IN THE COURT OF APPEALS OF IOWA

No. 8-841 / 08-0411
Filed June 17, 2009

STANLEY GLEN STEWART, DEBORAH SUE STEWART, and SARA ELIZABETH STEWART, SUZI ANN STEWART and CHRISTOPHER CLARK STEWART, All Minors by their Father and Next Friend STANLEY GLEN STEWART,
Plaintiffs-Appellants,

vs.

IOWA MACHINERY & SUPPLY CO., INC., DAVE RODGER, DAN HUNGERFORD;
Defendants,

JAMES BALLARD, FRANK WRIGHT, JASON STOOKESBERRY, BRAD RUSSMAN, MICHAEL MULLIHAN and SHEILA PIERSON,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Artis I. Reis, Judge.

Plaintiffs appeal the district court's grant of summary judgment to six defendants on plaintiffs' claims of civil conspiracy. **AFFIRMED.**

Kyle T. Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for appellants.

Angel A. West and Debra L. Hulett of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellees.

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

MILLER, J.

Background Facts & Proceedings

Stanley Stewart was employed by John Deere Des Moines Works. On May 28, 2003, Stewart claimed that while exiting a forklift he stepped on some hydraulic oil on the floor that had leaked from the forklift. He claimed that he slipped in the oil, injuring his knee. The forklift had recently been worked on by Iowa Machinery & Supply Co., Inc. Employees of John Deere investigated and came to the conclusion the forklift was not leaking oil at the time of the incident.

John Deere believed that Stewart had made a false claim of a work-related injury. A disciplinary hearing was held at which Stewart was represented by a union member. The company found that Stewart had made a false claim of a work-related accident and ordered him suspended for thirty days without pay.[1] The Union filed a grievance on Stewart's behalf under the terms of the collective bargaining agreement between the Union and the company. In an arbitration decision, the Union and the company agreed the period of Stewart's suspension would be reduced from four weeks to two weeks and he would be paid his wages for the other two weeks.

On May 24, 2005, Stewart, his wife, and children filed suit against Iowa Machinery alleging it was negligent in the maintenance, care, and operation of the forklift. The plaintiffs also raised claims against individual employees of John Deere—Dave Rodger, James Ballard, Frank Wright, Dan Hungerford, Jason Stookesberry, Brad Russman, Michael Mullihan, and Sheila Pierson. They

[1] Stewart was a member of the International Union United Automobile, Aerospace and Agricultural Implement Workers of America. The Union and John Deere had entered into a collective bargaining agreement.

alleged the first seven of the individual employees had engaged in gross negligence by repeatedly ignoring Stewart's complaints about the forklift. The plaintiffs also claimed the individual defendants had "individually and jointly conspired to deny the petitioned incident and Plaintiff's injury in a willful and wanton and fraudulent manner so as to maliciously interfere with any and all contractual rights that existed between Plaintiff and John Deere Des Moines Works."

The individual defendants filed a motion for summary judgment. On the claim of gross negligence, the district court granted summary judgment to Rodger, Ballard, Wright, Stookesberry, Mullihan, and Pierson.[2] Thus, on the claim of gross negligence the case proceeded against Russman and Hungerford only. On the claim of civil conspiracy, the court granted summary judgment to Rodger and Hungerford. The court denied the request for summary judgment on the claim of civil conspiracy against Ballard, Wright, Stookesberry, Russman, Mullihan, and Pierson.

Plaintiffs filed a motion seeking to amend the petition to bring claims of defamation and slander against the individual defendants. The district court denied the motion, finding the amendment would prejudice the defendants because "these new claims are substantially different than a claim of conspiracy and would require additional discovery in order for the Defendants to adequately prepare for trial."

The six individual defendants against whom the civil conspiracy claim remained outstanding subsequently filed a motion for reconsideration of the

[2] We note that the plaintiffs had made no claim of gross negligence against Pierson.

motion for summary judgment on the civil conspiracy claim. They stated that during discovery they became aware plaintiffs were claiming the individual defendants had intentionally interfered with Stewart's rights under the collective bargaining agreement between the Union and John Deere. The individual defendants asserted that, because plaintiffs' claims were "substantially dependent" upon or "inextricably intertwined" with consideration of the terms and provisions of the collective bargaining agreement, the claims were preempted by the federal Labor Management Relations Act (LMRA). The district court granted summary judgment to the remaining individual defendants on the civil conspiracy claim on the ground that plaintiffs' claims were preempted under the LMRA.

Plaintiffs filed a motion to reconsider the grant of summary judgment on the civil conspiracy claim. The district court denied the motion to reconsider. The plaintiffs then dismissed all remaining claims in the case. Plaintiffs appealed the grant of summary judgment to the six individual defendants on the plaintiffs' civil conspiracy claims based on the LMRA.

II. Standard of Review

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.4. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the nonmoving party. *Eggiman v. Self-Insured Servs. Co.*, 718 N.W.2d 754, 758 (Iowa 2006).

