FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

POOR FOUR GRAZING ASSOCIATION, INC., JERRY BOYD, LARRY E. FARRIS, EDWARD T. KENNEDY and PAUL D. McCAUGHEY,

Appellants,

vs.

McLAUGHLIN FARMS, BRUCE McLAUGHLIN, JR., and CLARENCE NEPPL,

Appellees.

Filed August 9, 1979

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2-62104

Appeal from Carroll District Court - Honorable E. J. Flattery, Judge.

Plaintiffs appeal from trial court's judgment dismissing their petition in an action for damages arising from defendants' breach of an alleged oral contract to pasture cattle on grazing land leased by plaintiffs. AFFIRMED.

James Van Dyke of the Wunschel Law Firm, Carroll, Iowa, for appellants.

Ronald Schechtman of Carroll, Iowa, and John A. Beltz of the Shook Law Office, Glidden, Iowa, for appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiffs, Poor Four Grazing Association, Inc.[1] and the four individuals who formed the Association, appeal from trial court judgment dismissing their petition in an action for damages arising from defendants' breach of an alleged oral contract to pasture cattle on grazing land leased by plaintiffs. Trial court found that oral negotiations between the parties had not ripened into a full contract later to be reduced to writing and that the facts showed the parties did not intend to be bound by their oral negotiations. On appeal, plaintiffs assert trial court erred in applying the controlling principles of contract law to the facts of this case and that the facts, as a matter of law, establish an intent by the parties to be bound by an oral contract which later was to be reduced to writing. We affirm trial court's judgment.

The Association's primary purpose was the leasing of Missouri pasture land from local land owners to be utilized for grazing cattle pursuant to contract with cattle owners. Following inquiry by the plaintiffs, defendants Neppl and McLaughlin discussed, with each other, the possibility of entering into a partnership relationship for the purchase of livestock to be pastured with plaintiffs and the basic terms of any grazing agreement they might enter. On April 24, 1970, defendant Neppl travelled to Missouri to inspect the pasture land plaintiffs would provide. After the inspection, plaintiffs McCaughey, Farris, and Boyd,[2] and defendant Neppl met at a local realtor's office to discuss the terms to be included in such an agreement. A written contract from a similar transaction between plaintiffs and a third person was used as a guideline for the discussion. The basic agreement anticipated the plaintiffs would furnish pasture land for approximately 1,000 head of the defendants' cattle for a period of several months for which plaintiffs would receive approximately $40,000.

No written agreement was signed at the April 24th meeting. A few days later, following a telephone call from plaintiffs stating they needed money to enable them to lease the necessary pasture land, defendant Neppl issued a $20,000 sight draft to plaintiffs, drawn on the McLaughlin Farms account.[3] Defendant McLaughlin was

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[1] Hereinafter referred to as the Association.

[2] Plaintiff Boyd's wife also was present and took notes.

[3] Defendant Neppl previously had issued drafts on this account for cattle purchases only.

unaware of the draft until he was notified by his bank that the draft had been received for payment. At that time defendant McLaughlin stopped payment on the draft because he had received no written contract. Several days later defendant Neppl received a written contract from plaintiffs. He forwarded a copy of the contract to defendant McLaughlin who rejected it on the grounds that it contained several important items which were substantially different from those contemplated by the defendants.

At trial, plaintiffs testified that there was agreement on all terms of the contract at the conclusion of the April 24th meeting, that defendant Neppl shook hands with everyone in attendance, and that, by both his words and actions, indicated that they had "a deal." Defendant Neppl testified that he repeatedly had told plaintiffs that defendant McLaughlin would have to approve any contract before it was binding, that no payment was contemplated until after the agreement had been signed by all the parties, and that he issued the $20,000 sight draft to help plaintiffs obtain the pasture land on the condition that he immediately receive a written contract containing the terms which had been discussed, but that the written contract, when finally received, contained terms markedly different from what he had contemplated at the preliminary negotiations session on April 24th.

I. Our review of this action tried to the court at law is on assigned error only. Trial court's findings of facts are equivalent to a jury verdict and will not be disturbed on appeal if supported by substantial evidence and justified as a matter of law. Iowa R. App. P. 4; Northrup v. Foster, 204 N.W.2d 889, 890 (Iowa 1973). We will not weigh the evidence or pass on the credibility of witnesses. Thomas Truck & Cast. Co. v. Buffalo Cast. & W. H. Corp., 210 N.W.2d 532, 536 (Iowa 1973); Northrup vs. Foster, 204 N.W.2d 889, 890. The findings of trial court are to be liberally construed and, in case of ambiguity, construed to uphold rather than defeat the judgment. Hammer v. County of Ida, 231 N.W.2d 896, 900 (Iowa 1975).

II. We agree with trial court's statement that the main issue in this case is "whether the negotiations between defendant Neppl and the plaintiffs resulted in a binding oral contract between the parties" rendering defendants liable for the breach thereof. Plaintiffs have the burden of proving by a preponderance of the evidence that a contract existed. Carmichael v. Stone, 243 Iowa 904, 905, 54 N.W.2d 454, 454 (1952).

Whether preliminary negotiations have ripened into an oral contract is determined by the intention of the parties, as determined by the facts of the case. Severson v. Elberon Elevator, Inc., 250 N.W.2d 417 (Iowa 1977). In Severson, the court enumerated several factors to be considered in determining whether the parties intended to be bound prior to the execution of a written document. These factors include: (1) whether the contract is of a class usually found to be in writing; (2) whether it is of a type needing a formal writing for its full expression; (3) whether it has few or many details; (4) whether the amount involved is large or small; (5) whether it is common or usual; (6) whether all details have been agreed upon or some remain unresolved; and, (7) whether the negotiations show a writing was discussed or contemplated. 250 N.W.2d at 421.

Based on these principles, and a careful review of the record, we find trial court's factual determinations to be supported by substantial evidence. Applying the Severson criteria, the trial court concluded the contract was of a type usually reduced to writing; many details were involved which would necessitate a written document, the amount involved was quite large (approximately $40,000); because of the large numbers, a contract of this type was not common or usual; many of the details of the agreement were unresolved, such as weight of the cattle to be grazed, duration of the contract, and death loss percentage. Finally, the court found that a writing was contemplated and that any contract to be reduced to writing and submitted to defendant McLaughlin for his approval prior to becoming binding.[4]

We, therefore, conclude that trial court's findings are supported by substantial evidence and affirm the judgment.

AFFIRMED.

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[4] Plaintiff McCaughey testified that he knew defendant McLaughlin had to agree to the contract.