IN THE COURT OF APPEALS OF IOWA

FILED
NOV 29 1988
CLERK SUPREME COURT

RONALD D. KAMMERER and CHRISTINE E. KAMMERER,

Plaintiffs-Appellants,

vs.

IOWA POWER AND LIGHT COMPANY, a Subsidiary of IOWA RESOURCES, INC.,

Defendant-Appellee.

8-385
87-1751

184

Appeal from the Iowa District Court for Pottawattamie County (57713), J.C. Irvin, Judge.

Plaintiffs appeal a jury verdict in favor of defendants contending the district court erred by excluding evidence and by refusing to submit to the jury their claim for intentional infliction of emotional pain and distress. **AFFIRMED.**

Michael G. Reilly and Frank E. Robak, Sr., Council Bluffs, for plaintiffs-appellants.

Gregory R. Brown and Hugh J. Cain, Des Moines, for defendant-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

185

The plaintiffs, Ronald and Christine Kammerer, appeal a jury verdict in favor of defendant Iowa Power for an alleged breach of contract on the part of the defendant, and directed verdict on plaintiffs' allegation of intentional infliction of emotional pain and distress. We affirm.

Iowa Power and Light Company accused plaintiffs of tampering with their electric power meter, allowing them to obtain power for which they had not paid. Iowa Power requested the plaintiffs to pay about $1,400 in arrearages. When the plaintiffs denied tampering and refused to pay the arrearage, Iowa Power disconnected electrical service to the plaintiffs' home. The plaintiffs then filed the present action against Iowa Power, alleging breach of contract to provide electrical power and also intentional infliction of emotional distress from said breach. After suit was filed, plaintiffs negotiated an agreement with Iowa Power for temporary electrical service while the case was pending. Under this agreement, plaintiffs posted a bond for the amount of arrearage and Iowa Power agreed in return to continue providing service during the litigation. However, during the period of this agreement, Iowa Power continued to send bills and disconnect notices to plaintiffs threatening to disconnect electrical service unless the arrearage was paid. However, no actual discontinuance of service occurred.

Plaintiffs' lawsuit was tried to a jury, which returned a verdict in favor of Iowa Power. The Kammerers appeal.

Plaintiffs contend the district court erred by excluding from evidence billing notices and disconnect notices they received while litigation was pending. In addition, they contend the court erred by refusing to submit to the jury their claim for intentional infliction of emotional pain and distress.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

Kammerers claim the trial court committed reversible error by improperly excluding three proposed exhibits and not submitting their claim of intentional infliction of emotional distress to the jury.

It is a well-settled principle the exclusion of admissible evidence which could not, if received, change the result, is harmless error. In re Lewman's Estate, 239 Iowa 563, 569, 30 N.W.2d 737, 740 (1948). In addition, the Iowa Supreme Court has held under analogous circumstances, even if a trial court failed to instruct on an issue of exemplary damages, such error was cured by verdict in favor of the defendant. Bending v. Thada, 243 N.W.2d 857, 862 (Iowa 1976).

The Kammerers filed a petition in two counts. The first count alleged breach of contract. The second count alleged that the breach of contract was an intentional infliction of emotional distress. The proposed exhibits,

which plaintiffs now claim were erroneously excluded, were offered for the purpose of showing intentional infliction of emotional distress. Therefore, in order for the tort of intentional infliction of emotional distress to have occurred, there must have been a breach of contract.

However, the jury determined there had been no breach of contract and judgment was accordingly entered for Iowa Power. Plaintiffs could only recover for intentional infliction of emotional distress if they proved breach of contract. The jury found there was not a breach of contract. At most, it was harmless error not to submit intentional infliction of emotional distress to the jury and not to admit the three proposed exhibits.

AFFIRMED.