
Plaintiff-Appellee,

vs.

MARK C. DAGGY substitution party for MacDonald Letter Service, an Iowa Corporation; substitution party for Richard Westcott and Amazing Products, an Iowa Corporation,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Bryan H. McKinley, Judge.

Defendant appeals from the district court's ruling granting plaintiff's motion to dismiss defendant's petitions to vacate a prior ruling. **AFFIRMED.**

Mark C. Daggy, Des Moines, appellant pro se.

John L. Duffy of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

SACKETT, C.J.

Defendant, Mark Daggy, appeals from the district court's ruling granting plaintiff's motion to dismiss Daggy's petitions to vacate a prior ruling. We affirm.

The plaintiff, Alexander Technologies Europe (Alexander), filed a replevin action against Amazing Products, and its owner, Richard Westcott. Westcott eventually assigned all of the rights he or Amazing Products acquired through the litigation to MacDonald Letter Service, which in turn assigned its rights to its chief executive officer, Mark Daggy, in his individual capacity. On November 8, 2005, Alexander filed a motion for summary judgment, which the district court granted. Daggy filed a notice of appeal on December 12, 2005.

Following the filing of his notice of appeal, beginning on December 21, 2005, Daggy filed numerous motions seeking to vacate the summary judgment decision alleging that fraud and illegal ex parte communications tainted the summary judgment decision. The district court refrained from ruling on these motions while the appeal was pending. We affirmed the summary judgment ruling in *Alexander Technologies Europe, Ltd. v. MacDonald Letter Service, Inc.*, No. 05-2023 (Iowa Ct. App. June 27, 2007). The district court then held a hearing on Daggy's petitions to vacate the ruling and on Alexander's motion to dismiss the same. It granted Alexander's motion to dismiss and determined, among other things, Daggy's claims were precluded by our court's ruling on the appeal of the summary judgment ruling.

Our review is for correction of errors at law. Iowa R. App. P. 6.4. A motion to dismiss a petition should only be granted if there is no state of facts

conceivable under which the petitioner may show a right of recovery. *Kingsway Cathedral v. Iowa Dept. of Transp.*, 711 N.W.2d 6, 7 (Iowa 2006). In essence, the district court determined that assuming any fraud or irregularity occurred, the result of the underlying summary judgment proceeding would not have been different. There is no error in this conclusion. In order to vacate a judgment, a petitioner must set forth a meritorious defense to the underlying claim. *See* Iowa R. Civ. P. 1.1013(1) ("If the pleadings in the original action did not allege a meritorious action or defense the petition [to vacate] shall do so."); *Thoreson v. Cent. States Elec. Co.*, 225 Iowa 1406, 1410, 283 N.W. 253, 255 (1939) (stating that a party seeking to vacate a judgment has the burden to show "that he has a valid cause of action or defense to the action in which the judgment was rendered"). After a thorough review of the record, we have found no defense to the replevin action asserted. Daggy has not claimed that the result of the replevin action would be different if a new summary judgment hearing were granted. Therefore, the district court properly granted Alexander's motion to dismiss.

AFFIRMED.