

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

RECKER, INC. AND PROTECTIVE
INSURANCE COMPANY,

Plaintiffs,

vs.

HERMAN T. ROBINSON,

Defendant.

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Case No. EQCV094006

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RULING**

This matter came before the undersigned for a bench trial on June 24, 2021. Plaintiffs were represented by attorney Chandler Surrency. Defendant was personally present, and was self-represented. The Court heard testimony and received exhibits as stated in the record. The Court has considered all of the evidence, but will focus herein on the evidence it finds most relevant to its ruling.

Having considered the evidence and the arguments of counsel, and having also considered the relevant law, the Court enters the following findings of fact, conclusions of law, and ruling.

FINDINGS OF FACT

Plaintiffs filed a Petition for Specific Performance on October 10, 2019. The Petition alleged that the parties, through their attorneys, had negotiated a settlement of a workers' compensation case filed by Defendant against the Plaintiffs for alleged injuries sustained in 2014. Specifically, the Petition alleges that a settlement was reached in a telephone conversation in November 2018. The Petition alleges that the parties agreed to settle the case for the amount of \$20,000, and that Plaintiffs would also reimburse defense counsel for costs in the amount of \$2,512.50. According to the Petition, Plaintiffs' counsel sent a letter to counsel for Defendant,

confirming the terms of the settlement. In a letter dated February 28, 2019, counsel for Defendant filed a document with the Office of the Workers' Compensation Commissioner noting that Defendant "was not going to follow through with the terms of the settlement." Plaintiffs request an order requiring Defendant to specifically perform the terms of the settlement agreement by signing the settlement documents.

Defendant was represented in the Workers' Compensation action by attorney Matthew Petrzelka. Because Mr. Petrzelka knew that he may be a witness in any attempt by Plaintiffs to enforce the alleged settlement, he withdrew as counsel for the Defendant.

Mr. Petrzelka testified at trial on behalf of Plaintiffs.¹ He is an Iowa licensed attorney who has been practicing since 1985. His practice primarily consists of personal injury and representing claimants in workers' compensation actions. As to his workers' compensation cases, he testified that the majority of them settle and do not proceed to trial. In helping his clients determine whether to settle a case, he testified that, generally, his practice is to educate his clients on the relevant law and the various options available to the client. Mr. Petrzelka testified that settlement is the client's decision, and not the attorney's decision.

While indicating that he was not talking about Defendant's workers' compensation case specifically, Mr. Petrzelka testified that if a client informs him that the client wishes to settle a case, he will ask the client if the client wishes to think about it more, before that decision is conveyed to opposing counsel. He testified that his clients frequently have had "buyer's

¹ Defendant objected to Mr. Petrzelka's testimony on the basis that the testimony violated the attorney-client privilege. The Court ruled on this objection on the record at trial, finding that the privilege had been waived to some extent, and did not apply in other regards, and the Court instructed Mr. Petrzelka to testify accordingly. Additional analysis on this issue is set forth in the Conclusions of Law section below.

remorse,” regardless of whether they chose to settle the case or pursue trial. He testified that, excluding this case, he had never been accused of settling a case without his client’s permission.

As to the underlying workers’ compensation case, on May 31, 2018, Mr. Petrzelka’s office notified the Workers’ Compensation Commissioner that Defendant requested a hearing on his workers’ compensation claim. (Exhibit A). A hearing was scheduled for November 21, 2018. (Exhibit B).

Mr. Petrzelka testified that, on November 13, 2018 (about one week before the scheduled hearing), Defendant gave him permission to communicate with opposing counsel to settle Defendant’s workers’ compensation case. Based on what Defendant told him, Mr. Petrzelka testified that it was his understanding that the underlying workers’ compensation case was settled.

Exhibit 1 is a letter from Matthew Grotnes (Plaintiffs’ counsel for the workers’ compensation claim) to Mr. Petrzelka, dated November 13, 2018. The letter indicates that “[p]ursuant to our negotiated settlement, [Plaintiffs] will pay [Defendant] \$20,000 new money in a lump sum in exchange for a Compromise Settlement of his workers’ compensation claim of November 26, 2014.” The letter continued, noting that “[i]n addition, [Plaintiffs] will reimburse your office for the IME with Dr. Taylor in the amount of \$2,512.50.” (Exhibit 1). Mr. Petrzelka, understood this letter to reflect the terms of the settlement agreement.

