IN THE COURT OF APPEALS OF IOWA

No. 1-530 / 10-1920
Filed July 27, 2011

RICH LESSARD, d/b/a
LESSARD LOGGING,
Plaintiff-Appellant,

vs.

DUANE HENRY,
Defendant-Appellee.

Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

Plaintiff appeals the district court's grant of a directed verdict for defendant in his action for breach of a logging contract. **AFFIRMED.**

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Parrish, P.L.C., Decorah, for appellant.

Timothy C. Lynch of Lynch Law Office, Decorah, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Mullins, JJ.

MULLINS, J.

I. Background Facts and Proceedings

Duane Henry (Henry) was the sole owner of forty acres of land in Winneshiek County. He also co-owned 120 acres with his four children, Daniel Henry, Julie Brenno, Angela Henry, and David Henry. Henry owned an undivided sixty percent interest in the 120 acres, and each child owned an undivided ten percent interest.

Jamie Bjornsen was a friend of Henry and she was also the cousin of the wife of Richard Lessard, a logger. Through Bjornsen, Henry and Lessard met and began discussions about having Lessard cut timber on Henry's property, including the property he owned with his children. Bjornsen testified she went to the county courthouse and confirmed that each child owned an undivided interest, and she provided Henry and Lessard with this information.

On August 9, 2008, Henry and Lessard signed a contract that Lessard, doing business as Lessard Logging, would cut down mature trees seventeen inches in diameter on Henry's property. On most timber, Henry would receive sixty percent of the profits, and Lessard forty percent. On walnut trees, Henry would receive sixty-five percent of the profit, and Lessard would receive thirty-five percent. The agreement also provided Henry's children would each receive five percent of Henry's share.

Henry was in a nursing home, and Lessard stated Henry asked him to start work as soon as he could because Henry wanted the money from the sale of the timber to help pay nursing home bills. One or two days after the contract

was signed, Lessard moved a skidder to the property. David Henry called him that evening and asked him to remove the skidder, which he promptly did. Within a month or two, Lessard received information that Henry and his children were taking bids for logging on their property. Lessard did not submit a bid. Eventually another person entered into a contract with Henry and his children to cut 345 trees on the property.

On February 4, 2009, Lessard filed suit against Henry alleging breach of the August 9, 2008 contract. Henry filed a counterclaim, alleging Lessard trespassed by parking the skidder on the property.

The case progressed to a jury trial on October 28, 2010. After plaintiff's evidence, Henry filed a motion for directed verdict asserting there was no evidence Henry's children, as cotenants of the property, authorized or ratified the contract. Henry claimed the contract was not enforceable because it had not been signed by all of the owners of the property. Lessard claimed the contract was valid against Henry, as he had the ability to encumber his own interest in the property.

The district court ruled from the bench granting the motion for directed verdict in regard to the property Henry owned as a cotenant with his children. The court found the children "had given their father no authority to enter into any kind of a logging agreement with the Plaintiff as to the parcels of land in which they have an ownership interest." The court determined the case could proceed against Henry as to the forty acres that he owned solely. The parties then entered into a stipulation to terminate the trial. On October 29, 2010, the court

filed a written order entering judgment for defendant on plaintiff's claim and for plaintiff on defendant's counterclaim. Lessard appeals the decision of the district court granting a directed verdict to Henry.

II. Standard of Review

We review the district court's ruling on a motion for a directed verdict for the correction of errors at law. *Deboom v. Raining Rose, Inc.*, 772 N.W.2d 1, 5 (Iowa 2009). A directed verdict should be granted "only if there was no substantial evidence to support the elements of the plaintiff's claim." *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 472 (Iowa 2005). "When reasonable minds would accept the evidence as adequate to reach the same findings, evidence is substantial." *Easton v. Howard*, 751 N.W.2d 1, 5 (Iowa 2008). We view the evidence in the light most favorable to the nonmoving party, and take all reasonable inferences into consideration. *Id.*

III. Merits

A. Lessard contends the district court erred in finding the logging contract was unenforceable. The court found plaintiff did not have any right to recovery based on the property Henry owned as a cotenant with his children.[1]

General legal principles provide:

> Since there is, merely by reason of the existence of a cotenancy, no agency relationship between the cotenants, one cotenant cannot ordinarily bind cotenants by contracts with third persons or transfer or dispose of the interest of another cotenant in

[1] We note the district court did not find the entire contract was void. The court determined there was a jury question regarding whether Henry breached the contract to cut timber on the property he owned alone.

> such a manner as to be binding, unless duly authorized to do so, or unless his or her act is thereafter ratified by other cotenants.
>
> In the absence of authorization or ratification on the part of the cotenants, any dealing on the part of one cotenant in relation to the common property is a nullity insofar as their interests are concerned.

20 Am. Jur. 2d *Cotenancy & Joint Ownership* § 94, at 224-25 (2005) (footnotes omitted); *see also King v. Gustafson*, 459 N.W.2d 651, 653-54 (Iowa Ct. App. 1990) (finding that where one sibling had entered into a contract with a third person to construct a dam on property owned as tenants in common with other siblings, those siblings had not ratified the contract and were not liable for work done).

There was no evidence presented that Henry was authorized to enter into agreements that would bind his cotenants in the property, and there was no evidence the cotenants authorized his actions. Where there has not been authorization or ratification, "any dealing on the part of one cotenant in relation to the common property is a nullity insofar as their interests are concerned." 20 Am. Jur. 2d *Cotenancy & Joint Ownership* § 94, at 225. The district court properly decided that as to the property Henry and his children owned as cotenants, the contract was unenforceable.

B. Lessard raises an alternative argument that logging contracts do not require the assent of cotenants. He claims that Henry could alone contract to sell timber from the land he owned with this children, but if he sold more than his proportionate share, he (Henry) could be liable to his cotenants (his children). *See Green v. Crawford*, 662 S.W.2d 123, 127 (Tex. Ct. App. 1983) (finding a cotenant may sell and convey timber standing on

commonly held properties, but the cotenant may not remove more than his or her proportionate share); *but see Threatt v. Rushing*, 361 So. 2d 329, 332 (Miss. 1978) ("We hold that the better rule which we now adopt is that a cotenant may not sever timber from the land without consent of the other cotenant(s).").

Lessard did not raise this claim before the district court. His arguments before the district court on the motion for directed verdict were based on the general rights and duties of cotenants, and did not raise a claim that there were different rules for the cutting of timber. We do not consider issues raised for the first time on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). We conclude Lessard has not preserved this issue for our review.

C. Lessard asserts Henry breached an implied covenant of good faith, and/or a promise to obtain authority to enter into the contract. As part of those assertions he argues theories of promissory estoppel and equitable estoppel. Again, he did not raise these claims in the arguments before the district court on the motion for directed verdict. We conclude these issues have not been preserved on appeal. *See id.*

We affirm the decision of the district court.

AFFIRMED.