IN THE COURT OF APPEALS OF IOWA

No. 9-384 / 08-1537
Filed June 17, 2009

EATON CORPORATION,
Plaintiff-Appellant,

vs.

ROBERT BRANSON,
Defendant-Appellee.

Appeal from the Iowa District Court for Page County, James Heckerman, Judge.

Eaton Corporation appeals the district court's order dismissing its petition for specific performance and punitive damages against Robert Branson. **AFFIRMED.**

Tiernan T. Siems of Erickson & Sederstrom, P.C., Omaha, Nebraska, for appellant.

Jacob J. Peters of Peters Law Firm, P.C., Council Bluffs, for appellee.

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

MANSFIELD, J.

Eaton Corporation (Eaton) appeals the district court's order dismissing its petition for specific performance and punitive damages against Robert Branson. Eaton brought this action after Branson refused to sign a written settlement agreement concerning a workers' compensation claim. Eaton primarily contends the court erred in concluding there was no enforceable settlement agreement between the parties. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

The trial testimony on Eaton's specific performance claim revealed the following facts: Robert Branson was fifty-two years of age at the time of trial. He began working for Eaton in March 1980 and worked there continuously through the time of trial, some twenty-eight plus years. On November 2, 2006, Branson was engaged in his ordinary duties at Eaton as an assembly repair person. As he began to lift the countershaft of a transmission, he heard a "pop" in his right shoulder and felt immediate pain. He reported the injury to his supervisor, completed an accident report, and went to the hospital emergency room. Branson was treated by Dr. Fursa, who diagnosed him as having a ruptured right bicep tendon. He was referred to Dr. Hagan in Omaha, who confirmed Branson had a rupture of the bicep tendon in his right shoulder. Dr. Hagan performed surgery on Branson's shoulder on November 15, 2006. By this time, a workers' compensation claim had been submitted to and accepted by Eaton. Branson's medical expenses and time off work were thus covered by Eaton under its workers' compensation insurance.

After the surgery, Branson missed six days of work. Healing period benefits were paid by Eaton. Branson returned to light duty work on November 22, 2006. He attended numerous physical therapy sessions and, as his strength and function increased, he gradually increased his work activities as well. Branson was released from the care of Dr. Hagan at maximum medical improvement with no formal written work restrictions on May 9, 2007, and returned to working his regular duties.

On August 30, 2007, Dr. Hagan issued a report to Andrew Wrona at Sedgwick CMS, the third party administrator for Eaton on its workers' compensation claims. In the report Dr. Hagen opined that Branson had a sixteen percent impairment rating to his right upper extremity as a result of the work injury and subsequent surgery to his right shoulder. That impairment rating would translate to a ten percent body as a whole disability rating. Following a communication between Branson and Dr. Hagen's office, Dr. Hagen later modified his impairment rating, increasing it to eighteen percent of the right upper extremity.

Wrona and Branson had at least three telephone conversations regarding potential settlements. It is not disputed that Branson rejected several prior settlement offers from Eaton, through Wrona, before their telephone conversation on November 12, 2007. During this final telephone conversation Wrona offered to pay Branson the lump sum of $26,436.30 to settle his workers' compensation case on a "closed file basis." Wrona testified that in prior conversations he had explained to Branson what "closed file basis" meant. Branson testified he did not accept the November 12 settlement offer and specifically told Wrona he thought

that offer "was more fair than the last offer but [he] wanted to see the papers on it." Branson's actual testimony under examination by Eaton's attorney was as follows:

> Q. Did you ever say to Mr. Wrona, I want to see it in writing before I'll agree to it? A. No, I said I wanted to see the papers.
> Q. And, in fact, what you had reached is what you called in your deposition kind of a gentleman's agreement, true? A. No.
> Q. Okay. That's how you characterized it in your deposition, didn't you, sir? A. The only gentleman's agreement was to the – I would look at the papers . . . .
> Q. And so it's your testimony today, sir, that you never said to Mr. Wrona, okay, that sounds fair to me or words to that effect? A. I said it sounded more fair than the last offer that I received.
> Q. And you never said to Mr. Wrona that you'll agree to accept the offer that was made? A. No.
> Q. You're absolutely certain of that? A. Positive.

Wrona vigorously disputed Branson's testimony. He testified Branson had actually accepted his settlement offer during the November 12 telephone conversation. In any event, it is not disputed that Wrona sent an e-mail to Eaton's attorney asking him to prepare settlement documents and to have the agreement approved by the Iowa Workers' Compensation Commissioner. Eaton's settlement documents were forwarded to Branson on November 16, 2007. Immediately upon receipt of Eaton's settlement documents and the attorney cover letter, Branson retained counsel. His counsel wrote Wrona stating that Branson had never accepted any offer from Eaton, and demanding that permanent partial disability benefits be paid to Branson on a weekly basis with interest on the accrued benefits.

On January 11, 2008, Eaton filed the present petition for specific performance against Branson. The case proceeded to a trial to the court on August 14, 2008. The court heard testimony from both Branson and Wrona. At

the close of the evidence the district court orally ruled from the bench in favor of Branson. In so ruling the court concluded Eaton failed to meet its burden of proving that the parties had a "meeting of the minds" during the November 12 telephone conversation. The court then told counsel for Branson to put his earlier trial brief in the form of an order, which the court subsequently signed.

