

IN THE COURT OF APPEALS OF IOWA

No. 8-765 / 07-1890
Filed November 13, 2008

**STANLEY RANCH and
MOLLY STANLEY,**
Plaintiffs-Appellants,

vs.

AMANDA BOYL and ZALEA LLC,
Defendants-Appellees.

Appeal from the Iowa District Court for Harrison County, Greg W.
Steensland, Judge.

Plaintiffs were granted discretionary review of a district court appeal
decision that affirmed in part and reversed in part a judgment in a small claims
action. **REVERSED IN PART AND REMANDED.**

Reta Noblett-Feld, Iowa City, for appellant.

Amanda Boyle, Woodbine, pro se.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

MILLER, J.

The plaintiffs, Stanley Ranch and Molly Stanley, were granted discretionary review of a district court appeal decision that affirmed in part and reversed in part a judgment in their favor and against the defendants Amanda Boyle and Zalea, LLC in a small claims action. We reverse in part the district court appeal decision and remand for entry of judgment in accord with this opinion.

The defendants, from Iowa, purchased a horse, Wystyrea, from the plaintiffs' ranch in Nevada by way of a written purchase agreement requiring periodic payments and providing the sellers with a security interest to secure the buyers' obligation. When the defendant buyers failed to make required payments, the plaintiffs brought a small claim action denominated an "Action for Money Judgment." However, in the body of the small claim "Original Notice" the plaintiffs demanded not only \$3200 in damages but also the return of Wystyrea and any offspring. The damages sought were identified as consisting of \$2000 for the "[c]ost associated with transporting/board/feed/worming of all horses back to Stanley Ranch"; "\$400 for "[a]ll Veterinarian bills associated with transportation/coggins test/health papers on ALL horses requested"; and \$800 for "[c]ourt costs and appearances."

The plaintiffs appeared for the scheduled small claim hearing, but the defendants did not. Following the hearing the magistrate entered a written ruling. In part the magistrate determined that the plaintiffs' action was in fact a replevin action. The magistrate ordered the issuance of a writ of replevin for the return to the plaintiffs of Wystyrea and any offspring. The magistrate also entered

judgment in favor of the plaintiffs and against the defendants for \$2400¹ for the detention of Wystyrea and any offspring, and taxed court costs of \$74.70 to the defendants.

The defendants appealed. On appeal the district judge affirmed in part and reversed in part. In reversing in part the court concluded that Iowa Code section 643.2 (2007) “prohibited joinder of an action for damages with an action for replevin” and set aside the judgment for money damages. The court taxed costs of the appeal to the parties equally.

The plaintiffs sought and were granted discretionary review. They claim the district court on appeal erred in determining that the plaintiffs’ action impermissibly joined an action for damages with a replevin action. More specifically, they claim that (1) the small claims court properly awarded damages in the replevin action, and (2) the defendants waived their right to object to any misjoinder by failing to timely object. They request that we reverse the district court’s order and reinstate the small claims court’s judgment for damages.

An action of replevin is by ordinary proceedings. Iowa Code § 643.2. Our review is thus for correction of legal error. Iowa R. App. P. 6.4; *Keppy v. Lilienthal*, 524 N.W.2d 436, 438 (Iowa Ct. App. 1994).

On appeal of the magistrate’s judgment the defendants correctly asserted that no cause of action other than replevin may be joined with an action of replevin. See Iowa Code § 643.2. Damages may, however, be sought and awarded as part of a replevin action, if the sought damages are “for the

¹ The record appears to indicate that the \$2400 consists of the \$2000 and the \$400 sought by the plaintiffs.

detention” of the property involved in the replevin action. See *id.* § 643.1(6); see also *id.* § 643.16 (“for the taking or detention”); § 643.17 (“for the illegal detention”).

Damages for the “detention” of property have been characterized as those “incidental to the purpose of regaining possession.”² *Roush v. Mahaska State Bank*, 605 N.W.2d 6, 9 (Iowa 2000). Whether the \$2000 and \$400 sought by the plaintiffs for such things as veterinarian expenses and transportation costs can properly be characterized as damages incidental to the purpose of regaining possession, and thus “for the detention” of the property, such as loss of its use, is not free from all doubt. Assuming however, without so deciding, that the \$2000 and \$400 sought by the plaintiffs were not properly part of the replevin action, the defendants’ remedy for misjoinder was to have the misjoined request for damages docketed separately or stricken through the use of a timely pursued motion. *Id.* at 10. Any such motion in this small claims action had to be made at such a time that it could be heard at the time set for the small claims hearing. See Iowa Code § 631.7(2) (motions in small claims action, except motions to bring in a third-party defendant, “shall be heard only at the time set for a hearing on the merits”). No such motion was made by the defendants, and no such motion was heard or ruled on by the magistrate. The defendants thus waived any claim of misjoinder. See *Roush*, 605 N.W.2d at 10 (approving consideration of misjoined actions where no motion attacking the misjoinder was made); *Interfirst Bank v. Hanson*, 395 N.W.2d 857, 859 (Iowa 1986) (same).

² Perhaps the clearest example of such damages is the value of the loss of use of the property. See, e.g., *Barry v. State Surety Co.*, 154 N.W.2d 97, 100 (Iowa 1967).

We conclude the district court erred in reversing that portion of the magistrate's judgment awarding money damages. As a result, we further conclude all court costs of the appeal in the district court should have been taxed to the defendants rather than taxed to the parties equally.

We note that the plaintiffs, in their written response to the defendants' appeal of the magistrate's small claims appeal, stated that although the magistrate had entered a money judgment for \$2400 their actual damages for the detention of Wystyrea consisted of \$910 for transportation from Iowa to Nevada, \$180 for veterinary services, \$190 for board, \$40 for food and other supplies, \$479.18 for transportation, and \$58 for telephone charges (a total by our calculation of \$1857.18). They requested that on appeal from the magistrate's judgment their damages be reduced to reflect these actual costs. The district judge did not address this request, as he reversed the money judgment in its entirety. In reversing the district court's appeal decision in part we find it appropriate to acknowledge the plaintiffs' forthright concession and direct that judgment be entered accordingly.

In conclusion, we reverse those parts of the district court's appeal decision that reversed the magistrate's judgment for money damages and that taxed one-half of the court costs to the plaintiffs. We remand to the district court to enter judgment in favor of the plaintiffs and against the defendants for money damages in the amount of \$1857.18 and to tax the district court costs against defendants. Costs on appeal are taxed to the defendants/appellees.

REVERSED IN PART AND REMANDED.