IN THE COURT OF APPEALS OF IOWA

No. 9-583 / 88-1654

ESTHER M. TONEY,

Appellee,

vs.

CASEY'S GENERAL STORES, INC.,

Appellant.

FILED
MAR 27 1990
CLERK SUPREME COURT
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Appeal from the Iowa District Court for Story County, Newt Draheim, Judge.

Defendant appeals the jury award made to plaintiff for actual and exemplary damages. **REVERSED.**

Ronald W. Kuntz and Patricia A. Barry of Kuntz & Garver, Des Moines, for defendant-appellant.

Donald G. Juhl, Nevada, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ. Hayden, J., takes no part.

DONIELSON, J.

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Frohwein Stores, Inc. owned and operated a convenience grocery store in Colo, Iowa, under a written franchise agreement with defendant Casey's General Stores, Inc. Pursuant to this agreement Frohwein did business in Colo as "Casey's." Plaintiff Esther M. Toney was hired under an oral contract by Frohwein to manage the store, beginning in April 1976. While Casey's recommended the salary and commission structure, plaintiff's contract was with Frohwein, and her employee benefits were negotiated with Frohwein.

Plaintiff enjoyed a cordial and productive working relationship with Frohwein. The store operated smoothly until Casey's decided all store managers of its franchises in Iowa should sign a uniform contract of employment. The uniform contract was less advantageous to plaintiff than the oral one under which she had performed.

According to Larry Frohwein's affidavit, he was approached in February 1980 by two agents of Casey's.

> In February of 1980 I was approached by Steve Adams and Larry Lamb. Mr. Adams and Mr. Lamb stated if any of the managers would not sign the new contract, they should be fired. We should fire them. When Esther Toney refused to accept even this term, Esther Toney was fired with my permission and consent. Although Frohwein stores -- Frohwein Stores, Incorporated, will follow the advice and recommendation of Casey's, Esther Toney was an employee of Frohwein Stores, Incorporated, and the ultimate decision with respect to Esther Toney's employment belonged to Frohwein Stores, Incorporated.

Plaintiff was asked to sign the new contract by Frohwein

and Casey's. When she refused to sign it as written, a representative of Casey's told her she was fired.

Plaintiff brought this suit against Casey's alleging tortious interference with her employment contract. The district court granted a directed verdict for Casey's on the ground there was no cause of action for tortious interference with an at-will employment contract. The supreme court reversed and remanded in Toney v. Casey's General Stores, Inc., 372 N.W.2d 220 (Iowa 1985), which held such a cause of action was feasible. On retrial, the jury returned a verdict of $76,480 actual and $100,000 exemplary damages against Casey's.

Casey's appeals. It contends the issue of interference with contractual relations should not have been submitted to the jury. A claim of tortious interference depends upon a finding of intentional and improper interference with an existing contract or a prospective relationship. Casey's asserts its conduct was not improper, and it was acting in the best interest of the franchise. Casey's raises a number of other issues on appeal, but we need not address them in light of our decision regarding Casey's motion for a directed verdict.

Casey's argues the issue of interference with contractual relations should not have been submitted to the jury. The tort of interference with contractual relations extends to "at will" contractual relationships. Toney v. Casey's General Stores, Inc., 372 N.W.2d 220, 222 (Iowa

1985). If sufficient evidence existed to submit the issue to the jury, the trial judge was correct in refusing to direct a verdict. The elements necessary to prove tortious interference with contractual relationships are:

> An existing valid contractual relationship or business expectancy, knowledge of this by the interferer, intentional interference inducing or causing a breach or termination of the relationship or expectancy, and resulting damage.

Id. The interference with a contractual relationship must be both intentional and improper. Nesler v. Fisher and Co., No. 88-858, slip op. at 13 (Iowa Feb. 21, 1990); Edward Valentine Studios Inc. v. Fraternal Composite, 373 N.W.2d 512, 514 (Iowa App. 1985). In its motion for a directed verdict Casey's claimed plaintiff had not presented evidence to demonstrate Casey's conduct was improper.

Under the substantial evidence standard, if reasonable minds could differ on an issue in light of the evidence presented, the court must submit the issue to the jury. Swanson v. McGraw, 447 N.W.2d 541, 543 (Iowa 1989). Evidence is substantial if a jury could reasonably infer from it these elements. Id. In addition, even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them a jury question is engendered. Id. When considering a motion for directed verdict, we consider the evidence in the light most favorable to the party against whom the motion is directed. Id.

In determining whether interference was improper, our supreme court has looked to the Restatement (Second) of Torts and its accompanying comments. See generally Nesler, No. 88-858. The restatement sets forth seven factors to be considered when determining if interference is improper:

> (a) the nature of the actor's conduct,
> (b) the actor's motive,
> (c) the interests of the other with which the actor's conduct interferes,
> (d) the interests sought to be advanced by the actor,
> (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
> (f) the proximity or remoteness of the actor's conduct to the interference and
> (g) the relations between the parties.

Restatement (Second) of Torts § 767 (1979).

