JOHNSON v. IVIMEY

3 Conn. App. 392 (1985) | Cited 3 times | Connecticut Appellate Court | March 19, 1985

The plaintiffs brought suit in contractto recover for repairs and renovations made by themto the home of the defendant Katherine Ivimey. A seconddefendant, John Ivimey, the husband of KatherineIvimey, was permitted to intervene as a defendant, pursuant

[3 Conn. App. 393]

to General Statutes 46b-37 (b)(4).[1] The defendantsappeal[2] from a judgment rendered on a jury verdictfor the plaintiffs against Katherine Ivimey only onthe complaint and against both defendants on theircounterclaim.[3]

After the defendant husband had intervened in theaction, the plaintiffs amended their complaint to allegethat he had represented himself to be the authorizedagent of his wife for the purpose of engaging the plaintiffsto perform the work done to her house. Subsequently,the plaintiffs were allowed to amend theircomplaint to add a count for unjust enrichment. A counterclaimwas filed by the defendants claiming that thework of the plaintiffs was unworkmanlike and incomplete.

Basically, the named defendant claims that the trialcourt erred (1) in instructing the jury on ratification,(2) in instructing the jury that an agreement existedand that the jury was to decide solely whether the husbandwas acting as the wife's agent or whether she hadratified his agreement with the plaintiffs, (3) in failingto direct a verdict for the named defendant on the plaintiff'scomplaint, (4) in refusing to allow the defendanthusband, who was not an attorney, to represent hiswife, (5) in refusing to grant a continuance, and (6) bypermitting prejudicial evidence to be introduced under

[3 Conn. App. 394]

the plaintiffs' added count of unjust enrichment whensubsequently, the jury was directed to return a verdictin favor of the defendants on this count.

Those claimed errors relating to the charge given bythe trial court are not reviewable. The defendant wifedid not file a written request to charge and took noexception to the charge. Practice Book 315, 3063;see Schaffer v. Schaffer, 187 Conn. 224, 227-28 n. 3,445 A.2d 589 (1982).

The trial court's refusal to direct a verdict for thedefendant wife on the claimed ground that the plaintiffs'complaint failed to state a claim upon which reliefcould be granted was proper. A decision to direct a verdictcan only be upheld when a jury could not reasonablyand logically reach any other

conclusion. Sestitov. Groton, 178 Conn. 520, 522, 423 A.2d 165 (1979).Such is not the case here. In any event, the nameddefendant's claim should have been raised by a motionto strike the complaint. Practice Book 152. Had amotion to strike the complaint been made, it wouldproperly have been denied because the plaintiffs hadstated a cause of action. Intertwined with this claimederror is the named defendant's argument that the trialcourt should have rendered judgment notwithstandingthe verdict because the jury failed to follow the trialcourt's charge by not returning a verdict in her favor.Although it is not clear from the record that this claimwas made in the defendant's motion to set aside theverdict, we briefly review it because of her pro se status.It is apparent from the transcript that the jury byfollowing the trial court's instruction could have foundfor or against this defendant.[4]

[3 Conn. App. 395]

The defendant John Ivimey could only argue his owncase in the trial court since he is not a member of thebar in Connecticut. Implicit in the granting of a motionto intervene is the determination that the party has aright which could be adversely affected and that hisinterest is presently not adequately protected. Hortonv. Meskill, 187 Conn. 187, 195-96, 445 A.2d 579 (1982).If the defendant Katherine Ivimey were not representingJohn Ivimey's interest, a fortiori, his status as intervenordoes not allow him to represent her interests.

Moreover, the amended complaint does not allege acause of action against John Ivimey based on his liabilityto the plaintiffs pursuant to General Statutes46b-37 (b)(4) but rather as one who represented himselfto be an agent for the defendant principal,Katherine Ivimey, even if he were not her agent. Thus,the pleadings indicate that the interests of the defendanthusband and the defendant wife are directlyadverse. He could, as a pro se, represent his own interestsin the case, but not those of his wife since therewas not an identity of interest between them at trial.The court properly refused to allow him to representhis wife.[5]

The last two claims of the named defendant arerelated. She argues that the case should not have beentried with the count alleging unjust enrichment sincethat theory allowed evidence of insurance to be interjectedinto the case to her prejudice. The named defendantclaims that she was forced by the trial court to denygenerally the count in order to close the pleadings, andthat, at the conclusion of the trial, this count was effectivelytaken from the jury by the trial court's direction

[3 Conn. App. 396]

of a verdict on that count for the defendants, after evidencerelating to the count had been considered by the jury.

It is the contention of the named defendant that thecomplaint should not have been amended on the eveof trial, and that because it was, the case should havebeen removed from the trial assignment list. "The trialcourt has wide discretion in granting or denying amendmentsbefore, during, or after trial."

Lawson v.Godfried, 181 Conn. 214, 216, 435 A.2d 15 (1980). Obviously,if one can amend a pleading during or after trial,an amendment does not remove a case from the triallist. Whether a case should proceed to trial lies withinthe trial court's discretion and the exercise thereof issubject to reversal only where an abuse of discretionis manifest or when injustice appears to have been committed.Sturman v. Socha, 191 Conn. 1, 5-7, 463 A.2d 527 (1983).

In the present case, the transcript reflects that thetrial court inquired as to why a continuance was necessaryand no satisfactory answer was proffered. Thelimited transcript filed with this appeal does not revealthat the defendant Katherine Ivimey requested a continuance.Moreover, we note that the claims advancedin the added third count did not interject any new materialissues into the proceedings as the plaintiffs continuedto allege that they performed work at thepremises in question and the role of the insurance companyhad already been introduced by the defendantsin their counterclaim. The defendant Katherine Ivimeycites us to only one transcript reference concerning theadmission of prejudicial evidence introduced at trial,which mentions the payment of insurance proceedsto her. First, the transcript excerpt filed does notindicate who elicited that testimony. Additionally, evidencethat the insurance company paid the defendantKatherine Ivimey would be admissible to refute the allegation

[3 Conn. App. 397]

with the adjuster and the insurance company. We, thus,conclude that any error in failing to strike the thirdcount was at most harmless error.

There is no error.

1. General Statutes 46b-37 (b) provides in pertinent part: "[I]tshall be the joint duty of each spouse to support his or her family, andboth shall be liable for . . . (4) any article purchased by either whichhas in fact gone to the support of the family, or for the joint benefit ofboth. . . ."

2. This appeal was originally filed in the Appellate Session of theSuperior Court. General Statutes 51-197a (c).

3. Both defendants have appealed but the issues raised, briefed andargued, solely involve the judgment against Katherine Ivimey on theplaintiffs' complaint. The defendant John Ivimey, thus, is not an aggrievedparty and we have no jurisdiction over his appeal. Waterbury Trust Co. v.Porter, 130 Conn. 494, 498, 35 A.2d 837 (1944).

4. The defendant Katherine Ivimey's reply brief raises a claim ofinsufficiency of the evidence. That claim was not articulated in thestatement of issues or in her original brief and therefore the plaintiffswere not apprised of this claim. We, thus, refuse to consider it.

5. On appeal, the defendant, John Ivimey, presented oral argument.It was not then apparent that he was not aggrieved by any action of thetrial