III. Federal Preemption

Section 301 of the LMRA provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

The United States Supreme Court has determined section 301 preempts state claims "founded directly on rights created by collective-bargaining agreements, and also claims 'substantially dependent on analysis of a collective-bargaining agreement.'" *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394, 107 S. Ct. 2425, 2431, 96 L. Ed. 2d 318, 328 (1987) (citation omitted). This preemption is necessary to "ensure uniform interpretation of collective-bargaining agreements, and thus to promote the peaceable, consistent resolution of labor-management disputes." *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 404, 108 S. Ct. 1877, 1880, 100 L. Ed. 2d 410, 417 (1988).

In tort as well as contract suits, the preemption of section 301 applies "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between parties in a labor contract . . . ." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220, 105 S. Ct. 1904, 1916, 85 L. Ed. 2d 206, 221 (1985). In tort actions, we must consider "whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract." *Id*. at 213, 105 S. Ct. at 1912, 85 L. Ed. 2d at 216. We must also

consider whether the federal labor law, as established by section 301, would be frustrated by bringing the tort action in state court. *Id.* at 209, 105 S. Ct. at 1910, 85 L. Ed. 2d at 214.

Where a tort action brought in state court is not "inextricably intertwined" with a collective bargaining agreement, the claim is considered to be independent and is not preempted under section 301. *Lingle*, 486 U.S. at 407, 108 S. Ct. at 1882, 100 L. Ed. 2d at 419. If "the state-law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for § 301 pre-emption purposes." *Id.* at 410, 108 S. Ct. at 1883, 100 L. Ed. 2d at 421. Thus, the preemption of section 301 does not apply to every state law claim that relates in some manner to a collective bargaining agreement, or to all parties covered by a collective bargaining agreement. *Lueck*, 471 U.S. at 211-12, 105 S. Ct. at 1911-12, 85 L. Ed. 2d at 215-16. The issue of federal preemption must be determined in a case-by-case basis. *Barske v. Rockwell Int'l Corp.*, 514 N.W.2d 917, 921 (Iowa 1994).

This case involves a tort claim of civil conspiracy. "Civil conspiracy is not in itself actionable; rather it is the acts causing injury undertaken in furtherance of the conspiracy which give rise to the action." *Basic Chemicals, Inc. v. Benson*, 251 N.W.2d 220, 233 (Iowa 1977). "A conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose, or to accomplish by unlawful means some purpose not in itself unlawful." *Id*. at 232. The tort of civil conspiracy requires proof of an agreement or understanding to effect a wrong against another. *Ezzone v. Riccardi*, 525 N.W.2d 388, 398 (Iowa

1994); *Robbins v. Heritage Acres*, 578 N.W.2d 262, 265 (Iowa Ct. App. 1998). Civil conspiracy is "an avenue for imposing vicarious liability on a party for the wrongful conduct of another with whom the party has acted in concert." *Wright v. Brooke Group Ltd.*, 652 N.W.2d 159, 172 (Iowa 2002).

Plaintiffs' civil conspiracy claim alleges that the individual defendants "individually and jointly conspired to deny the petitioned incident and Plaintiff's injury in a willful and wanton and fraudulent manner so as to maliciously interfere with any and all contractual rights that existed between Plaintiff and John Deere Des Moines Works." Through later discovery plaintiffs specified that the contractual rights they were relying upon were those arising from the collective bargaining agreement between the Union and John Deere. Thus, the acts giving rise to the action of civil conspiracy would be interference with Stewart's contractual rights under the collective bargaining agreement.

The case of *Conaway v. Webster City Products Co.*, 431 N.W.2d 795, 798 (Iowa 1988), involved a claim of retaliatory discharge. The court found this tort was like the tort of interference with contractual relationships. *Conaway*, 431 N.W.2d at 799. The court stated, "[t]he existing valid contractual relationship here is the employment relationship, the existence of which is a factual question that does not depend on the interpretation of a collective-bargaining agreement." *Id*. The court concluded the tort of retaliatory discharge was independent of the collective bargaining agreement, and was not preempted by section 301 of the LMRA. *Id.; see also Sanford v. Meadow Gold Dairies, Inc.*, 534 N.W.2d 410, 414 (Iowa 1995) (noting retaliatory discharge suit was not preempted by LMRA).

Although *Conaway* discussed the tort of interference with contractual relationships, the case actually involved the tort of retaliatory discharge, and we conclude it has limited relevance to the issue in this case.

In *Grimm v. US West Communications, Inc.*, 644 N.W.2d 8, 12 (Iowa 2002), the plaintiff raised a claim of tortious interference with a contract. The court specifically pointed out the plaintiff had chosen not to rely upon contractual rights arising from a collective bargaining agreement, but rather was asserting contractual rights created by an employee handbook. *Grimm*, 644 N.W.2d at 13. The court noted, "[w]hen a plaintiff invokes a right created by a collective-bargaining agreement, the plaintiff has *chosen* to plead what we have held must be regarded as a federal claim, and removal is at the defendant's option." *Id*. at 14 (quoting *Caterpillar*, 482 U.S. at 399, 107 S. Ct. at 2433, 96 L. Ed. 2d at 331). The court concluded that the claim of tortious interference with a contract, not based upon a collective bargaining agreement, was not preempted by the LMRA. *Id*. at 15-16.

