FILED
AUG 30 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERT ROMAN BROWN, DOROTHY E. BROWN, ROBERT GEORGE BROWN,	)	Filed August 30, 1983
Plaintiffs-Appellants,	)	3-79
vs.	)	2-68340
FIRST NATIONAL BANK IN LENOX, RALPH ZABEL, personally, and **ZABEL LIMITED,** an Iowa Corporation,	)	
Defendants-Appellees.	)	

Appeal from Union District Court, James W. Brown, Judge.

Plaintiffs appeal from the judgment entered on a jury verdict for defendants in this action arising out of transfer of plaintiffs' farm to defendant Zabel. AFFIRMED.

James R. Cook of the Cook & Waters Law Firm, Des Moines, for plaintiffs-appellants.

John R. Sandre and Richard McConville of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Plaintiffs appeal from the judgment entered on a jury verdict for defendants in this action arising out of transfer of plaintiffs' farm to defendant Zabel. On appeal, plaintiffs assert that (1) their claim for breach of a confidential relationship (breach of a fiduciary duty) is an equitable action, reviewable de novo; (2) they proved a confidential relationship existed between plaintiff Robert R. Brown, the defendant bank and defendant Zabel; and (3) the court should have admitted evidence of defendant Zabel's allegedly similar transactions with two other persons. Defendants respond, inter alia, that while the confidential relationship issue may be equitable, the case was filed in law, and tried to a jury at plaintiffs' request. They assert that it was therefore treated in district court as a law case, and that this court's scope of review in such cases is on error. Therefore, they contend, plaintiffs' issue (2) is a question of whether there was substantial evidence to support the jury's finding. We affirm.

In 1970 plaintiffs Robert and Dorothy Brown were buying 350 acres of farmland on an installment contract. That year Robert R. Brown entered into partnership in a construction business. The defendant bank lent money to the construction business, obtaining a personal guarantee from Brown. The business soon failed, and Brown's partner declared bankruptcy. By the spring of 1972, the bank, which was apparently dominated by Zabel, refused to extend further credit to Brown. In an effort to resolve the problem, Brown conveyed his equity in the farm contract to the bank, which canceled the indebtedness to the extent of his equity. The Browns gave the bank a quitclaim deed, in return for which the bank canceled $40,000 of the indebtedness. The bank almost immediately transferred the farm to Zabel personally, in return for which Zabel paid the $40,000 and real estate taxes. Zabel subsequently transferred the farm to his family corporation.

The Browns continued to occupy the farm on a sharecrop basis until late 1977, when Brown heard that the farm was for sale and attempted to negotiate with Zabel to repurchase it. Apparently outraged by the price asked by Zabel, the Browns commenced this suit, claiming that they did not understand the fairly complex financial transactions going on, and that they thought that they were negotiating a personal loan from Zabel which would be secured by the farm. The Browns asserted that Zabel, who allegedly was in a confidential relationship with them breached a fiduciary duty to them for which they were entitled to compensatory and punitive damages, and asked for damages for fraud.

On demand of plaintiffs, the case was tried to a jury, which returned a verdict for the defendants, responded in the negative to an interrogatory which asked whether a confidential relationship had been established.

I. Scope of Review

The plaintiffs contend that because breach of a confidential relationship is an equitable action, this appeal should be reviewed as if it were in equity, and our review should be de novo. We disagree. Determination of the nature of an action--whether it is at law or at equity--depends upon the pleadings, the relief sought, and the nature of the case. Bjork v. Dairyland Insurance Co., 174 N.W.2d 379, 382 (Iowa 1970). This action was filed at law, and not in equity. The plaintiff sought monetary damages. The case was tried at law before a jury in accordance with the plaintiffs' wishes. On appeal, the case must be treated as an action at law in which the findings of fact, if supported by substantial evidence and justified as a matter of law, are binding upon the court and will not be disturbed on appeal. Iowa R. Civ. P. 4. On review, the evidence is viewed in a light most favorable to the party that prevailed in the trial court. Nora Springs Co-op Co. v. Brandau, 247 N.W.2d 744, 747 (Iowa 1976).

II. Sufficiency of the Evidence

The principal issue, upon which all else hinges, is whether a confidential relationship existed between the plaintiffs and the defendants. The jury found that there was no such relationship.

The Browns point to evidence in the record that Robert Brown sought the advice of Ralph Zabel, president and chairman of the board of the bank, and one of the defendants herein, on a number of financial transactions. They also argue that there is evidence that tends to show that Zabel misled Brown as to the true nature of certain documents that Brown signed.

On the otner hand, there is evidence in the record that Brown's principal purpose in going to the bank (and thus to Zabel) was not so much to receive advice as to borrow money. The business transaction that brought about the situation complained of herein was entered into by Brown independently of Zabel and the bank. Brown made certain business decisions without consulting Zabel or anyone else at the bank, and then sought financing at the bank. Under these circumstances, we hold that the evidence was sufficient to enable the jury to find that Zabel was not in a fiduciary or dominate position relative to Brown. The mere fact (if it is a fact) that Zabel had superior knowledge and skills in banking, finance, and real estate, and that he advised the bank's customers in their business transactions, is not in itself sufficient to establish as a matter of law that Brown and Zabel had a confidential relationship. See Oehler v. Hoffman, 253 Iowa 631, 113 N.W.2d 254, 256 (1962); Groves v. Groves, 248 Iowa 682, 82 N.W.2d 124, 131 (1957).

We hold that the record contains sufficient evidence to support the jury's finding that no confidential relationship existed between Brown and Zabel, and therefore affirm that finding.

In light of this conclusion, we hold that there is no presumption that the transfer of certain property from Brown to Zabel and the bank is fraudulent and voidable, as the plaintiffs contend. On the contrary, we hold that the burden of proof is upon the plaintiffs in this regard, and that they have not carried that burden.

III. Exclusion of Evidence

The Browns attempted, both prior to and during the trial, to offer evidence concerning allegedly similar transactions between Zabel and other individuals. In a complex series of rulings, the details of which need not detain us here, following extensive hearings and discussions out of the presence of the jury, the court refused to admit this evidence. The Browns argue that the court was in error in not allowing evidence of these transactions to be produced during the trial.

The court found that there were substantial dissimilarities between the transactions about which the Browns wanted to produce evidence and those that were before the court, and therefore did not allow the evidence to be brought before the jury. This was an exercise of sound discretion. The court has the discretion to weigh the probative value of evidence against the danger of unfair prejudice, confusion of the issues, the possibility of misleading the jury, waste of time, and needless duplication of evidence. Linge v. Ralston Purina Co., 298 N.W.2d 191, 198 (Iowa 1980). "The determination of the relevancy and similarity of other acts is for the trial court within its exercise of sound judicial discretion." Northrup v. Miles Homes, Inc. of Iowa, 204 N.W.2d 850, 856 (Iowa 1973).

We find no abuse of discretion.

IV. Costs of Appendix

The appellants have asked that the cost of reproducing unnecessary portions of the appendix be assessed against the appellees. The appendix is far more

voluminous than necessary. Costs in the amount of $534 are therefore assessed against the appellees.

AFFIRMED.