

IN THE SUPREME COURT OF IOWA

No. 18-1545

BRIAN AND LISA TERRY,

Plaintiffs/Appellants,

vs.

MEGAN DOROTHY,

Defendant/Appellee.

DECISION OF IOWA COURT OF APPEALS
FILED FEBRUARY 5, 2020

DEFENDANT/APPELLEE'S APPLICATION FOR FURTHER REVIEW

Charles A. Blades AT0000916
SMITH MILLS
SCHROCK BLADES P.C.
118 3rd Ave SE, Suite 200
Cedar Rapids, IA 52406-0036
Telephone: (319) 286-1743
Fax: (319) 286-1748
Email: cblades@smithmillslaw.com
ATTORNEY FOR APPELLEE

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals abused its discretion by limiting its review of the District Court decision to the statutory theory and refusing to consider the contractual theory raised.
2. Whether the Court of Appeals' reversal of the grant of summary judgment in this case is in conflict with the decision in *Thornton v. Hubill, Inc.*, 571 N.W.2d 30 (Iowa Ct. App. 1997).

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STATEMENT SUPPORTING FURTHER REVIEW

The District Court's grant of summary judgment in this case was based upon two theories: a statutory theory and a contractual theory. In their review, the Court of Appeals reversed the grant of summary judgment based upon a finding that the statutory theory was invalid. However, the Court of Appeals abused their discretion by refusing to examine whether summary judgment was appropriate under the contractual theory. As a result, the decision of the Court of Appeals is directly contrary to established precedent. Further review is therefore warranted because the Court of Appeals' decision in this matter is "in conflict with a decision of this court or the court of appeals on an important matter" Pursuant to Iowa Rule of Appellate Procedure 6.1103(1)(b)(1). Specifically, the Court of Appeals' decision in this matter is in direct conflict with *Thornton v. Hubill, Inc.*, 571 N.W.2d 30 (Iowa Ct. App. 1997). Therein, the Court of Appeals affirmed the District Court's decision that a settlement agreement and release contained therein are contracts governed by contract rules, and that because they contained clear and unambiguous language, the contract would be enforced as written and summary judgment was appropriate as a matter of law.

Here, too, the conflict centers around a settlement agreement that was entered into by the parties, and a release contained therein that specifically outlined the released parties to include LSI, West Bend, and “any of their officers, directors, employees, agents, subsidiaries, affiliates, and parent companies.” Dorothy, as an employee of LSI, is one of the parties that was specifically released by the language of the settlement agreement.

Settlement agreement are essentially contractual in nature, and the Iowa Supreme Court has held that contract principles are to be utilized when interpreting settlement agreements. *Phipps v. Winneshiek County*, 593 N.W.2d 143, 146 (Iowa 1999). In this case, The Court of Appeals failed to properly utilize contract principles in interpreting the settlement agreement, but instead focused entirely upon the statutory theory of whether Terry’s claim arose under Iowa Code Chapter 85. The reversal and remand of the District Court’s grant of summary judgment in favor of Dorothy is in direct conflict with the principles set forth in *Thornton v. Hubill, Inc.*, and therefore warrants further review. 571 N.W.2d 30 (Iowa Ct. App. 1997). In order to correct these errors, the Court of Appeals’ decision must be reversed and the District Court’s grant of summary judgment in favor of Dorothy must be affirmed.

BRIEF IN SUPPORT OF FURTHER REVIEW

I. Statement of the Facts

On October 12, 2017, plaintiffs Brian and Lisa Terry filed a petition at law seeking to recover damages for alleged personal injuries allegedly caused by a work related incident occurring on October 14, 2015. (App. p. 4). Plaintiffs' petition alleges that co-employee gross negligence on the part of defendant Megan Dorothy caused plaintiffs' injuries and damages. (App. p. 6).

At all material times, plaintiff Brian Terry and defendant Megan Dorothy were co-employees of Lutheran Services in Iowa, Inc. (LSI) (App. p. 4-5).

