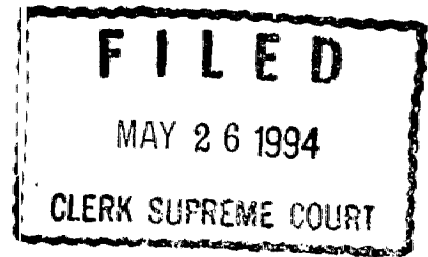


IN THE COURT OF APPEALS OF IOWA

No. 4-148 / 93-0847



CHUCK KOPPES,

Plaintiff-Appellee/Cross-Appellant,

vs.

LAVERN J. WEBER,

Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Dubuque County,
Robert J. Curnan, Judge.

The defendant appeals and the plaintiff cross-appeals
the district court's judgment awarding the plaintiff
damages regarding a project for the reburial of telephone
cable. **AFFIRMED.**

Dave Hughes, Cascade, for appellant.

Joseph Bitter of Law Offices of Joseph Bitter, Dubuque,
for appellee.

Heard by Donielson, C.J., and Hayden and Habhab, JJ.

PER CURIAM

The defendant, Lavern J. Weber, appeals and the plaintiff, Chuck Koppes, cross-appeals the trial court's ruling of May 3, 1993. The appellant asserts: (1) the plaintiff failed "to prove the contract alleged," thus the trial court erred in not dismissing plaintiff's action and (2) that the trial court applied an incorrect measure of damages. The cross-appellant asserts the trial court erred in not finding that "Koppes and Weber entered into a joint venture," whereby the proceeds from the venture were to be divided equally; and (2) the trial court erred in not awarding punitive damages. We affirm.

I.

Koppes and Weber learned of a project for the reburial of AT&T's telephone cable. Koppes has a tiling business with a back hoe and tiling equipment and Weber has an excavation business with a Caterpillar.

The parties visited the project site several times and agreed to submit a bid of \$6800 for the project assuming it would be 100 feet in length. It was agreed that Weber would submit the bid to AT&T.

Weber's bid was accepted. Later, it was renegotiated so as to provide a sum certain in the event the project length was extended. The work was completed and Weber was paid the sum of \$18,550.

It is undisputed that both parties furnished labor and material for the project. Koppes claims that under their

agreement he is entitled to one-half of the proceeds. Weber claims otherwise.

II.

This action was tried as a law action to the district court. Our review is for the correction of errors at law. Iowa R. App. P. 4.

This cause was submitted to a trial judge. It is well settled that the trial judge's findings of fact are akin to jury verdict and are binding on us if supported by substantial evidence. Mastland, Inc. v. Evans Furniture, Inc., 498 N.W.2d 682 (Iowa 1993). Evidence is substantial if a reasonable person would find it adequate to reach the given conclusion, even if we might draw a contrary inference. Hy Vee Food Stores v. Civil Rights Comm'n, 453 N.W.2d 512, 515 (Iowa 1990). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reins. Co. v. Voeltz, 431 N.W.2d 783, 785 (citations omitted).

In addition, we are obligated to affirm an appeal where any proper basis appears for a trial court's ruling, even though it is not one upon which the court based its holding. Citizens First Nat'l Bank v. Hoyt, 297 N.W.2d 329, 332 (Iowa 1980).

III.

There decidedly is a conflict in the evidence as to the extent and meaning of the parties' agreement but in evaluating the sufficiency of the evidence, we view it in

the light most favorable to sustaining the court's judgment. In this respect we need only consider evidence favorable to the judgment, whether or not it was contradicted. Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

The trial court found for the plaintiff and awarded damages in the amount of \$8,162. Having reviewed the record, we find substantial evidence to support the trial court's judgment. We find no error in its application of the law. We affirm on this issue.

There were several issues raised on appeal that were not presented in the trial court. Errors may not be raised for the first time on appeal. Conner v. State, 362 N.W.2d 449, 457 (Iowa 1985). In this respect and as it relates to the plaintiff/cross-appellant's claim for punitive damages, we note that the petition makes no reference to punitive damages.

In the cross-appellant's brief it is claimed that a motion to amend the pleadings was filed on the date of trial requesting punitive damages. However, the cross-appellant fails to cite us to a page in the appendix where this appears. From our search of the appendix, we are unable to locate the same.

Passing for a moment the problem of not including the motion to amend in the appendix, cross-appellant admits the trial court never did enter a ruling on his motion. From our review of the record, it is clear that no further

request to rule was made by the responsible party. Under these circumstances there is nothing for us to review.

As our supreme court stated in Harper v. Cedar Rapids Television Co., Inc., 244 N.W.2d 782, 786 (Iowa 1976):

A motion never decided or ruled on in the trial court presents nothing for review in the appellate court. Where a ruling on a motion or objection is reserved by the court, the moving or objecting party must subsequently obtain a direct ruling in order to preserve the matter for appellate review. The burden of demanding a ruling rests upon the one desiring it. If a party permits the court to proceed to judgment without action upon his motion or objection, he will be held to have waived the right to have the motion or objection acted upon.

Id. (citations omitted)

But even if punitive damages were properly before us, under the record made, we conclude the proof submitted does not rise to the level necessary to establish a fiduciary relationship as alleged in cross-appellant's brief.

In conclusion, the trial court is affirmed in all respects. Costs on appeal assessed one-half to each party.

AFFIRMED.