



IN THE COURT OF APPEALS OF IOWA

NED HILL d/b/a	)	
NED HILL REALTY,	)	
	)	Filed November 22, 1978
Appellee,	)	
	)	
vs.	)	
	)	672
HAROLD W. CORNWELL,	)	<u>2-60390</u>
	)	
Appellant.	)	

Appeal from Polk District Court - Luther T. Glanton, Judge.

Defendant appeals judgment by trial court awarding plaintiff realtor a commission on the sale of defendant's real estate. - Affirmed.

Harlan L. Lemon, Des Moines, for Appellant.

Allen L. Anderson, Ankeny, for Appellee.

Submitted to Oxberger, C.J., and Donielson, Snell and Carter, JJ.

PER CURIAM

Defendant Harold Cornwell appeals from an adverse ruling of the trial court in favor of plaintiff Ned Hill, d/b/a Ned Hill Realty, on plaintiff's petition which sought to recover a real estate commission on the sale of a piece of real estate owned by defendant. The evidence is uncontroverted that plaintiff and defendant entered into an exclusive listing contract for the sale of the property in question.

However, defendant claims plaintiff's agent, with whom he dealt, was aware of a prior offer to buy and that the listing was subject to the prior offer falling through. Plaintiff and the agent testified they were unaware of any such reservation. When plaintiff learned that the real estate had been sold, he made his demand for the 10% commission called for in the exclusive listing and defendant refused. This action then ensued.

On appeal, defendant raises two issues. First, defendant argues the trial court erred in overruling his motions for directed verdict and judgment notwithstanding the verdict on the ground the record is undisputed that defendant sold the property in dispute before he listed it for sale with plaintiff. The instant case was tried to the court without a jury. Findings of fact in a law action tried by ordinary proceedings are binding upon the appellate court if supported by substantial evidence. Rule 14(f)(1), Rules of Appellate Procedure; *Fjelland v. Wemhoff*, 249 N.W.2d 634, 637 (Iowa 1977). In ruling upon motions for directed verdict, this court views the evidence in the light most favorable to the party against whom the motion was made. Rule 14(f)(2), R. App. P. From a review of the evidence, we find there is substantial support from which the trial court could conclude defendant did not actually sell the property until after it was listed with plaintiff.

Secondly, defendant argues the trial court erred in fixing the amount of recovery because there were no facts or circumstances to substantiate the court's award of \$4500. We disagree. The sale price was found to be \$90,000 and the exclusive listing contract called for a commission of 10% of the sale price with a minimum of \$500. A commission of \$9000 was in order. However, the trial court found that custom and usage allowed a 50-50 split if another real estate broker sold

the listing. As defendant sold his own property, the trial court concluded that plaintiff was entitled to only 50% of the commission or \$4500. There is no error.

Costs are assessed to defendant excepting costs of plaintiff's brief which was not timely filed.

AFFIRMED.