On July 27, 2017, the Iowa Workers Compensation Commissioner approved a compromise settlement pursuant to Iowa Code §85.35(3) of the workers compensation claim filed by plaintiff Brian Terry against LSI and its workers compensation carrier. (App. pp. 18-20). Exhibit A to the compromise settlement documents, entitled "Additional Terms of Settlement," includes the following language:

Claimant agrees that the payment of [\$XXX] is acceptable to Claimant as a full and final compromised settlement, satisfaction, and final discharge of all claims and demands that may exist against Lutheran Services of Iowa, Inc., West Bend Mutual Insurance Company, *and any* of their officers, directors, *employees*, agents, subsidiaries, affiliates, and parent companies

(“Released Parties”), by reason of his employment and by reason of all injuries or damages sustained by Claimant on or about October 14, 2015, through his association with the Released Parties. The parties stipulate that the date of injury released in this document represents any and all claims of injuries that claimant may have against the Released Parties relating to any of the body parts or systems as set forth in the following paragraph.

In consideration of this payment, Claimant releases and discharges the Released Parties *from all liability*, including liability under the Iowa Workers’ Compensation Law, for the above injury or injuries, including without limitation hip, back or neck injury, head injury, brain injury, headaches, dizziness, tinnitus, vertigo, fatigue, visual disturbances, neurological injury, any sequelae of the same, and any and all psychological or mental injuries related to the alleged October [14], 2015 work injury through the date of settlement. (emphasis added)(App. p. 21-22).

Plaintiff Terry’s workers compensation claim and compromise settlement arises out of and involves the same subject matter as plaintiffs’ petition at law herein, *i.e.*, personal injuries allegedly caused by the alleged October 14, 2015 workplace incident. (App. p. 4-8, 18-20, 21-22).

II. Argument

A. The Court of Appeals’ Decision in this Case

The District Court grant of summary judgment in this case was based upon both a statutory theory and a contractual theory. In addressing whether the District Court grant of summary judgment was proper, The Court of Appeals only looked to the statutory theory- whether Terry’s gross negligence claims against co-employee Dorothy were outside of Iowa Code Chapter 85.

The Court of Appeals' majority decision completely failed to address the contractual theory as outlined by the District Court- that the settlement was contractual in nature and therefore Terry's claim should be barred by the unambiguous language of the contract. The Court of Appeals concluded that "the district court erred as a matter of law when it concluded the commissioner's approval of the compromise settlement under section 85.35(9) was a final bar to the Terry's pursuit of co-employee gross negligence claims." (Dec. p. 8). However, this conclusion only addresses the statutory theory. As the dissent points out, the District Court's grant of summary judgment in this case was actually based upon **two** grounds, the statutory theory that the Court of Appeals' Decision addresses, and **also a contractual theory**. (Ct. of Appeals Decision p. 13; App. p. 15)(emphasis added). The majority opinion failed to address the contractual theory the District Court employed in granting the Motion for Summary Judgment in this case. In failing to do so, the Court of Appeals abused their discretion, and the resulting decision runs in direct conflict to the decision reached in the similar case of *Thorton v. Hubill, Inc.*, 571 N.W.2d 30 (Iowa Ct. App. 1997).

The Court of Appeals' decision states that the contractual issue was not addressed because it was not raised by Dorothy through her brief. However,

as the dissent points out, this is not accurate, as arguments for the application of contract law were present in Dorothy's appeal brief:

“It is true Dorothy's appellate brief does not draw a sharp line between her valid contractual theory and her invalid statutory theory. Even so, she does argue that the settlement agreement “is a contract and the principles of contract law apply.” She does contend that, when “looking at all of the clearly stated language” in the settlement agreement, “the only conclusion that can be reached is that plaintiff Terry released any and all claims he may have against not only his employer and its insurer, but also against their employees.” And she does maintain that, because she “is one of the employees covered by the language in the settlement documents, her motion for summary judgment [was] properly granted.” So in my view, Dorothy's brief adequately raises a contractual basis to affirm. Even if it does not, we could still affirm on that basis because it was litigated below, and ultimately, it was one of the “bas[e]s upon which the trial court rendered its decision.” *See Anderson*, 895 N.W.2d at 138; *see also King v. State*, 818 N.W.2d 1, 12 (Iowa 2012) (noting “[o]ur rules provide that an appellee need not even file a brief in our court”; further noting “we may choose to consider only grounds for affirmance raised in the appellee's brief, but we are not required to do so, so long as the ground was raised below”). (Ct. of Appeals Decision, pp. 14-15)