In other cases, courts have held that when a plaintiff alleges tortious interference with contractual rights arising from a collective bargaining agreement, the claim is preempted under section 301 of the LMRA. *See Beidleman v. Stroh Brewery Co.*, 182 F.3d 225, 235 (3rd Cir. 1999); *Oberkramer v. IBEW-NECA Serv. Ctr., Inc.*, 151 F.3d 752, 756 (8th Cir. 1998); *Turner v. American Fed. of Teachers Local 1565*, 138 F.3d 878, 884 (11th Cir. 1998); *DeCoe v. General Motors Corp.*, 32 F.3d 212, 218 (6th Cir. 1994); *Magerer v.*

John Sexton & Co., 912 F.2d 525, 528 (1st Cir. 1990); *Johnson v. Anheuser Busch, Inc.*, 876 F.2d 620, 624 (8th Cir. 1989).

We conclude plaintiffs' claim of civil conspiracy, based on their claim the individual defendants interfered with Stanley Stewart's contractual rights under the collective bargaining agreement between the Union and John Deere, is preempted by section 301 of the LMRA. Plaintiffs' claim is "substantially dependent" upon and "inextricably intertwined" with the collective bargaining agreement. We affirm the decision of the district court granting summary judgment on this issue to Ballard, Wright, Stookesberry, Russman, Mullihan, and Pierson.

IV. Motion to Amend

Plaintiffs assert the district court abused its discretion in denying their motion to amend the petition to include a claim of defamation. Plaintiffs' original petition was filed on May 24, 2005. Twenty-one months later, on February 21, 2007, plaintiffs filed a motion to amend the petition, claiming defendants' actions constituted slander and defamation. The motion to amend was filed after defendants had filed a responsive pleading, and so the petition could be amended "only by leave of court or by written consent of the adverse party." *See* Iowa R. Civ. P. 1.402(4).

A district court has considerable discretion in ruling on a motion for leave to amend the petition. *Rife v. D.T. Corner, Inc.*, 641 N.W.2d 761, 766 (Iowa 2002). "We will find an abuse of discretion when the court bases its decision on clearly untenable grounds or to an extent clearly unreasonable." *Id*. Generally,

"[l]eave to amend . . . shall be freely given when justice so requires." Iowa R. Civ. P. 1.402(4). A court does not abuse its discretion, however, by denying a motion to amend that would substantially change the issues in the case. *See Holliday v. Rain & Hail, L.L.C.*, 690 N.W.2d 59, 65 (Iowa 2004). Furthermore, a motion to amend should be denied if the opposing party is prejudiced or unfairly surprised. *Rife*, 641 N.W.2d at 767.

We conclude the district court did not abuse its discretion by denying plaintiffs' motion to amend the petition. The motion was not filed until eighteen months after the individual defendants had filed their motion for summary judgment; after the plaintiffs had once amended their petition as of right and had later amended it again, with leave of court; and after the plaintiffs had at least twice been granted extensions of time to complete discovery and respond to the defendants' motions for summary judgment. The claims of slander and defamation were substantially different than the claims of gross negligence and civil conspiracy that had previously been raised and concerning which discovery had been conducted. Also, the defendants would have been prejudiced by the amendment because it would have led to the need for additional discovery, and under existing orders all or most all discovery should have been completed at the time the motion to amend was filed.

V. Motion to Strike

The appellees filed a motion to strike certain materials included in the appendix. They claim "Disciplinary Action Hearing Findings" and "Disciplinary Hearing Minutes" were improperly included in the appendix because they were

not part of the record presented to the district court. The appellants resist the motion. They point out that these exhibits were included in a list they filed, as required by a scheduling order, of proposed witnesses and exhibits to be used at trial. The Iowa Supreme Court has ordered that the motion to strike be submitted with the appeal.

Following the district court's grant of summary judgment on the civil conspiracy claim to the six individual defendants, the plaintiffs dismissed their remaining claims and no trial was held. The "exhibits" in question were never submitted to the district court for its consideration in ruling on the individual defendants' motion for summary judgment or reconsideration thereof.

Iowa Rule of Appellate Procedure 6.10(1), regarding the composition of the record on appeal, provides that "[t]he original papers and exhibits filed in the district court . . . shall constitute the record on appeal in all cases." Materials that were not filed in the district court should not be included in the record on appeal. *Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005). We conclude the motion to strike should be granted.

We affirm the decision of the district court granting summary judgment to Ballard, Wright, Stookesberry, Russman, Mullihan, and Pierson on plaintiffs' claims of civil conspiracy.

AFFIRMED.