FILED
MAY 24 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-165 / 89-1123

38

DENTAL PROSTHETIC SERVICES, INC.,

Appellant,

vs.

JAMES P. HURST,

Appellee.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

Appellant appeals the trial court's decision the covenant not to compete was not reasonable as to time or area. **AFFIRMED BY OPERATION OF LAW.**

Ron Adams and Burns H. Davison III of Adams, Howe & Zoss, P.C., Des Moines, for appellant.

George D. Scully Jr. and Joe Nutting of Martin, Nutting, Miller, Keith, Pedersen & Scully, Waterloo, for appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ., but considered en banc.

PER CURIAM 39

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1987).

AFFIRMED.

For affirmance: Oxberger, C.J., and Schlegel and Hayden, JJ.

For reversal: Donielson, Sackett, and Habhab, JJ.