The contractual theory was addressed in Dorothy's appellate brief and was also addressed by the District Court in granting summary judgment. Based upon the guidance above, even if it had not been adequately addressed in Dorothy's brief, the Court of Appeals was required to consider the contractual theory on review because it was addressed by the District Court in granting summary judgment. “Our general rule of error preservation is

that we will not decide an issue presented before us on appeal that was not presented to the district court.” *City of Postville v. Upper Explorerland Reg’l Planning Comm’n*, 834 N.W.2d 1 (Iowa 2013). In order for error to be preserved, the issue must be both raised and decided by the district court. *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 833 (Iowa 2014). The issue of the contractual nature of the settlement agreement in the present case was both raised and decided by the District Court. (App. p. 15). The Court of Appeals abused their discretion by limiting their review to only the statutory theory and failing to address the contractual theory relied upon by the District Court in their grant of summary judgment in this case. The Court of Appeals’ failure to address the contractual theory in this case resulted in a decision that is directly contrary to *Thornton v. Hubill, Inc.*, 571 N.W.2d 30 (Iowa Ct. App. 1997).

B. The Court of Appeals’ Decision in *Thornton v. Hubill, Inc.*

In *Thornton*, the Court of Appeals affirmed the District Court’s grant of summary judgment based upon a settlement that clearly and unambiguously released the insurer of all liability and legal obligations to the plaintiff. 571 N.W.2d 30 (Iowa Ct. App. 1997). *Thornton* involved a settlement agreement for a personal injury action that included a settlement agreement and release which was signed by all of the parties.

Approximately ten years after the settlement was executed, Thornton filed suit against the released parties. The District Court concluded that a grant of summary judgment was appropriate because “the plain, unambiguous language of the settlement agreement documents expressed the parties’ intent to extinguish Hubill, USF & G, and Economy Fire’s legal obligations to Thornton and to completely release Hubill, USF & G, and Economy Fire of all liability.” *Thorton v. Hubill, Inc.*, 571 N.W.2d 30 at 32 (Iowa Ct. App. 1997). The Court of Appeals agreed and affirmed the District Court’s grant of summary judgment. *Id.*

Iowa courts “utilize contract principles when interpreting settlement agreements.” *Phipps v. Winneshiek Cty.*, 593 N.W.2d 143, 146 (Iowa 1999). A release is a contract governed by applicable contract rules. *Huber v. Hovey*, 501 N.W.2d 53, 55 (Iowa 1993). “Accordingly, we apply the law governing the construction and interpretation of contracts to the settlement agreement and related documents to determine the meaning of their terms and their legal effect.” *Thorton v. Hubill, Inc.*, 571 N.W.2d 30 (Iowa Ct. App. 1997). If a contract is not ambiguous, it will be enforced as written. *Spillman v. Board of Directors*, 253 N.W.2d 593, 596 (Iowa 1977). The court in Thornton found that the language of the parties’ settlement agreement and release was unambiguous- and that therefore the contract

should be enforced as written. *Thornton v. Hubill, Inc.*, 571 N.W.2d 30, 33 (Iowa Ct. App. 1997). “The terms of the agreement clearly express the parties' intent to release Economy Fire of all liability and legal obligations to Thornton. Hubill, USF & G, and First Executive are entitled to summary judgment as a matter of law.” *Id.*

Turning to the present case, a settlement agreement was executed that contained a release. Based upon the aforementioned principles grounded in established case law precedent, the settlement contract and the release are governed by contract rules. The Additional Terms of Settlement, executed by the parties in this case includes the following language:

Claimant agrees that the payment of [\$XXX] is acceptable to Claimant as a full and final compromised settlement, satisfaction, and final discharge of all claims and demands that may exist against Lutheran Services of Iowa, Inc., West Bend Mutual Insurance Company, *and any* of their officers, directors, *employees*, agents, subsidiaries, affiliates, and parent companies (“Released Parties”), by reason of his employment and by reason of all injuries or damages sustained by Claimant on or about October 14, 2015, through his association with the Released Parties. The parties stipulate that the date of injury released in this document represents any and all claims of injuries that claimant may have against the Released Parties relating to any of the body parts or systems as set forth in the following paragraph.

