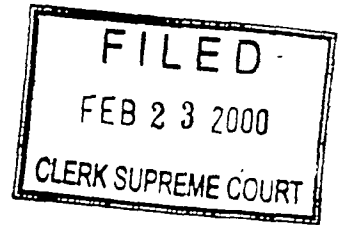


IN THE COURT OF APPEALS OF IOWA

No. 1999-441 (9-698) / 98-1358
Filed February 23, 2000



BEVERLY RULA, as Executor of the **LEO ROGER RULA ESTATE**, and
individually,
Appellee/Cross-Appellant,

vs.

JOHN EHRHART, as Temporary Administrator of the **LEONA RANKIN ESTATE**,
Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Linn County, August F. Honsell,
Judge.

John Ehrhart appeals, and Beverly Rula cross-appeals, a district court
judgment on Rula's wrongful death action against the estate of her mother, Leona
Rankin. **APPEAL AND CROSS-APPEAL AFFIRMED.**

Patrick M. Roby and Christopher L. Bruns of Elderkin & Pimie, P.L.C., Cedar
Rapids, for appellant.

~~James~~ **E. Shipman** and Chad M. VonKampen of Simmons, Perrine, Albright
& Ellwood, **P.L.C.**, Cedar Rapids, for appellee.

Heard by Vogel, P.J., Vaitheswaran, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

VOGEL, P.J.

John Ehrhart appeals, and **Beverly Rula** cross-appeals, a district court judgment on **Rula's** wrongful death action against the estate of her mother, **Leona Rankin**. We affirm both the appeal and cross-appeal.

Background facts. **Beverly Rula** is the wife of **Roger Rula** and daughter of **Leona Rankin**, who died on July 31, 1991. A few months prior to **Leona's** death, **Roger** retired so he could farm properties owned by **Leona** in **Linn County** and **Benton County**. After **Leona's** death, **Beverly** was appointed executor of her estate, and **Roger** continued to farm the properties. On February 13, 1994, **Roger** was hauling a bale of cornstalks from one farm to the other when the tractor he was operating rolled over and pinned him underneath. **Roger** subsequently died from his injuries.

In August of 1995 **Beverly** filed a wrongful death action against the **Leona Rankin Estate**, claiming **Roger's** death was due to the Estate's negligence. Prior to filing this action, **John Ehrhart** was appointed as temporary administrator pursuant to Iowa Code section 633.431 to avoid any conflict of interest. Following trial, a jury found the Estate was twenty-five percent at fault and **Roger Rula** was seventy-five percent at fault. The jury awarded \$150,000 to **Beverly** for loss of consortium, along with \$15,000 for the loss of consortium of each of the **Rula's** adult children. The district court denied **Ehrhart's** post-trial motions, and he now appeals. **Beverly Rula** cross-appeals from the district court's rulings that **Roger Rula** was not an employee of the Estate.

I. Duty of estate. At trial, the jury was instructed that **Beverly** could establish her claim against the defendant Estate by proving one of the following:

(a) the defendant failed to provide plaintiff's decedent with a farm vehicle capable of negotiating the route required to be traveled in order to feed the livestock in the location where maintained;

(b) the defendant failed to provide plaintiff's decedent with a farm tractor with proper roll-over protection devices;

(c) the defendant failed to provide a vehicle properly equipped to provide rear visibility when the operator was required to operate the vehicle in reverse while hauling a large round bale of feed and equipped with four-wheel drive to enable it to negotiate a slippery grade.

Ehrhart now claims the district court erred in failing to sustain his objections to this jury instruction, as well as his motion for directed verdict, all concerning the issue of whether the Estate owed Roger a duty to provide him with safe equipment. We review a district court's denial of a motion for directed verdict for errors of law. *See Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 528 (Iowa 1999). Our review of objections to jury instructions is likewise for errors at law. *See Grefe & Sidney v. Watters*, 525 N.W.2d 821, 824 (Iowa 1994).

Ehrhart forwards the argument that the real defendant is Beverly Rula, executor of the Rankin Estate at the time of the accident. However, the named defendant throughout the trial and this appeal was "John H. Ehrhart, as temporary administrator of the Leona C. Rankin Estate". The jury found, according to instructions, that "the defendant" was negligent in failing to provide equipment that was capable of safely completing the farm work. Although argued during the trial, Ehrhart failed to substitute Beverly Rula as a defendant. Therefore, he did not preserve this issue for appeal.

We nonetheless find there was substantial evidence in the record to indicate Leona Rankin, prior to her death, purchased the equipment, her estate later

provided it for use on the two farms, and the tractor was faulty for the job it was intended for. Therefore, the evidence contained in the record is sufficient to support the submission of the instructions to the jury and deny defendant's motion for a directed verdict.

II. Remittitur. Ehrhart next contends the district court erred in failing to order a remittitur or, alternatively, correct the judgment because Beverly and Roger Rula bore one hundred percent of the fault together. Again, this argument is based in part on Ehrhart's mistaken and unpreserved premise that the Estate's negligence was attributable to Beverly because she was the executor at the time of the accident. However, Ehrhart also claims that Roger's fault should be attributed to Beverly because he was acting as her agent. We find Ehrhart failed to preserve error on this issue. Ehrhart did not object to jury instructions which addressed the issue. Jury Instruction No. 3 in particular provided that "[a]ny fault assigned to Roger Rula, unless it is 100 percent, will not reduce the recovery awarded to his wife or children for their consortium claims." Ehrhart did not make an agency argument until his post-trial motions. We find that his failure to timely raise the issue precludes our review of the same. See Iowa R. Civ. P. 196 (stating that all grounds or objections to instructions must be asserted prior to final arguments and further objections cannot be considered on appeal); see also *Morgan v. Perlowski*, 508 N.W.2d 724, 729 (Iowa 1993) ("We may only consider on appeal those objections to the instructions previously raised with the trial court.") (citation omitted).

III. Cross-appeal. At the close of evidence, Beverly moved for a directed verdict asking for the court to determine as a matter of law that Roger was an employee of the Estate. The court denied this motion. Over Beverly's objection, an

instruction was submitted to the jury on this issue. The jury concluded Roger was an independent contractor rather than an employee of the Estate, and the district court denied Beverly's post-trial motion asking it to reverse the jury on this issue. In her cross-appeal, Beverly claims the court erred in overruling her motions and objection because there is insufficient evidence to support the jury's finding.

We find there was substantial evidence to support the jury's decision that Roger Rula was an independent contractor. Roger kept track of his time worked, the Estate did not withhold state and federal taxes from his pay, he controlled what work would be done and when, he decided when Randy Rula would assist him for pay, and he worked without supervision or direction from anyone else. In addition to this, the Rula tax returns, schedule F, classified Roger's income as contract labor for the Rankin farms. *See generally Iowa Mut. Ins. Co. v. McCarthy*, 572 N.W.2d 537, 542 (Iowa 1997) (outlines several factors to determine employment status). Therefore, the district court did not err by denying Rula's motion for a directed verdict.

Having considered all issues properly before us on appeal, we hereby affirm the judgment of the district court.

APPEAL AND CROSS-APPEAL AFFIRMED.