IN THE COURT OF APPEALS OF IOWA

No. 0-510 / 90-0124

FILED
APR 23 1991
CLERK SUPREME COURT

A. L. DIETERICH, d/b/a ST. ANSGAR OIL CO., (A Sole Proprietorship),

Plaintiff-Appellant,

vs.

RICHARD A. (MIKE) WOLD and JANET D. WOLD, d/b/a WOLD's SERVICE,

Defendants-Appellees.

Appeal from the Iowa District Court for Mitchell County, Ralph McCartney, Judge.

Plaintiff appeals a district court judgment dismissing plaintiff's claims for an alleged balance due on an account for the furnishing of petroleum supplies and products. **AFFIRMED.**

Craig G. Ensign, Northwood, for appellant.

James F. Smith of Noah & Smith, Charles City, for appellees.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SACKETT, J.

On January 28, 1987, plaintiff-appellant A.L. Dieterich, d/b/a St. Ansgar Oil Co. sued defendants-appellees Richard A. Wold and Janet D. Wold, c/b/a Wold's Service, for $51,670 on open account for petroleum supplies plaintiff sold defendants between 1965 and 1975. The trial court found plaintiff had not met his burden of proof in establishing the account and entered judgment for defendants. Plaintiff appeals contending the trial court erred in finding the plaintiff was not able to reconstruct the account and did not meet his burden of proof. We affirm.

Defendants owned and operated a service station in St. Ansgar from 1965 through 1985. Plaintiff delivered supplies to defendant for resale from 1965 to January 1975. Defendants were given a yellow slip when they received the product and a white slip when they paid. Defendants made payments to plaintiff and also delivered credit card slips to him for credit. Plaintiff's business records consisted of invoices, deposit slips and credit card slips. The plaintiff kept no ledger or book of accounts.

During the years defendants did business with plaintiff, defendants never received a statement of their account and were never billed for an outstanding balance. Plaintiff personally took care of the account and made the

deliveries himself. No other person was involved in plaintiff's operation.

In 1983 defendants, on the advice of tax counsel, destroyed their business records for the period prior to 1976. On November 5, 1985, defendants paid plaintiff $500 on the account.

Jerry Zirbel, a CPA, attempted to reconstruct the account for the plaintiff. Plaintiff sought to establish the account at trial through Zirbel's testimony. Defendant had an accountant who testified it was not possible to reconstruct the account.

The trial court, after hearing the evidence, found:

> Lack of any ledger of any description showing balances due from the Defendants, the problems the Plaintiff himself has had in determining what is due and owing (witness the various prayer amounts above described), the failure to provide any statement of account due and owing although requested on numerous occasions by the Defendants, the testimony of the expert witness appearing for the Defendant that it is not feasible to reconstruct the account from the records extant, the absence of certain records (in invoices, credit charge slips and the like) and finally the great lapse of time from the 1st item in January 1975 to November of 1985 all militate against any finding by this Court that the account has been proven by a preponderance of the evidence. The Plaintiff in his deposition testified that no statements were ever provided and that he did not know what was due.

We agree with these findings.

Plaintiff had the burden of proving the account and showing the prices charged were fair and reasonable. See Team Cent., Inc. v. Teamco, Inc., 271 N.W.2d 914, 920 (Iowa

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1978). It was not enough for plaintiff to show something is due on the account. Id. If plaintiff fails to sustain that burden, plaintiff has failed to establish his claim. Id.

Under this record, we cannot say, as a matter of law, plaintiff established his account against defendants. The trial court's findings of fact have the effect of a special verdict and are equivalent to a jury verdict. National Food Products Corporation v. Schakel, 171 N.W.2d 858, 859 (Iowa 1969). They are binding on us if supported by substantial evidence. Id. There is substantial evidence to support the findings.

AFFIRMED.