In consideration of this payment, Claimant releases and discharges the Released Parties *from all liability*, including liability under the Iowa Workers’ Compensation Law, for the above injury or injuries, including without limitation hip, back or neck injury, head injury, brain injury, headaches, dizziness, tinnitus, vertigo, fatigue, visual disturbances, neurological

injury, any sequelae of the same, and any and all psychological or mental injuries related to the alleged October [14], 2015 work injury through the date of settlement. (emphasis added)(App. p. 21-22).

Terry's workers compensation claim and compromise settlement arises out of and involves the same subject matter as plaintiffs' petition at law herein, i.e., personal injuries allegedly caused by the alleged October 14, 2015 workplace incident. (App. p. 4-8, 18-20, 21-22). The "released parties" outlined in the settlement agreement specifically includes employees- and therefore Dorothy qualifies as a released party. The District Court concluded that "by the plain language of the contract (here, the Compromise Settlement including the Additional Terms of Settlement), Mr. Terry released all employees of LSI – including Ms. Dorothy – from any and all claims of injuries that he may have against them. Therefore, Ms. Dorothy is entitled to summary judgment on Mr. Terry's claim of gross negligence." (App. p. 15).

The District Court's grant of summary judgment here follows the same reasoning as the lower court's grant of summary judgment in *Thorton*, which was affirmed by the Court of Appeals. 571 N.W.2d 30, 33 (Iowa Ct. App. 1997). The contrary decision reached by the Court of Appeals in this case warrants further review since it is in direct conflict with the Court of Appeals' decision in *Thornton* pursuant to Iowa Rule of Appellate Procedure 6.1103(1)(b)(1), and reversal is appropriate to instead affirm the District

Court's grant of summary judgment based upon the contractual nature of the settlement agreement and the reasoning and principles set forth in *Thornton* barring Terry's claims based upon the specific release in the contract.

CONCLUSION

The Court of Appeals abused its discretion by limiting its review of the District Court grant of summary judgment to the statutory theory and refusing to consider the contractual theory that also served as the basis for the District Court's decision. The reverse of the grant of summary judgment in this case is in direct conflict with the Court of Appeals' decision in *Thornton v. Hubill, Inc.*, and therefore warrants reversal. Based upon the arguments set forth in this Application for Further Review, the Court of Appeals' decision in this case must be reversed and the District Court's grant of summary judgment must be affirmed in favor of Dorothy.

SMITH MILLS
SCHROCK BLADES P.C.

By: /s/ Charles A. Blades
Charles A. Blades AT0000916
118 3rd Ave SE, Suite 200
Cedar Rapids, IA 52406
Telephone: (319) 286-1743
Fax: (319) 286-1748
cblades@smithmillslaw.com
ATTORNEY FOR APPELLEE

CERTIFICATE OF FILING/SERVICE

I hereby certify that a true and accurate copy of this instrument has been and will be filed electronically with the Clerk of the Iowa Supreme Court and forwarded to all counsel via the electronic filing system on this 25th of February, 2020, and by U.S. Mail for any party not registered to receive notice of filings via the ECF process.

/s/ Charles A. Blades

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) and 6.1103(4) because it contains 3,084 words, excluding the parts of the brief exempted.
2. This brief complies with the typeface requirement of Iowa Rule of Appellate Procedure 6.903(1)(e) because it has been prepared in proportionately spaced typeface using Microsoft Word 2007 in Times New Roman 14 point type.

/s/ Charles A. Blades