IN THE COURT OF APPEALS OF IOWA

No. 8-1016 / 07-2007
Filed January 22, 2009

SONDREA JOHNSON,
Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR BLACKHAWK COUNTY,
Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister, Judge.

A tenant seeks review of a district court order imposing sanctions for seeking an order temporarily enjoining her eviction. **WRIT SUSTAINED.**

Corbett Luedeman, Cedar Rapids, for appellant.

John Harris of Law Offiices of C. Kevin McCrindle, Waterloo, for Deborah DeGraeve.

Considered by Mahan, P.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

A tenant seeks review of a district court order imposing sanctions for seeking an order temporarily enjoining her eviction.

I. Background Facts and Proceedings

Tenant Sondrea Johnson leased an apartment from Deborah DeGraeve. Johnson received rent assistance through the federal Section 8 Tenant-Based Assistance Housing Choice Voucher Program.

Johnson asked DeGraeve to make certain repairs to the apartment. When the repairs were not made, she contacted the Waterloo Housing Authority to inspect her home. The Housing Authority sent DeGraeve a list of repairs that she was required to complete. Twelve days later, DeGraeve gave Johnson a sixty-day notice to terminate her tenancy.

Before the expiration of the sixty days, Johnson filed a petition for declaratory judgment and request for temporary injunctive relief. The petition sought a declaration that the sixty-day notice was given in retaliation for Johnson's complaint about the conditions of the apartment, the notice was invalid for that reason, and the notice violated Section 8 housing requirements. The petition also sought "an order temporarily enjoining her eviction."

Shortly after Johnson filed her petition, DeGraeve filed a forcible entry and detainer action to evict Johnson. *See* Iowa Code ch. 648 (2007). Several days before the eviction hearing, the district court held a hearing on Johnson's request for a temporary injunction. The court concluded Johnson was entitled to a temporary injunction and, on its own, scheduled the matter for a permanent injunction hearing. After the hearing was scheduled, Johnson's attorney filed a

supplemental document claiming a violation of the temporary injunction and seeking a permanent injunction.

A different judge presided over the permanent injunction hearing. After considering counsel's arguments, the judge dissolved the temporary injunction, dismissed the landlord's forcible entry and detainer action which was joined with Johnson's declaratory judgment action, and decided on his own motion to impose sanctions against Johnson and her attorney for seeking an injunction against DeGraeve. The judge subsequently ordered Johnson and her attorneys to pay $795 toward DeGraeve's attorney fees.

Johnson filed a motion pursuant to Iowa Rule of Civil Procedure 1.904 attacking the imposition of fees as against Iowa law. She also noted she had not been given notice that she could be sanctioned. Johnson was granted a hearing on the sanctions question. The original sanctions were upheld and additional sanctions were imposed for filing what the court construed as a frivolous rule 1.904 motion. Johnson's attorney was ordered to pay an additional $15 in court costs.

Johnson petitioned for a writ of certiorari.

II. Standard of Review

Review of a district court's decision to impose sanctions is for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). We are only allowed to sustain the proceedings below, annul the proceedings in whole or in part, or prescribe the manner in which either party may proceed. *Harris v. Iowa Dist. Ct.*, 570 N.W.2d 772, 776 (Iowa Ct. App. 1997).

III. Analysis

Iowa Rule of Civil Procedure 1.413(1) provides in pertinent part:

> Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation.

Compliance is measured by an objective standard of reasonableness under the circumstances. *Mathias*, 448 N.W.2d at 445–46. In determining whether a reasonable inquiry into the law has been made, the court considers the relevant circumstances, including "the clarity or ambiguity of existing law" and "the plausibility of the legal positions asserted." *Id.* at 446 (quoting American Bar Ass'n Section on Litig., *Standard and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure* (1988)). Courts are to "evaluate the signer's conduct at the time of signing the pleading, motion, or other paper." *Id. a*t 447.

A. Sanctions for Seeking Injunctive Relief

The district court found that "the injunction sought by the tenant was not warranted by existing law and was interposed to cause unnecessary delay or needless increase in the cost of litigation in violation of I.R.C.P. 1.413(1)." After Johnson filed a rule 1.904 motion to enlarge findings, the court further wrote,

> There is no good faith argument that tenants in general or any particular class of tenants with affirmative defenses to a forcible entry and detainer should be entitled to enjoin a landlord from pursuing that remedy so long as the landlord is adhering to the judicial process provided by statute.

We are not convinced that Iowa law precluded Johnson's attorney from seeking a temporary injunction. Temporary injunctions are allowed under the following circumstances:

> (1) When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.
>
> (2) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the subject of the action and tending to make the judgment ineffectual.
>
> (3) In any case specially authorized by statute.

Iowa R. Civ. P. 1.1502. To obtain a temporary injunction, a party must show "the likelihood or probability of success on the merits of the underlying claim." *Lewis Invs., Inc. v. City of Iowa City*, 703 N.W.2d 180, 184 (Iowa 2005).

We begin with the merits of the underlying claim. In *Rokusek v. Jensen*, 548 N.W.2d 570, 573 (Iowa 1996), the court held that an aggrieved tenant had at least two legal remedies available to her: she could wait for the landlord to file a forcible entry and detainer and submit her defenses in that proceeding, or she "could have sought to establish her rights under the parties' agreement pursuant to an action for declaratory judgment." The court specifically stated the tenant "need not have waited to assert her available defenses but could have moved pro-actively." *Rokusek*, 548 N.W.2d at 573.; s*ee also Ewurs v. Irving*, 344 N.W.2d 273, 276 (Iowa Ct. App. 1983) ("The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate . . . . [Iowa Code chapters 648 and 656 do not] require a vendee in a real estate contract to wait until the vendor has brought an action . . . to present their claims only in defense of those actions."). Based on *Rokusek*, there is no question that

Johnson was authorized to file a declaratory judgment action. In fact, the district court conceded the action was appropriate, stating, "Now, I didn't ever criticize your declaratory judgment action. That's not the problem." Therefore, Johnson's vehicle for raising her retaliation claim was meritorious. It is also clear that the substance of her claim was meritorious, as "evidence of a good faith complaint within one year prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation." *See* Iowa Code § 562A.36.