Exhibit 2 contains an email dated November 16, 2018, from Mr. Grotnes to the Division of Workers’ Compensation, informing the agency that “Matt Petrzelka and I have settled the case.” (Exhibit 2). The agency responded, confirming receipt of the email. (*Id.*). Mr. Petrzelka was copied on the email from Mr. Grotnes (and on the agency’s responsive email). (*Id.*). Mr. Petrzelka did not respond to either email to indicate that there was no settlement agreement. Mr.

Petrzelka testified that he did not respond to either email because he understood that the case was settled.

Exhibit 4 is a copy of the settlement documents. Mr. Grotnes signed the settlement agreement on November 13, 2018 – just three days before he emailed the Division of Workers’ Compensation, and the same date as the phone call with Mr. Petrzeka. He sent the documents, with a cover letter that has been admitted as Exhibit E, to Mr. Petrzeka that same date.²

Upon receiving the settlement documents from Mr. Grotnes, Mr. Petrzeka sent a copy of the documents to Defendant on November 19, 2018. (*See* Exhibit G). In his email to Defendant, Mr. Petrzeka told Defendant that he would “appreciate [Defendant] reviewing these documents in detail and thereafter contacting me for the purpose of discussing any questions you have.” (Exhibit G). Mr. Petrzeka’s email also instructed Defendant to sign the documents if Defendant did not have any questions. (*Id.*). Defendant’s Exhibit D is a copy of the last page of the settlement documents, and contains a “Sign and Date” sticker pointing to Defendant’s signature block. (Exhibit D). The settlement documents were not signed by either Mr. Petrzeka or Defendant.

Mr. Petrzeka and his staff made attempts to contact Defendant “to discuss signing the settlement documents.” (Exhibit 3). Mr. Petrzeka met with Defendant on or about February 21, 2019. (*Id.*). According to a document filed by Mr. Petrzeka with the Iowa Workers’ Compensation Commissioner, when Defendant met with Mr. Petrzeka at the February 21, 2019, meeting, Defendant told Mr. Petrzeka that “he was not going to follow through with the terms of the settlement.” (Exhibit 3). Mr. Petrzeka did not testify at trial regarding what Defendant told

² Mr. Petrzeka testified he believed that the settlement documents (as reflected in Exhibit 4) accurately reflected the terms of the settlement agreement that was reached with opposing counsel.

him during this meeting,³ but he did testify that he would not put anything into a pleading that he did not believe to be true. The Court finds that Mr. Petrzelka and Defendant did have a conversation on or about February 21, 2019, and that Mr. Petrzelka's impression from that conversation was that Defendant "was not going to follow through with the terms of the settlement."

Defendant called Carissa Gericke to testify on his behalf. In his direct examination, Defendant asked Mr. Gericke the following:

[In] April 2018, we went to see Mr. Matt Petrzelka to discuss the settlement with Matt Petrzelka at that time. Would you agree that there was no settlement agreement on - - in April of 2018 when we met with Matt Petrzelka?

Counsel for Plaintiffs objected that the question was a leading question on direct examination. Since the matter was being heard in equity, the Court allowed the witness to answer subject to the objection. However, the question was a leading question, and Plaintiffs' objection is valid. Further, the Court warned Defendant that, if the evidence indicates that a third party was present during any conversations Defendant had with Mr. Petrzelka, it could be possible that the attorney-client privilege is waived for those statements. Mr. Gericke testified that there was no agreement to settle during the April 2018 meeting. Defendant then decided to ask Mr. Gericke no further questions.

Defendant testified on his own behalf. Defendant testified that he did not agree to the settlement, citing Exhibit C and the lack of his signature. Defendant testified that he met with

³ Citing attorney-client privilege, Mr. Petrzelka refused to answer a question whether Defendant told him that he would not follow through with the settlement. The information being elicited did not clearly fall within the Court's pretrial ruling regarding the attorney-client privilege and Mr. Petrzelka's testimony. Counsel for Plaintiffs instead asked Mr. Petrzelka if he would include any information in a pleading that was not true, and Mr. Petrzelka testified that he would not. This record is sufficient to establish that Mr. Petrzelka believes that the information in Exhibit 3 is accurate.

