

IN THE COURT OF APPEALS OF IOWA

No. 8-515 / 07-0778
Filed October 29, 2008

CARGILL, INCORPORATED,
A Delaware Corporation,
Plaintiff-Appellee,

vs.

MARVIN R. MITCHELL and
MARLENE M. MITCHELL,
Defendants,

MAURICE D. MITCHELL, SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Dallas County, William H. Joy,
Judge.

Surety Maurice Mitchell appeals a ruling dismissing his claims against the proceeds of a supersedeas bond posted on an appeal from a fraudulent transaction action. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.
Jacob D. Bylund, Kimberly J. Walker, Ross W. Johnson, and Todd P.
Langel of Faegre & Benson, L.L.P., Des Moines, for appellee.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

VOGEL, P.J.

Surety Maurice Mitchell appeals a ruling dismissing his claims against the proceeds of a supersedeas bond posted on an appeal from a fraudulent transaction action brought by Cargill, Inc., against Marvin and Marlene Mitchell. We affirm.

Background Facts and Proceedings.

This litigation began in 2004 when Cargill attempted to collect a judgment against Marvin Mitchell. Cargill filed an action against Marvin, his wife Marlene, and his father Maurice Mitchell, seeking, among other things, (1) a declaration that Marvin's transfer of all his farming assets to Marlene for the sum of one dollar was fraudulent, and (2) a note and financing statement from Marvin and Marlene to Maurice was fraudulent, thus entitling Cargill to the proceeds of Marvin's 2004 crop. Cargill also sought a declaration that its interests in Marvin's farm products or their proceeds was senior to that of Maurice. Prior to trial, the district court granted Cargill's summary judgment motion as to Maurice, concluding Cargill's interest in Marvin's 2004 crops was senior to any interest held by Maurice. Maurice did not appeal that ruling, and he was dismissed from the action by Cargill.

Later, the case proceeded to trial on the only remaining issue—whether the transfer from Marvin to Marlene was fraudulent. Following a trial, the court ruled on June 3, 2005, that the transaction was fraudulent and set it aside, thus permitting Cargill to levy upon Marvin's 2004 crop. In so ruling, the court found that Maurice had conceived of the fraudulent plan in order to place his son's farming operation out of the reach of Cargill's judgment. Cargill immediately

submitted a praecipe for execution and execution was issued to the Madison and Wayne County Sheriffs, who seized Marvin's 2004 crops. Preparations were made for the sale of the grain. In light of the impending sale, Maurice deposited \$139,479.68 in cash with the Dallas County Clerk of Court as security and posted a supersedeas bond, pending the outcome of the appeal.

Marvin and Marlene appealed from the June 3, 2005 ruling. This court affirmed, rejecting claims that the district court erred in (1) denying their motion to dismiss or for a directed verdict and (2) denying their motion to amend their answer to conform to the proof. *Cargill, Inc. v. Mitchell*, No. 05-0993 (Iowa Ct. App. April 26, 2006).

Following issuance of procedendo, Cargill filed a motion for judgment on Maurice's appeal bond with the district court. On August 1, 2006, the court granted the motion; however, on October 9, 2006, the court partially set aside its order and allowed Maurice the opportunity to state his unlitigated claims to his alleged interest in Marvin's 2004 crop, as it related to the proceeds of the appeal bond.

In doing so, Maurice claimed (1) he had a perfected security interest in Marlene's interest in the crops transferred to her by Marvin, (2) he is a protected transferee under Iowa Code section 684.8 (2005), and (3) he is entitled to expenses for harvesting and care of the crop. Cargill responded by filing a motion to dismiss. The court granted Cargill's motion, concluding that Maurice was precluded from recovering on his statement of claims. Maurice appeals from this ruling.

Scope of Review.

