

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

LEE M. SIMMONS,
Plaintiff,

vs.

**MARY KRVIYZANOWSKI HAYFORD and
CLARENCE HAYFORD, husband and
wife, and JOHN DOE and MARY DOE,
unknown persons,**
Defendants.

Case No. CI99-9

**ORDER DENYING MOTIONS
FOR SUMMARY JUDGMENT**

DATE OF HEARING: August 20, 1999.

DATE OF DECISION: August 30, 1999.

APPEARANCES:

For plaintiff: James D. Sherrets without plaintiff.

For defendants:

Hayford: Michael V. Smith without defendants.

Doe: no appearance.

SUBJECT OF ORDER: (1) defendants' motion for summary judgment, and,
(2) plaintiff's motion for summary judgment.

FINDINGS: The court finds and concludes that:

1. Both appearing parties move for summary judgment. The applicable principles of law are well-known:

a. Summary judgment is proper only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Parker v. Lancaster Cty. School Dist. No. 001*, 256 Neb. 406, ___ N.W.2d ___ (1999).

b. The court views the evidence in a light most favorable to the party against whom the judgment is sought and gives such party the benefit of all reasonable inferences deducible from the evidence. *Id.*

c. On a motion for summary judgment, the question is not how a factual issue is to be decided but whether any real issue of material fact exists. *Id.*

d. Where reasonable minds may differ as to whether an inference supporting an ultimate conclusion can be drawn, summary judgment should not be granted. *Id.*

2. Viewed in the light most favorable to the plaintiff, the court is not persuaded that the defendants have met their burden to show that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the defendants are entitled to judgment as a matter of law.

3. Viewed in the light most favorable to the defendants, the court is not persuaded that the plaintiff has met his burden to show that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the plaintiff is entitled to judgment as a matter of law.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The defendants' motion for summary judgment is denied.
2. The plaintiff's motion for summary judgment is denied.

Entered: August 30, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19____ by _____.
- : Note the decision on the trial docket as: 8/30/99 Signed "Order Denying Motions For Summary Judgment" entered.
Done on _____, 19____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel, District Judge