Mr. Petrzelka in April 2018 and that Ms. Gericke was also present. Defendant requested a hearing on his workers' compensation claim, and was notified by Mr. Petrzelka's office that the hearing was set for November 21, 2018.

Defendant testified that, on November 20, 2018, Mr. Petrzelka told Defendant that the November 21 hearing was cancelled. Defendant testified that he later received settlement papers in the mail at the end of November 2018, and he did not sign the settlement papers.

According to Defendant, he met with Mr. Petrzelka in February 2019, and told Mr. Petrzelka that he was not in agreement with the settlement. Defendant testified that Mr. Petrzelka reached this settlement agreement without his consent.

On cross-examination, Defendant claimed that, prior to November 13, 2018, Defendant had never been told that there was an offer to settle the case for \$20,000. Defendant testified that the settlement offer was never conveyed to Defendant prior to Defendant's receipt of the settlement documents in the mail.

Additional factual findings are set forth in the Court's analysis below.

CONCLUSIONS OF LAW AND ANALYSIS

Attorney-Client Privilege

The Court first addresses Defendant's claim that Mr. Petrzelka's testimony violated his attorney-client privilege. The Court ruled on this issue on the record, but provides additional information in this Order.

"Our law recognizes that a confidential communication between an attorney and the attorney's client is absolutely privileged from disclosure against the will of the client." *Fenceroy v. Gelita USA, Inc.*, 908 N.W.2d 235, 242-43 (Iowa 2018). "Under Iowa law, the privilege is created by statute." *Progressive Cas. Ins. Co. v. F.D.I.C.*, 302 F.R.D. 497, 500 (N.D. Iowa 2014)

(citing Iowa Code § 622.10). “The party seeking to assert the privilege bears the burden to show an attorney-client relationship existed and that the communication was made in confidence.” *Keefe v. Bernard*, 774 N.W.2d 663, 669 (Iowa 2009). “Because it impedes the full and free discovery of the truth, the attorney-client privilege is strictly construed.” *Miller v. Cont’l Ins. Co.*, 392 N.W.2d 500, 504 (Iowa 1986).

“[V]oluntary disclosure of the content of a privileged communication constitutes waiver as to all other communications on the same subject.” *Id.* at 504-05. An individual “waived objection to an attorney’s testimony when the client testifies to the communications.” *Kantaris v. Kantaris*, 169 N.W.2d 824, 830 (Iowa 1969).

There is no dispute in this case that Mr. Petrzelka had an attorney-client relationship with Defendant. At the trial in this matter, the Court ruled prior to the presentation of evidence that Mr. Petrzelka could testify about any matters that were said to him by his client that were intended to be transmitted to a third party. Because Defendant intended these communications to be passed along by Mr. Petrzelka to a third-party, the communication are not privileged. *See Bailey v. Chicago, B & Q.R. Co.*, 179 N.W.2d 560, 564 (Iowa 1970) (finding that “no privilege protection ordinarily attends when a client imparts information to his attorney, (1) for transmittal to others; or (2) which the attorney is duty bound to make public; or (3) which is contained in any pleading or other document publicly filed or in some manner publicized for and on behalf of the communicant.”). Any information that Defendant provided Mr. Petrzelka “for transmittal to others” (including opposing counsel) is not protected.

In addition, the Court also found that Defendant had waived the privilege in a couple of regards. First, Defendant offered Exhibit G, which is a letter emailed to him by Mr. Petrzelka. Defendant concedes that he waived any privilege as to Exhibit G.

The Court also found that Defendant had implicitly waived privilege as to other matters. First, the Court permitted Mr. Petrzelka to testify as to his “opinions and impressions.” The Court noted that it was not confident that such matters were covered by the privilege. But even if they were, Defendant denied that he ever told Mr. Petrzelka that he was interested in settling the case. This denial is an affirmative defense raised by Defendant that Mr. Petrzelka acted without his authorization. The Court found that Mr. Petrzelka was permitted to testify as to his belief that he had authorization, based on what Defendant told him.

