FILED
JAN 26 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GARY L. TJELMELAND,	)	
Plaintiff-Appellant,	)	Filed January 26, 1982
vs.	)	169
HAROLD E. TJELMELAND,	)	1-448 2-66820
Defendant-Appellee.	)	

Appeal from Story District court, Edward J. Flattery.

Plaintiff appeals from the trial court's dismissal of his petition seeking damages for breach of an alleged contract contending the court erred in holding the existence of a contract had not been proved and by failing to rule on plaintiff's alternative theory of unjust enrichment. AFFIRMED.

Robert L. Huffer, Storney City, for plaintiff-appellant.

Thomas J. Cahill of Nelson, Cahill & Cahill, Nevada, for defendant-appellee.

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

PER CURIAM

Plaintiff appeals from the trial court's dismissal of his petition seeking damages for breach of an alleged contract, contending the court erred in holding the existence of a contract had not been proved and by failing to rule on plaintiff's alternative theory of unjust enrichment. We affirm the trial court's dismissal of plaintiff's petition.

Plaintiff, Gary L. Tjelmeland, and defendant, Harold E. Tjelmeland, are brothers. Defendant had been licensed to sell hail insurance for Farmers Mutual Hail Insurance Company since 1961. Plaintiff, and another brother, Keith Tjelmeland, had worked as subagents for their brother, Harold, from 1966 to 1970. Neither plaintiff Gary nor Keith received deferred, or renewal, commissions from Harold during that time.

In early 1971 when Keith left the business, Harold and Gary met to discuss the future of their business affairs. The parties sharply contest the results of that meeting. Harold claims he was to receive the year-end bonus (i.e. the deferred commissions) and Gary was to receive the advance commissions on the policies Gary sold. Gary contends he was to receive all of the commissions on the policies. Gary contends he was unaware of the distinction between "year-end bonuses" and "advance commissions."

Since the parties could not resolve their differences, Gary instituted an action against Harold for $8000 of commissions on two alternative theories: (a) an oral contract between Gary and Harold to pay Gary commissions; and, (b) implied contract to prevent unjust enrichment of Harold in the amount of the commissions. The trial court held plaintiff failed to prove a contract and dismissed the petition but did not mention Gary's unjust enrichment argument. Plaintiff now appeals, claiming the court erred in failing to find a contract and by not ruling on the unjust enirchment argument.

The findings of fact of a trial court in a law action are binding on appeal if supported by substantial evidence. Iowa R. App. P. 14(f)(1); Cannot v. Jennings, 202 N.W.2d 48, 49 (Iowa 1972). A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. Briggs Transportation Company v. Starr Sales Company, 262 N.W.2d 805, 809 (Iowa 1978). In evaluating the sufficiency of evidence, we view it in the light most favorable to sustaining the court's judgment. Id. Furthermore, we need only consider evidence favorable to the judgment, whether or not the evidence is contradicted. Id. Grefe v. Ross, 231 N.W.2d 863, 865 (Iowa 1975).

The trial court found there had been no agreement made between Gary and Harold under which Harold was to pay Gary deferred commissions. We find substantial support in the record for that conclusion.

The parties do not dispute neither Keith nor Gary received any deferred or renewal commissions from any of the policies they sold. Both Gary and Keith, however, received advance commissions upon the initial sale of each policy. Gary claims the new contract, created in 1971 when Keith left the business, altered the previous arrangement and established his additional right to collect deferred commissions in exchange for his assumption of the office administrative paperwork. Gary did not seek to collect any deferred commissions until 1980.

Gary explains his failure to attempt to collect the deferred commissions from Harold until nine years after the alleged contract by claiming he knew nothing of deferred commissions. Gary testified he only knew about the initial advance payments. After discussing the credibility of Gary's testimony, the trial court concluded other evidence established Gary knew of the deferred commissions. Since there is substantial evidence Gary knew of the deferred commissions during the negotiations and no mention had been made of them during the 1971 negotiations, the inference is easily made that Gary and Harold made no

new agreement concerning deferred commissions in 1971. The new agreement essentially effected a continuation of the prior arrangement with the modification Gary was to perform the office paperwork. Accordingly, we affirm the trial court's conclusion Harold and Gary did not enter into an agreement in 1971 to pay deferred commissions.

Gary also claims the court erred in not ruling on his claim of unjust enrichment. There is no reversible error in the trial court's failure to specifically rule on the claim of unjust enrichment. Bahnsen v. Rabe, 276 N.W.2d 413, 414 (Iowa 1979). Independent claims not addressed in the findings but inconsistent with the judgment are deemed to have been decided adversely to the losing party. Id. Thus, any reversible error must emanate from the deemed rejection of the unjust enrichment claim. We find no error in the trial court's rejection of the unjust enrichment claim and affirm the trial court's conclusion.

The trial court held, on the contract claim, the agreement negotiated between Harold and Gary did not incorporate any provision for deferred commissions. The court implicitly held the agreement essentially worked a continuation of the prior arrangement under which Gary was to receive only the initial advance commission payments. Consequently, there is no reason to imply a contract to permit Gary to recover the value of his services when the issue of compensation had been adequately covered in the negotiations. See Sitzler v. Peck, 162 N.W.2d 449, 451-52 (Iowa 1968).

AFFIRMED.