IN THE COURT OF APPEALS OF IOWA

No. 8-249 / 07-1353
Filed May 14, 2008

CAROL LEE and ROBERT E. LEE,
Plaintiffs-Appellees,

vs.

DALLAS BRADFORD and MARTHA CUMPTON,
Defendants-Appellants.

Appeal from the Iowa District Court for Dallas County, Paul R. Huscher, Judge.

The defendants appeal from the district court order finding they breached a settlement agreement with the plaintiffs and ordering specific performance of the agreement. **AFFIRMED.**

John P. Roehrick of Roehrick Law Firm, P.C., Des Moines, for appellants.

Martin L. Fisher, Adair, for appellees.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

The defendants, Dallas Bradford and Martha Cumpton, appeal from the district court order finding they breached a settlement agreement with the plaintiffs, Robert and Carol Lee, and ordering specific performance of the agreement. The defendants contend the plaintiffs were not entitled to specific performance of the settlement agreement as the terms were not sufficiently certain. They further contend specific performance is not appropriate because it would cause an unreasonable hardship or loss to them. Finally, they contend the district court erred in awarding the plaintiffs attorney fees and costs. The plaintiffs ask for an award of their appellate attorney fees. Because the case was tried in equity, our review is de novo. *See* Iowa R. App. P. 6.4.

The Lees and Dallas Bradford own adjoining property in De Soto. In April 2003, the Lees filed an action against Bradford and Cumpton for nuisance, trespass, and negligence. As characterized by the trial court, the parties had a long standing dispute involving property boundaries and nuisance. On November 4, 2005, the day of trial, the parties executed a settlement agreement wherein Bradford agreed to pay $6500 in exchange for the purchase of a twenty-foot wide strip of land along the southern border of the Lees' lot. Additionally, Bradford and Cumpton agreed to "use their best efforts and be removed from their current residence on or before December 10, 2005." Finally, the settlement agreement provided that in the event of breach, the parties would be entitled to seek injunctive relief with "the right to recover reasonable attorney's fees . . . ." In turn the lawsuit was dismissed with prejudice.

The defendants tendered the $6500 to the Lees in the appropriate time frame and a quit claim deed was signed by the Lees conveying the twenty feet of land to Bradford. Because of difficulties with construction on a new home, Bradford did not move from his DeSoto residence until August 15, 2006. However, Bradford moved back into the residence in dispute on December 1, 2006.

On May 16, 2006, the Lees filed a petition alleging breach of the settlement agreement and breach of good faith and fair dealing. A bench trial was held on July 11, 2007. The court ruled the Lees failed to establish damages, but held they were entitled to specific performance and ordered Bradford and Cumpton to vacate Bradford's DeSoto home on or before August 10, 2007. The court further awarded the Lees $2896.32 in attorney fees, with interest and costs. The defendants appeal.

The plaintiff's burden in a suit for specific performance is to prove by clear, satisfactory, and convincing evidence the terms of the contract declared upon in his or her pleadings. *H & W Motor Exp. v. Christ,* 516 N.W.2d 912, 913 (Iowa Ct. App. 1994). Specific performance of a contract is not a remedy which is available as a matter of right. *Id.* at 913-14. Rather, its availability rests in the sound discretion of the court. *Id.* at 914.

Ordinarily specific performance should not be decreed unless contractual terms are so express that the court can reasonably determine the duty of each party and the conditions under which performance is due. *Lange v. Lange,* 520 N.W.2d 113, 117 (Iowa 1994); *Tri-States Inv. Co. v. Henryson,* 179 N.W.2d 362, 363 (Iowa 1970). If the duties of each party and the conditions under which

performance is due may be reasonably ascertained from the agreement, the district court makes no mistake in enforcing it. *Lange,* 520 N.W.2d at 118.

The defendants argue the settlement agreement cannot be specifically enforced because its terms are not sufficiently certain. The district court found "it was the clear intent and understanding of all parties that the defendants were to remove themselves from the property at 616 Dallas Street, DeSoto, Iowa" and that the defendants would not occupy the property "for so long as the plaintiffs, or either of them, reside at 720 Dallas Street, DeSoto, Iowa." The defendants contend this interpretation is not supported by the express terms of the agreement. They claim the agreement simply required them to make their best efforts to remove themselves from the DeSoto home by a certain date, but there was no restriction on their return.

It is true that in order for a settlement agreement to be enforced, the terms must be complete and certain. *Linn County v. Kindred*, 373 N.W.2d 147, 150 (Iowa Ct. App. 1985). The degree of certainty necessary has been discussed at *Palmer v. Albert,* 310 N.W.2d 169, 172 (Iowa 1981):

> We have a number of cases supporting the principle that a contract must be definite and certain in order to be given legal effect. However, this rule should not be carried to extreme lengths nor should it be used to defeat the intent of the parties. . . . . Vagueness, indefiniteness, and uncertainty are matters of degree. Each case must be decided on its own particular circumstances.

(Citations omitted.) Although the settlement agreement did not specifically state that the defendants could not return to the residence, this was clearly the intention of the parties and the only reasonable reading of the agreement when considering the extrinsic evidence available in the record. *See Iowa-Illinois Gas & Elec. Co. v. Black & Veatch*, 497 N.W.2d 821, 825 (Iowa 1993) ("Extrinsic

evidence is admissible as an aid to interpretation when it throws light on the parties' situation, antecedent negotiations, the attendant circumstances, and the objectives the parties were trying to attain."). As noted by the trial court it would be absurd to conclude the "neighbor problem" could be solved if Bradford and Cumpton could move out for a day and then move back in. We conclude the term "removal" in the agreement infers permanent removal, that this term was understood and intended by the parties, and we therefore conclude the defendants return to the residence was a breach of the settlement agreement.

In determining whether to grant a request for specific performance, we must examine the particular facts of the situation and will generally grant the request when it would serve the ends of justice and deny the request where it would produce a hardship or injustice on either party. *Breitbach v. Christenson*, 541 N.W.2d 840, 843 (Iowa 1995). The defendants contend the district court erred in requiring specific performance because the Lees have failed to prove they will suffer irreparable harm if the settlement agreement is not enforced, while enforcement would cause Bradford economic hardship considering his age, health, and financial situation. The Lees agreed to forego their claims of nuisance and dismissed their lawsuit. Allowing Bradford and Cumpton to return to the property, which constitutes irreparable harm to the Lees.

We further conclude there is no economic hardship shown by the defendants. They each own another residence outside of DeSoto. The terms of the settlement agreement should not be disregarded simply because the defendants no longer find them to be advantageous.

Finally, the defendants contend it was in error to award the Lees their attorney fees and costs. Generally attorney fees are not allowable in the absence of statute or an agreement by the party to be charged. *D.M.H. by Hefel v. Thompson,* 577 N.W.2d 643, 648 (Iowa 1998). Iowa Code section 625.22 (2005) authorizes the payment of attorney fees when a judgment is recovered on a written contract containing an agreement to pay attorney fees. The settlement agreement here provided for the recovery of attorney fees, and therefore such an award was available.

The district court has considerable discretion in awarding attorney fees. *In re Marriage of Okonkwo,* 525 N.W.2d 870, 873 (Iowa Ct. App. 1994). The decision to award attorney fees rests within the sound discretion of the court, and we will not disturb its decision absent a finding of abuse of discretion. *In re Marriage of Maher,* 596 N.W.2d 561, 568 (Iowa 1999). We find no abuse of discretion under the facts of this case.

The Lees request an award of their appellate attorney fees, which are also available under the terms of the settlement agreement. We award the Lees $5000 in appellate attorney fees.

AFFIRMED.