Eaton appeals. It contends the trial court erred in concluding there was no enforceable settlement agreement between the parties, in delegating preparation of the final order to Branson's attorney, and in determining Iowa law required payment of industrial disability benefits to Branson.

II. SCOPE AND STANDARD OF REVIEW.

Our scope of review of an action for specific performance is de novo. *H & W Motor Express v. Christ*, 516 N.W.2d 912, 913 (Iowa Ct. App. 1994). In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 6.904(3)(*g*); *H & W Motor Express*, 516 N.W.2d at 913.

III. MERITS.

A. Settlement Agreement.

Eaton contends the trial court erred in concluding there was no enforceable settlement agreement between the parties based on the November 12, 2007 telephone conversation between Wrona and Branson. "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 Express,* 516 N.W.2d at 913.

> When the terms of an agreement are definitely fixed so that nothing remains except to reduce them to writing, an oral contract will be upheld unless the parties intended not to be bound until the agreement was reduced to writing. In order to be binding, the settlement must be complete in itself and certain. An agreement to agree at some point in the future is not binding. Whether preliminary negotiations actually ripened into an oral contract depends on the intention of the parties as gleaned from the facts of the case.

Id. at 914 (citations omitted).

We agree with the trial court's conclusion that Eaton did not sufficiently establish by the required "clear, satisfactory, and convincing evidence" that the parties entered into an enforceable oral settlement agreement on November 12, 2007. *See Lockie v. Baker*, 206 Iowa 21, 24, 218 N.W. 483, 484 (1928) ("In an action for specific performance the burden is on the plaintiff to establish the alleged contract, and the evidence must be clear, satisfactory, and convincing."). Although Wrona testified that Branson orally accepted the $26,436.30 closed file offer, Branson's testimony paints a different picture. Branson testified he specifically told Wrona that the offer "was more fair than the last offer but [he] wanted to see the papers on it." Branson in fact transmitted those "papers" to an attorney as soon as he received them. Giving weight to the trial court's credibility determinations, we agree that this appears to be a situation where the participants in the phone call were on different wavelengths and may have misunderstood what each other was saying.[1]

In making its ruling from the bench that no agreement had been reached on November 12, the district court used the common shorthand "meeting of the

[1] In its comments from the bench, the district court characterized the situation was one where both witnesses were "credible" and "honorable," but that Eaton had failed to prove an agreement was reached on November 12.

minds." Of course, "minds" don't literally "meet." What this phrase really means is that in order to have a contract, there must be a manifestation of mutual assent. Absent such a manifestation, there is no contract. *Heartland Express, Inc. v. Terry*, 631 N.W.2d 260, 268 (Iowa 2001); *Magnusson Agency v. Pub. Entity Nat'l Co.-Midwest*, 560 N.W.2d 20, 26 (Iowa 1997). The determination whether there has been a manifestation of mutual assent is based upon the objective evidence, not the hidden intent of the parties. *Heartland Express, Inc*., 631 N.W.2d at 268. Here we agree with the district court that Eaton failed to establish Branson actually accepted the closed file offer on November 12, 2007.

B. Attorney Preparation of Court's Written Order.

Eaton next contends the court erred in delegating preparation of its written order to Branson's attorney. As noted above, the trial court issued an oral ruling from the bench, and then instructed Branson's counsel to turn his trial brief into a written order. Branson's counsel did this, and the district court signed Branson's six-page order.

We reiterate prior disapprovals of this practice. *See, e.g., Kroblin v. RDR Motels, Inc*., 347 N.W.2d 430, 434-35 (Iowa 1984) (finding that although disfavored, trial court's request for and adoption of order drafted by one party did not adversely affect substantial rights of the other party and did not warrant a new trial when the findings and conclusions were supported by the evidence). However, in this case, the district court adequately explained its reasoning from the bench, and we agree with it. Any embellishment that entered the written order by way of Branson's trial brief is not necessary to our decision, and we do not here rely upon it.

C. Industrial Disability Payment.

Finally, Eaton argues the trial court erroneously determined that Iowa law required paying Branson industrial disability benefits even though he had returned to the same job, at the same pay, without accommodations or restrictions.

Eaton did not preserve error on this issue, nor do we agree that the district court even made a determination on this issue. Issues must ordinarily be presented to and passed upon by the trial court before they can be raised and adjudicated on appeal. *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998); *Benavides v. J.C. Penney Life Ins. Co*., 539 N.W.2d 352, 356 (Iowa 1985). There is nothing in the transcript of evidence or the court's oral ruling on the record to indicate the question of whether Branson was entitled to such benefits was an issue presented to the court for adjudication. Furthermore, in its written ruling the court specifically stated the only issue before it was whether the conversation between Wrona and Branson formed an enforceable settlement agreement. Accordingly, because this issue was not presented to or passed upon by the trial court we conclude the issue is not properly before us.

IV. CONCLUSION.

Based on our review, and for the reasons set forth above, we conclude that Eaton failed to prove its case for specific performance of an oral settlement agreement reached during the November 12, 2007 telephone conversation between Branson and Wrona. Thus, the district court did not err in dismissing Eaton's claims.

AFFIRMED.