"The issue in each case is whether the interference is improper or not under the circumstances; whether, upon a consideration of the relative significance of the factors involved, the conduct should be permitted without liability, despite its effect of harm to another." Restatement (Second) of Torts § 767 comment b (1979) (emphasis added). Some types of conduct, like physical violence, fraudulent misrepresentation and threats of illegal conduct, are ordinarily recognized as improper means of interference. Id. at comment c.

Our supreme court has recognized the prosecution of civil suits in bad faith and with the purpose to harass can constitute improper interference. Nesler, No. 88-858 slip op. at 15. Economic pressure, depending upon the

circumstances in which it is exerted and the degree of coercion involved, may amount to improper interference. Restatement (Second) of Torts § 767 comment c (1979).

In determining whether interference was improper, it may become very important to ascertain whether the actor was motivated in whole or in part by a desire to interfere with the other's contractual relations. Nesler, No. 88-858 slip op. at 14, citing Restatement (Second) of Torts § 767, comment d (1979). The relation between the parties is often an important factor in determining whether an interference is proper or improper. Restatement (Second) of Torts § 767 comment i (1979). For example, a business adviser may offer good faith advice within the scope of an advisee's request for advice, and the offering of such advice will not constitute improper interference. Id. See also Restatement (Second) of Torts § 772 (1979).

The record in this case reveals Casey's and Frohwein Stores, Inc. had a franchiser-franchisee relationship. Casey's assisted Larry Frohwein by offering advice regarding the operation of his Casey's stores. Casey's had used uniform contracts for its corporate store managers and recommended its franchisees do the same with their managers. Frohwein asked Casey's to approach his store managers and obtain their signatures to written employment contracts.

The record is devoid of improper conduct by Casey's. There is no evidence that it threatened or forced Frohwein

to seek written contracts with his managers. No evidence of illegal or economic pressure was presented to the jury. Casey's, acting in its franchiser capacity, offered economic advice to Frohwein. Frohwein wished to utilize the advice and requested that Casey's implement the plans regarding uniform contracts. Plaintiff's own testimony reveals Larry Frohwein asked her several times to sign the agreement Casey's had presented to her.

Unlike the typical case in which an actor's interest is economic, Restatement (Second) of Torts § 767 comment f (1979), Casey's was to receive three percent of the store's gross sales regardless of what employment contract plaintiff had with Frohwein. The record reveals Frohwein Stores, Inc. had been undergoing financial straits due to rising gasoline prices and Casey's was acting in its franchisee's best interests when it recommended the adoption of uniform manager contracts.

In light of the circumstances of the franchiser-franchisee relationship which existed between Casey's and Frohwein, the evidence as presented was insufficient to submit to the jury the issue of improper interference. This decision does not preclude the possibility that a franchiser's conduct could be improper under another set of circumstances. As noted earlier, violence, threats, misrepresentations and economic pressure can constitute improper interference. The facts presented in this case, however, simply did not raise an issue of improper conduct

by Casey's. Our decision today negates any need to address what measure of damages should apply when an "at will" contract is the subject of tortious interference. Similarly, the issue of exemplary damages is mooted by our opinion in this case.

Casey's motion for a directed verdict should have been awarded. The resulting verdict and judgment are reversed.

REVERSED.

Oxberger, C.J., concurs; Schlegel, J., dissents.

SCHLEGEL, J. (dissenting) 227

I respectfully dissent.

The majority has concluded that insufficient evidence exists to submit the issue of intentional interference with contractual relations to the jury. It bases this conclusion on its failure to find any improper conduct on the part of Caseys. I strongly disagree with this conclusion.

In the first page of the majority opinion it quotes the employer of Esther Toney. He specifically stated that two agents of Caseys approached him and stated, "if any of the managers would not sign the new contract, they should be fired. We should fire them." This is improper conduct. Caseys was not Esther Toney's employer. There is no "We." It had no business telling Mr. Frohwein how to deal with his employees. Perhaps it had an interest in promoting the new contract by listing its qualities and other types of promotion, but Caseys did not restrict its action to this alone. At the very first meeting the agents said in effect, fire anyone who does not sign the contract. They did not wait to see the manager's response to the contract, they merely told Mr. Frohwein what to do. Mr. Frohwein had no "legal" obligation to listen to them, but the amount of influence Caseys had over his decision was obvious. Mr. Frohwein admitted that Esther Toney and he were friends and saw no reason why she would not be employed by him for a

very long time. If Caseys had not made it clear what Mr. Frohwein had to do, Esther Toney would still be employed.

The facts discussed above are sufficient to support an actual jury verdict finding intentional interference with contractual relations and possibly one for punitive damages as well. However, we do not need this amount of evidence to defeat a motion for a directed verdict. All we need is sufficient evidence upon which reasonable minds can differ. Swanson v. McGraw, 447 N.W.2d 541, 543 (Iowa 1989). The trial judge refused to allow the motion, and the jury found for the plaintiffs. Reasonable minds could find, and did find, that Casey's actions were improper. The majority's attempt to characterize Casey Stores as a sort of Helpful Heloise, merely giving advice and counsel to Mr. Frohwein, is clearly misplaced. Caseys had no business interfering with the relationship between Esther Toney and Mr. Frohwein and a jury could certainly find for the plaintiffs. I would affirm the trial court in toto.