

IN THE COURT OF APPEALS OF IOWA

FILED
NOV 30 1983
CLERK OF SUPREME COURT

BRIAN CURTIS AND JIM CURTIS
d/b/a FEEDERS GRAIN AND SUPPLY,

Plaintiff-Appellee,

Filed November 30, 1983

vs.

RICHARD DOUGHERTY,

Defendant-Appellant.

3-265

2-68982

Appeal from Adams District Court - M. C. Herrick, Judge.

Defendant appeals from a judgment against him on a suit by a feed dealer on an open account. AFFIRMED.

Ann Fitzgibbons and John R. Sandre of Scalise, Scism, Sandre & Uhl, Des Moines, Iowa, for defendant-appellant.

Jeffrey B. Millhollin of Mullin & Millhollin, Corning, Iowa, for plaintiff-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Defendant appeals from a judgment against him on a suit by a feed dealer on an open account.

Plaintiff, a feed dealer, sued defendant, farmer, alleging that defendant owed him \$20,984 for feed delivered by plaintiff. Defendant claimed that not as much feed had been delivered as plaintiff alleged. To support his position defendant proposed to testify about a formula he used correlating the amount of feed consumed and the weight gain of the cattle. The results of this formula would allegedly have shown that during the relevant period, defendant's cattle could not have consumed the amount of feed which plaintiff claimed to have delivered to him. The trial court sustained plaintiff's objection to this testimony as being immaterial to the question of whether defendant owed the amount of money claimed by the plaintiff.

Defendant appeals a judgment for the plaintiff asserting as error the exclusion of testimony concerning his formula. Our scope of review of this action at law is on assigned error. Iowa R. App. P. 4.

A ruling excluding evidence will be upheld on appeal if there are any grounds for excluding the evidence. Aller v. Rodgers Machinery Manufacturing Co., Inc., 268 N.W.2d 830, 840 (Iowa 1978). Defendant attempted to introduce into evidence the results of a test performed by him which correlated weight gain and feed consumed and then compared that ratio with a similar ratio from prior years.

The admission or exclusion of the results of tests and experiments is within the discretion of the court. Hubby v. State, 331 N.W.2d 690, 697 (Iowa 1983); Palleson v. Jewell Cooperative Elevator, 219 N.W.2d 8, 16 (Iowa 1974). This court will reverse only if there has been an abuse of discretion. We find no abuse of discretion in the present case. Defendant attempted to give the results of his formula without providing the court with any indication of their reliability. Generally test results are admissible where there is some general scientific

acceptance of the test and a sufficient foundation concerning test conditions is made to assure reliability. State v. Conner, 241 N.W.2d 447, 459 (Iowa 1976); Lessenhop v. Norton, 153 N.W.2d 107, 112 (Iowa 1967). Defendant neither demonstrated that his tests had been accurate in the past or that the same conditions existed during the period relevant to this lawsuit as existed during prior testing periods. Differences in weather, feedlot conditions, health of cattle, and type of cattle could affect the results of such a test.

We find no abuse of the trial court's discretion in the exclusion of this evidence.

AFFIRMED.