We turn to Johnson's request for a temporary injunction. DeGraeve's pursuit of a forcible entry and detainer action would have rendered a judgment in favor of Johnson on the declaratory judgment petition ineffectual. *See* Iowa R. Civ. P. 1.1502(2). At a minimum, therefore, the temporary injunction simply preserved the status quo prior to a full determination of the rights sought to be established by the concededly valid declaratory judgment action. *See Rokusek*, 548 N.W.2d at 572 (explaining that the district court granted a temporary injunction to "maintain the status quo pending hearing" and to disallow the plaintiffs from being evicted). Notably, another district court judge found merit to Johnson's request for a temporary injunction. In granting the request, the court stated, "I believe [Johnson has] proven that there is an illegal eviction at this point." The court reached this conclusion following an evidentiary hearing at which both Johnson and DeGraeve testified. Accordingly, the injunction was "grounded in fact." *See* Iowa R. Civ. P. 1.413(1). Because the temporary injunction did no more than preserve the status quo, it was "warranted by existing law" or a good faith argument for the extension of existing law. *Id.*; *Rokusek*, 548 N.W.2d at 572.

The district court also focused on the propriety of a permanent injunction, noting that this type of injunction would deprive the landlord of the ability to use the statutorily authorized procedure to summarily evict a tenant. *See* Iowa Code ch. 648. We recognize that a permanent injunction preventing a landlord from evicting a tenant in perpetuity is not permissible. *See Rokusek*, 548 N.W.2d at 573 (holding permanent injunction "effectively created a *new* lease, preventing the Jensens from evicting Lola for *any* reason." (emphasis in original)). We are not convinced Johnson's attorney requested this type of injunction. In the petition, Johnson's attorney did not request anything more than a temporary injunction. At the hearing on the temporary injunction, Johnson's attorney did not expand this request. Indeed, there is no indication that Johnson's attorney requested the hearing on a permanent injunction which was ultimately scheduled; that hearing was scheduled sua sponte by the district court. While Johnson's attorney did make a supplemental filing in which he prayed that "the Court permanently enjoin any eviction by the Respondent," the filing was made after the district court issued a temporary injunction and related to a new notice to quit served by DeGraeve in claimed violation of the temporary injunction. At the subsequent hearing, Johnson's attorney made no mention of an injunction permanently foreclosing eviction actions by DeGraeve. At the rule 1.904 hearing, the district court asked Johnson's attorney about the effect of a permanent injunction. The attorney responded by specifically citing his intent to obtain a determination on whether the landlord's conduct was retaliatory. He pointed out that, absent an injunction, the district court could determine the conduct was retaliatory and the landlord could, the next week, file another notice to quit and

Johnson would have to go to court again. He also explained that the landlord had already filed three forcible entry and detainer actions. Finally, he acknowledged that DeGraeve could evict Johnson for nonpayment of rent, a concession that highlights the limited nature of his request. Based on this record, we are not persuaded that Johnson requested a permanent injunction enjoining all evictions in perpetuity but an injunction to prevent DeGraeve from evicting her pending a determination of whether the conduct was retaliatory. In short, counsel sought to enforce the temporary injunction that had already been issued.

In reaching this conclusion, we place particular emphasis on the fact that the sanctions rule relates to "signature[s]" and the requirement that the focus of the rule is on conduct at the time of the signatures. Iowa R. Civ. P. 1.413(1); *Mathias*, 448 N.W.2d at 447. The signature on the petition certified a request for a temporary injunction. The signature on the supplemental filing certified a request for a permanent injunction in relation to a thirty-day eviction notice issued after entry of the temporary injunction. While the supplemental filing concededly sought to "permanently enjoin any eviction," it is established that "the duty [under rule 1.413] is not breached when merely one argument or sub-argument behind a valid pleading or motion is without merit." Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 483, 496 (1986).

We conclude the district court abused its discretion in concluding that Johnson's request for an injunction in the context of this case amounted to sanctionable conduct. We sustain the writ.

B. Sanctions for Filing Rule 1.904 Motion

The district court imposed an additional sanction of $15 for having to entertain Johnson's motion to reconsider the original sanctions and for a hearing on those sanctions. The court stated:

> Because the motion to reconsider was also unwarranted by existing law or a good faith argument for its extension, modification, or reversal and was not well-grounded in fact, all of the court costs in this case are taxed to Petitioner's attorney as an additional sanction . . . .

We conclude the request for a hearing was warranted by existing law. *See K. Carr v. Hovick*, 451 N.W.2d 815, 817–18 (Iowa 1990) ("[B]efore sanctions are imposed, the alleged offender [must] be afforded: (1) fair notice and (2) an opportunity to be heard."). As Johnson's attorney had no notice that the court intended to impose sanctions prior to the hearing on the permanent injunction, he had only a limited opportunity to respond. *See In re Marriage of Anderson*, 451 N.W.2d 187, 190 (Iowa Ct. App. 1989) ("To comport with due process, a person must ordinarily be informed somehow of the issues involved in order to prevent surprise at the hearing and allow an opportunity to prepare." (quoting *Wedergren v. Bd. of Dirs.*, 307 N.W.2d 12, 16 (Iowa 1981))). We sustain the writ as it relates to these sanctions.

WRIT SUSTAINED.