The Iowa Court of Appeals has cited three criteria in determining if a client implicitly waives the attorney-client privilege. See *B&F Jacobson Lumber & Hardware, L.L.P. v. Acuity*, 912 N.W.2d 500 (Table), 2017 WL 6513961 *5 (Iowa App. Dec. 20, 2017) (citing *Hearn v. Rhay*, 68 F.R.D. 574, 578-82 (E.D. Wash. 1975)). First, the Court looks at whether assertion of the privilege was a result of an affirmative act, such as raising an affirmative defense. As set forth above, Defendant raised a defense that Mr. Petrzelka proceeded to settlement without his authorization. This “put the protected information at issue by making it relevant to the case.” *Id.* Finally, “application of the privilege would have denied the opposing party access to information vital” to the case. *Id.*

The Court found that Defendant’s testimony placed at issue the communications between Defendant and Mr. Petrzelka related to whether the settlement offer was conveyed by Mr. Petrzelka to Defendant and (to the extent they were covered by the privilege, anyway), Mr. Petrzelka’s impressions and opinions based on what Defendant told him. The Court also notes that, through his testimony, Defendant also waived any privilege relating to his conversation with Mr. Petrzelka in April 2018, because he conceded that a third party (Ms. Gericke) was present during the conversations.

For all the reasons cited above, the Court affirms the rulings it made at trial regarding the attorney-client privilege, waiver, and Mr. Petrzelka's testimony.

Claim for Specific Performance of Settlement Agreement

Turning to the underlying claim, Plaintiffs seek an order requiring Defendant to sign the settlement documents. "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 v. Christ*, 516 N.W.2d 912, 913 (Iowa App. 1994). A settlement agreement need not be in writing or signed in order to be valid. "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." *Id.* at 914. "Whether preliminary negotiations ripened into an oral contract depends on the intention of the parties as gleaned from the facts of the case." *Id.*

"The making of a settlement offer is an act generally within the scope of authority of an attorney handling personal injury litigation for a client." *Kirk Gross Co. v. Schwab*, 728 N.W.2d 60 (Table), 2006 WL 3436464 *2 (Iowa App. Nov. 30, 2006). "However, an attorney cannot settle or compromise a claim of his or her client without special authority." *Id.* "Although an attorney is presumed to act with authority, the presumption is not conclusive and may be rebutted." *Id.* "The presumption is overcome only by clear and satisfactory proof." *Id.*

Based on the evidence presented and the Court's evaluation of the credibility of the witnesses, the Court finds that Plaintiffs have met their burden to establish by clear, satisfactory, and convincing evidence that Defendant agreed to the terms of the settlement that are set forth in Exhibit 4. The evidence establishes that, as of April or May 2018, Defendant desired to proceed to a hearing on his workers' compensation claim. Consistent with Defendant's desire, Mr. Petrzelka requested that a hearing be set. A hearing was set for November 21, 2018. Mr.

Petrzelka testified that, about one week prior to this hearing, Defendant provided authorization for Mr. Petrzelka to settle the matter. Mr. Petrzelka's testimony directly contradicts Defendant's testimony that there were no settlement communications between Mr. Petrzelka and Defendant, prior to Defendant's receipt of the settlement documents. Having observed the parties testify, and considering the other evidence, the Court finds Mr. Petrzelka's testimony to be credible on this issue.

First, Mr. Petrzelka has not been accused, prior to this case, of settling a matter without client approval throughout his lengthy career. If Mr. Petrzelka was in the habit of cancelling hearings and settling cases *without any communication with his client*, it would be difficult to believe that no prior claims of an unauthorized settlement have been made against him. Mr. Petrzelka also testified that he never settles a case without client approval, and that testimony is supported by the fact that he has never before been accused of settling a case without client approval.

Second, the letter sent from Mr. Petrzelka to Defendant on November 19, 2018, is not consistent with Defendant's claim that he had not discussed any possible settlement prior to receipt of the letter. The letter simply states that the settlement documents are enclosed, as if they were to be expected. For example, the letter does not say "Good news, we have received an offer to settle this case for \$20,000" or anything to that effect. Yet, despite receiving these documents in November 2018, the record does not reflect that Defendant objected to them at any point prior to February 2019.

