

IN THE COURT OF APPEALS OF IOWA

**FILED**

MAR 20 1984

CLERK SUPREME COURT

**ALAN KOCH and CATHY KOCH,** )

Plaintiffs-Appellants, )

and )

**NOCONA SUE KOCH and CODY ALAN KOCH,** )

Intervenors-Appellants, )

vs. )

**ERVIN J. MEYER and ERVIN J. MEYER**  
**and LAWRENCE E. MEYER d/b/a**  
**MEYER FARMS,** )

Defendants-Appellees. )

Filed March 20, 1984

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Appeal from the Iowa District Court for Franklin County - Russell J. Hill,  
Judge.

Plaintiffs and intervenors appeal from judgment for defendants in a negligence action, asserting that the trial court abused its discretion by excluding certain offered rebuttal testimony. **AFFIRMED.**

John L. Butler and James C. Ellefson of Lundy, Butler & Lundy, Eldora, for plaintiffs-appellants and intervenors-appellants.

Claire F. Carlson and Steven W. Hendricks of Kersten, Opheim, Carlson & Trevino, Fort Dodge, for defendants-appellees.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

Plaintiffs, Alan and Cathy Koeh, and intervenors, Nocona Sue and Cody Alan Koeh, appeal from a judgment for defendants in a negligence action. The appellants assert that the trial court abused its discretion by excluding certain offered rebuttal testimony.

Plaintiffs filed a negligence action seeking damages as a result of injuries sustained by Alan while pitching hay in defendants' barn. The jury returned a verdict for defendants and plaintiffs' motion for new trial was subsequently overruled.

At trial plaintiffs presented evidence concerning the size of the working area in the barn. Defendants presented testimony by Margaret Meyer which, inter alia, may have indirectly suggested that the working area was larger or more spacious than shown by plaintiffs' evidence. On grounds that it was improper rebuttal and prejudicial, defendants successfully objected to admission of proposed rebuttal testimony concerning the proposed witness' post-accident observations of the size of the working area. Some of the jurors were aware that the proposed witness was an insurance adjuster.

We note that the trial court has considerable discretion in determining what is proper rebuttal evidence, and absent clear abuse of discretion, the trial court will not be reversed when the court has exercised that discretion. Crane v. Cedar Rapids and Iowa City Railway Co., 160 N.W.2d 838, 847 (Iowa), aff'd, 395 U.S. 164, 23 L. Ed. 2d 176, 89 S. Ct. 1706 (1968). The trial court also has discretion to exclude evidence when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence, Kalianov v. Darland, 252 N.W.2d 732, 736 (Iowa 1977). The trial court, after an in-camera hearing regarding the proffered rebuttal testimony, decided:

And, the general rule in this area is that there is some discretion placed in the trial court as to what or what is not rebuttal evidence. Moving on next into the area of evidence, at this particular point the Court is weighing what may be admissible in rebuttal at the rebuttal stage of the trial. The Court is also weighing the evidentiary value of the evidence which is proposed by the Plaintiffs and Intervenor. Coming directly into this matter is—or the danger of collateral issues. It is the law of this State that matters as to insurance coverage are irrelevant and immaterial. The Court is weighing at this time the danger of that coming into the case and the possible declaration of a mistrial at this stage. . . . In looking at the offer of proof which is now before the Court, the evidentiary value of the testimony of Mr. McDonald to rebut evidence presented by the Defendants, the Court finds that that value is not of such great weight to outweigh the danger of the matter of insurance coming in before the jury at this time. Further, the Court is considering in this matter that one of those jurors has a personal knowledge of this witness. The danger of collateral matters being discussed in the jury room at this time is of such danger compared to the value and the weight of this evidence, the motion in limine is sustained. And, the Court will not permit the calling of Mr. McDonald to testify as a witness in rebuttal.

After a careful review of the evidence in the record, we find that the plaintiffs and intervenors have failed to demonstrate an abuse of discretion here.

AFFIRMED.