IN THE COURT OF APPEALS OF IOWA

FILED
OCT 2 8 1987
CLERK SUPREME COURT

WILLIAM E. BREHM,

Plaintiff-Appellant,

vs.

KENT HABEGAR,

Defendant-Appellee.

Filed October 28, 1987

7-339
86-1609

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Appeal from the Iowa District Court for Kossuth County (No. 21937) - Murray S. Underwood, Judge.

Plaintiff appeals from trial court's refusal to grant him a new trial in his fraudulent and negligent misrepresentation action. **AFFIRMED.**

Warren L. Bush, Wall Lake, for plaintiff-appellant.

M. Gene Blackburn, Fort Dodge, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, and Sackett, JJ. Snell, J., takes no part.

SACKETT, J. 37

In this case we address plaintiff's contentions (1) the trial court abused its discretion in refusing to allow him to amend his petition, and (2) the trial court erred in not granting a new trial because of alleged inconsistencies in answers to interrogatories. We affirm.

Plaintiff purchased a steer from defendant. Plaintiff claims the defendant represented the steer was in its natural condition when in fact it had been surgically altered. Plaintiff filed suit claiming defendant had fraudulently misrepresented the steer was in its natural condition or in the alternative was negligent in failing to discover the surgical alteration. Plaintiff sought damages.

This cause was tried to a jury. The jury answered a series of special interrogatories and returned a verdict for defendant on both counts. Plaintiff moved for new trial contending (1) the trial court should have allowed him to amend his petition after trial to include a claim for breach of warranty and should have submitted that claim to the jury, and (2) the answers to the interrogatories were inconsistent with the verdict. The trial court denied the motion for new trial. Plaintiff appeals alleging error on both issues.

I.

Plaintiff's first contention is the trial court abused its discretion in not allowing him to amend at the close of his evidence to assert a claim for breach of warranty of fitness for particular purpose. Iowa Rule of Civil Procedure 88 provides in relevant part as follows:

> . . . a party may amend a pleading only by leave of court or by written consent of the adverse party. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

Allowance of amendments should be the rule and not the exception. Nevian v. Moser, 400 N.W.2d 538, 543 (Iowa 1987). Allowance or disallowance of amend-

ments is a matter for the exercise of the trial court's discretion. Chao v. City of Waterloo, 346 N.W.2d 822, 825 (Iowa 1984). We are reluctant to find an abuse of the trial court's discretion. Johnston v. Percy Constr., Inc., 258 N.W.2d 366, 370 (Iowa 1977). We are even less likely to find an abuse of discretion when reviewing denial of an amendment proposed during trial. Id. at 371. However, the time of the amendment is not the determinative factor. Id. The trial court's discretion is a legal discretion to be exercised in the light of all circumstances in a particular case. Id.

After plaintiff's suit was filed, he filed interrogatories and took depositions. There was no surprise alleged between discovery and time of trial. There is no allegation undiscovered evidence came forth at trial. There is no reason advanced as to the reason this amendment was not made at an earlier time. We do not find an abuse of discretion. See Trask v. Gibbs, 200 N.W.2d 565, 568-69 (Iowa 1972).

II.

Plaintiff contends two interrogatories submitted to the jury allowed the jury to provide inconsistent answers and the jury did in fact supply inconsistent answers. Plaintiff did not object to the interrogatories as they were submitted to the jury. Issues not raised in the trial court will not be considered for the first time on appeal. See Rhiner v. City of Clive, 373 N.W.2d 466, 474 (Iowa 1985). The trial court is affirmed.

AFFIRMED.