

IN THE COURT OF APPEALS OF IOWA

No. 1999-143 (9-359) / 98-1816

Filed November 23, 1999

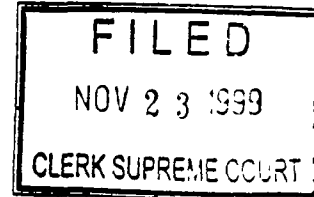
VINTON CARROTHERS,

Appellee,

vs.

**T.J. CARROTHERS, MATT CARROTHERS, KENT CARROTHERS, and
CONNIE CARROTHERS,**

Appellants.



Appeal from the Iowa District Court for Buchanan County, K.D. Briner, Judge.

The defendants appeal from entry of a district court judgment, following a jury trial, in favor of the plaintiff. **AFFIRMED.**

Gary F. McClintock of Hoeger & McClintock, Independence, for appellants.

Morris L. Eckhart of Milroy, Eckhart & Thompson, Vinton, for appellee.

Considered by Streit, P.J., and Vogel, and Vaitheswaran, JJ.

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VAITHESWARAN, J.

T.J. and Matt Carrothers appeal a jury verdict and judgment finding a farm sale contract unenforceable. They contend the district court erred in denying their motion for directed verdict. We affirm.

I. Background Facts and Proceedings

Eighty-two year old Vinton Carrothers owned a 140 acre farm. In August 1996, Vinton's grandsons T.J. and Matt approached him about purchasing the farm. Vinton conceded his signature appeared on a farm sale contract. However, he did not read the document, did not recall signing it, and neither intended nor agreed to sell the farm to T.J. and Matt for \$250,000.

Vinton's lawsuit against T.J. and Matt raised fraud and conversion counts unrelated to the land transaction, as well as an equity count seeking a declaration that the farm sale contract was null and void. This equity count was tried at law, to a jury, together with the fraud and conversion counts. At the close of Vinton's case and again at the close of their own case in chief, T.J. and Matt moved for a directed verdict, contending the contract was enforceable as a matter of law. The district court concluded Vinton generated a jury question on each element of his claims. Therefore, the court denied the motions and submitted all three counts to the jury. The jury answered a special interrogatory, finding no enforceable contract between Vinton, T.J. and Matt. This appeal followed.

II. Error Preservation

Vinton contends T.J. and Matt waived error on the district court's directed verdict ruling because they did not renew their motion following presentation of rebuttal and surrebuttal evidence. *See Mueller v. St. Ansgar State Bank*, 465 N.W.2d 659, 660 (Iowa 1991) ("Error in overruling a motion to direct a verdict at the close of the plaintiff's evidence is waived unless the motion is made again at the close of all the evidence."). We disagree. The record reflects adequate reason for defense counsel's failure to renew his motion at the close of all the evidence. Following an unanticipated early end to the defendants' case in chief, the district court decided to hear motions before Vinton's rebuttal witness was called, to accommodate the witness and expedite matters for the jury. Under these circumstances, we conclude the directed verdict ruling was preserved for review.

III. Scope of Review

We review a district court's directed verdict ruling for errors of law, and limit our review to issues raised in the motion. *Pierce v. Staley*, 587 N.W.2d 484, 485 (Iowa 1998). We examine whether there was sufficient evidence to justify submitting the question to the jury, and review the evidence in the light most favorable to the nonmoving party. *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998). We will affirm a denial of a motion for directed verdict if substantial evidence supports each of the elements of a plaintiff's claim. *Olson v. Nieman's Ltd.*, 579 N.W.2d 299, 313 (Iowa 1998).

IV. Nature of Claim

Our legal analysis is necessarily framed by the nature of the claims asserted. In his petition, Vinton alleged T.J. and Matt forged his signature and falsely represented he signed the farm sale contract. Vinton apparently abandoned this theory after discovering the signature on the land contract was in fact his. However, through trial and on appeal, Vinton maintained his signature was fraudulently procured, and there was no meeting of the minds with respect to sale of the farm for \$250,000. The case was tried without objection on Vinton's theory that the contract was unenforceable for failure of consideration. While we believe Vinton presented an issue of fraud in the inception of the contract, rather than failure of consideration, our review is confined to the legal theories and grounds raised by the parties. *Hylar v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996).

V. Directed Verdict Ruling

Our analysis is controlled by the parties' allocation of burdens of proof. The parties agreed T.J. and Matt had the burden of establishing an enforceable contract. They also agreed in Jury Instruction No. 13 that T.J. and Matt would have to prove: (1) the parties were capable of contracting; (2) the existence of a contract; (3) consideration; (4) the terms of the contract; and (5) T.J. and Matt performed the contract requirements.¹

¹ The parties modified Iowa Civil Jury Instruction 2400.1, which sets forth the essentials for recovery on a breach of contract claim.

Finally, the parties agreed to the following jury instruction:

Vinton Carrothers contends that the Offer to Buy Real Estate and Acceptance is not a binding contract enforceable against him because of failure of consideration. If he has proved failure of consideration, then you must find that the contract is not enforceable against him. If he has not proved failure of consideration, then you must determine whether the contract is otherwise enforceable against him as explained in Instructions No[s]. 13 [elements of enforceable contract], 18 [requirement of meeting of minds], 19 [breach], and 20 [performance].

This instruction confirmed Vinton was only required to prove failure of consideration to void the contract. *Cf. Iowa Code § 537.3(4) (1997); Fed. Land Bank of Omaha v. Woods*, 480 N.W.2d 61, 66 (Iowa 1992) (stating failure of consideration is an affirmative defense to a written contract).

The district court and parties framed the legal question to be decided as follows: “[w]as the August 23, 1996 Offer to Buy Real Estate and Acceptance an enforceable contract as defined in Instruction No. 13?” T.J. and Matt argued the farm sale contract was enforceable because Vinton signed it and, according to them, also knew the purchase price. The motion for directed verdict did not address whether Vinton met his burden of establishing failure of consideration. T.J. and Matt accordingly waived error as to that issue. *Pierce*, 587 N.W.2d at 485.

We conclude T.J. and Matt could not obtain a directed verdict on whether the contract was enforceable because Vinton did not bear the burden on this issue. See Iowa R. Civ. P. 243; Olson, 579 N.W.2d at 313 (noting directed verdict addresses elements of plaintiff’s claim). T.J. and Matt retained the burden of proving each element of an enforceable contract as outlined in Jury Instruction No. 13, including

whether a contract existed. Even if the legal claims had been postured differently, however, Vinton presented sufficient evidence to generate a jury question on whether a contract existed, through his testimony that he did not know what he was signing, and never agreed to sell his farm for \$250,000. Accordingly, the district court did not err in denying the motion for directed verdict.

AFFIRMED.