IN THE COURT OF APPEALS OF IOWA

No. 9-809 / 09-0352
Filed November 25, 2009

HARRISON COUNTY SOIL AND WATER CONSERVATION DISTRICT COMMISSIONERS,
Plaintiffs,

vs.

SCOTT H. GANZHORN and BEVERLY R. GANZHORN,
Defendants.

SCOTT H. GANZHORN and BEVERLY R. GANZHORN,
Third-Party Plaintiffs-Appellants,

vs.

HARRISON COUNTY CONSERVATION BOARD,
Third-Party Defendant-Appellee.

Appeal from the Iowa District Court for Harrison County, James M. Richardson, Judge.

Landowners appeal directed verdict in favor of county conservation board.

AFFIRMED.

Brett Ryan and Frank W. Pechacek Jr. of Willson & Pechacek, P.L.C., Council Bluffs, for appellant.

Judson L. Frisk, Logan, and Curtis J. Heithoff, Council Bluffs, for appellee.

Considered by Vogel, P.J., and Eisenhauer, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, J.

In 1987, the Harrison County Conservation Board entered into a real estate contract to purchase land from Della, Lloyd, and Oma Ganzhorn and Jay and Mildred Tronvold. The contract named the Ganzhorns/Tronvolds as sellers and the Board as buyer and provided: "Harrison County Conservation Board agrees that it will not file a soil loss complaint on any remaining land of sellers which adjoins subject premises." The warranty deed fulfilling the contract was recorded and contains no mention of the soil loss provision. Around the same time, the sellers sold their remaining land to Scott and Beverly Ganzhorn (Ganzhorn).

Eighteen years later, in 2005, the Board filed a complaint with the Harrison County Soil Conservation District alleging soil from the Ganzhorn's adjoining property was eroding onto the Board's property. The District investigated and entered an administrative order in July 2006 requiring the Ganzhorns to take action to prevent soil erosion on their property. When the District's April 2007 inspection revealed the Ganzhorn's failure to comply with the administrative order, the District petitioned the court for enforcement. The Ganzhorns answered and also, in October 2007, filed a third-party petition against the Board alleging the Board breached the 1987 real estate contract by filing the soil loss complaint.

In December 2008, the court granted summary judgment to the District. The Ganzhorns have not appealed this judgment. In January 2009, the bench trial of the Ganzhorn's third-party petition alleging breach of contract

commenced. After receiving testimony and exhibits, the court granted the Board's motion for directed verdict ruling: (1) the Ganzhorns "have no privity with the contracting parties," (2) the Ganzhorns are not third-party beneficiaries of the contract, and (3) enforcement of the contract would violate public policy.

On appeal, the Ganzhorns argue the district court erred in not finding them to be third-party beneficiaries of the 1987 real estate contract. They also contend the court erred in concluding public policy prevented enforcement of the contract.

> Our standard of review concerning appeal from the grant of a motion for directed verdict involves looking for substantial evidence. Thus, where no substantial evidence exists to support each element of a plaintiff's claim, the court may sustain a motion for directed verdict.

Godar v. Edwards, 588 N.W.2d 701, 705 (Iowa 1999). In reviewing the district court's decision, we view the evidence as the trial court did in ruling on the motion, that is, in the light most favorable to the party against whom the motion was directed. *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990).

After reviewing the testimony and exhibits, we agree with and adopt the well-reasoned opinion of the district court:

> If a party is not in privity, they may still have an enforceable right under the contract if they can show they are an intended third-party beneficiary. Iowa has adopted the following principles regarding beneficiaries from the Restatement:
>
> > (1) Unless otherwise agreed . . . a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and . . . the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.
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> *Vogan v. Hayes Appraisal Assoc.*, 588 N.W.2d 420, 423 (Iowa 1999). The primary determination is whether the contract manifests intent to benefit a third party. *Id*. . . . Intent may be determined

> both from what the contract says and the surrounding circumstances. *Midwest Dredging Co. v. McAninch Corp.*, 424 N.W.2d 216, 225 (Iowa 1988).
>
> In this case the Ganzhorns argue they are not subject to the District's soil loss limitations because under the real estate contract the Board agreed "that it will not file a soil loss complaint on any remaining land of sellers which adjoins subject premises." . . . Despite lacking privity, the Ganzhorns argue they were beneficiaries of the agreement. . . . This court does not reach the same conclusion. A review of the real estate contract shows the Ganzhorns did not participate in the drafting, are not named anywhere in the contract or on the schedule containing the covenant, and did not sign the contract. It is true that the intent to benefit another is subjective and need not be explicitly stated. However, there is nothing in the contract indicating the Ganzhorns were intended third-party beneficiaries and the surrounding circumstances are too attenuated to be conclusive.

Because we find a directed verdict was properly granted on the above grounds, we need not address the public policy argument.

AFFIRMED.