The parties disagree on whether the district court treated Cargill's motion as a motion to dismiss or as a motion for summary judgment. While the court primarily cited to motion-to-dismiss case law, it also noted that when relying on matters outside the pleadings, as it did here, the proper procedure is to treat the motion as one for summary judgment. See *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 311 (Iowa 1982). Regardless, our review is for the correction of errors at law. *LeMars Mut. Ins. Co. v. Joffer*, 574 N.W.2d 303, 306 (Iowa 1998) (summary judgment); *Estate of Ryan v. Heritage Trails Assocs., Inc.*, 745 N.W.2d 724, 728 (Iowa 2008) (motion to dismiss).

Supersedeas Bond.

As noted, this matter comes before this court from proceedings on the proceeds of a supersedeas bond following an affirmance on appeal in the main action. On appeal, Maurice would like to frame this case as one involving a judgment holder (Cargill) against a *secured creditor* (Maurice). We believe this action, as it is currently procedurally situated, is more appropriately viewed as one involving a judgment holder against a *surety*.

The cash bond provided by Maurice on behalf of Marvin and Marlene, was to forestall execution on the 2004 crop, pending outcome of the appeal of the June 3, 2005 ruling, judgment having been rendered in favor of Cargill in the sum of \$139,479.68. In a July 14, 2005 ruling regarding the bond, the district court ordered

that said amount, \$139,479.68, will remain in the possession of the Clerk of Court pending appeal and will serve as the primary source of security and to guarantee payment of the judgment and ruling

appealed from (this Court's order of June 3, 2005) if and when said judgment is affirmed or if said appeal is dismissed.

As noted, this court affirmed the district court and procedendo issued on July 20, 2006.

Following the issuance of procedendo, a hearing was held on September 21, 2006, to discuss the appropriate extent of issues to be raised on Cargill's motion for judgment on the appeal bond. Throughout the hearing, Cargill remained adamant that the "collateral issues" raised by Maurice were inappropriate in the context of a motion for judgment on an appeal bond. Cargill maintained that, procedurally, Maurice stood only as a surety and that it was not appropriate for him to raise additional claims against the proceeds of the bond. Despite Cargill's clear position, the court proceeded to allow Maurice to raise a number of substantive claims, holding the proceeds of the bond at bay. Subsequently, in granting Cargill's motion for judgment on the bond, the court rejected each of the substantive claims Maurice raised and which are noted earlier in this opinion.

Iowa Rule of Appellate Procedure 6.7 provides for the filing of a supersedeas bond in order to "stay proceedings under a judgment" on the condition that the appellant "will satisfy and perform the judgment if affirmed" As our supreme court has stated, "[i]t is apparent from the express language of these rules that a supersedeas bond guarantees payment of and is available to satisfy only a judgment that is 'appealed from' and 'affirmed.'" *Iowa State Bank & Trust v. Michel*, 683 N.W.2d 95, 101 (Iowa 2004). Further, rule 6.9 provides that upon affirmance from an appellate court, the case may be

remanded “to the district court for the determination of such damages and costs and entry of judgment on the bond.”

We believe that following issuance of procedendo the only additional proceedings allowed, pursuant to the rule, would be for the “determination of such damages and costs” Iowa R. App. P. 6.9. After such, an entry of judgment on the bond should have been made. Here, Maurice managed to shift the focus from the simple motion for judgment on the bond to distinctly different issues. Thus, Maurice was allowed to improperly bootstrap his separate claims into the bond hearing in hopes of recouping some or all of the cash bond he had posted as surety on Melvin and Marlene’s appeal. This is neither contemplated nor authorized by the rules. Accordingly, we conclude the court should not have delayed judgment on the appeal bond aside from the resolution of “damages and costs.” *Id.* However, because the court eventually dismissed Maurice’s claim on other grounds, we find no error in the final result and therefore affirm. By virtue of this ruling, we need not address the remainder of the claims presented in Maurice’s appeal.

AFFIRMED.

Vogel, P.J. and Mahan, J. concur. Miller, J. concurs specially.

MILLER, J. (concur specially)

I concur in the result.