Third, Mr. Petrzelka acted consistent with Defendant's desire in May 2018, when he requested a hearing on Defendant's behalf. The record does not reflect any motive on Mr. Petrzelka's part to schedule a hearing in May 2018, at his client's request, but then a week before

the hearing, settle the matter and cancel the hearing without any authorization by his client.

Indeed, the documents in evidence support the timeline outlined by Mr. Petrzelka's testimony.

Fourth, Mr. Petrzelka's prior filing with the Iowa Workers' Compensation Commission (Exhibit 3) supports his testimony. In that filing, Mr. Petrzelka stated that Defendant indicated he was "not going to follow through with the terms of the settlement." This language demonstrates an understanding that an agreement had been reached, and that the terms were certain. Mr. Petrzelka also noted that he may be called upon to enforce a settlement, again indicating his understanding that his client has agreed to the settlement. Mr. Petrzelka's understanding that Defendant agreed to the settlement is genuine and supported by this earlier documentary evidence. Yet he would not have had this understanding if he had not, as Defendant claims, even talked with Defendant about settlement prior to sending Defendant the settlement documents.

Fourth, the evidence does not overcome the presumption that "an attorney is presumed to act with authority." *Kirk Gross Co. v. Schwab*, 728 N.W.2d 60 (Table), 2006 WL 3436464 *2 (Iowa App. Nov. 30, 2006). Defendant's complete denial that Mr. Petrzelka discussed the settlement with him at any time prior to his receipt of the settlement documents is difficult to believe, and does not overcome the presumption. This would be a closer case if Defendant had conceded that he met with Mr. Petrzelka to discuss settlement, but that Mr. Petrzelka had misinterpreted Defendant's statements to provide authorization for settlement. But Defendant's testimony completely denies that such a meeting took place. Therefore, this is not a case where a client met with his attorney to discuss settlement, and the attorney misunderstood the client's statements. Either (1) Defendant met with Mr. Petrzelka to discuss settlement in November 2018, as Mr. Petrzelka testified; or (2) Defendant never met with Mr. Petrzelka to discuss

settlement, and Defendant simply received the settlement documents in the mail, as Defendant testified. Having observed the demeanor of the witnesses, and considered the rest of the evidence, the Court has little trouble concluding that Mr. Petrzelka's testimony is far more credible on that point. Defendant's lack of credibility in his denial about meeting with Mr. Petrazelka regarding settlement in November 2018 also impacts the Court's view of the rest of his testimony.

Defendant appears to be of the mindset that a contract is not complete until it is signed. In his direct examination, when noting that he did not agree to the settlement, Defendant cited the lack of his signature or the signature of a notary. Defendant then argued that the timeline supports his claims. However, as set forth above, the relevant documents that were admitted into evidence all support a finding that, in the week prior to the hearing, the parties reached a settlement.

For all these reasons, the Court finds that Defendant reached an agreement to be bound by the terms set forth in the Settlement Agreement (Exhibit 4). Plaintiffs are entitled to an order requiring Defendant to specifically perform under that contract, i.e., to sign the settlement documents.

Accordingly:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment on the Petition for Specific Performance is entered in favor of Plaintiffs and against Defendant. The Court shall order specific performance of the contract.

IT IS FURTHER ORDERED that Defendant Herman T. Robinson shall, within thirty calendar days of today's date, specifically perform under the contract by signing his name to the Settlement Documents, a copy of which was entered into this case as Exhibit 4, and delivering

the signed documents to counsel for Plaintiffs. Defendant shall not interfere with the submission of the signed documents to the Iowa Workers' Compensation Commissioner. Plaintiffs' counsel shall provide information to Defendant regarding the method for delivery of the signed documents to Plaintiffs' counsel.

IT IS FURTHER ORDERED that costs of this action are assessed to Defendant.

Clerk to Notify.



State of Iowa Courts

Case Number
EQCV094006
Type:

Case Title
RECKER INC ETAL VS HERMAN T ROBINSON
ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, appearing to read "Justin Lightfoot".

Justin Lightfoot, District Court Judge
Sixth Judicial District of Iowa

Electronically signed on 2021-08-09 21:22:11