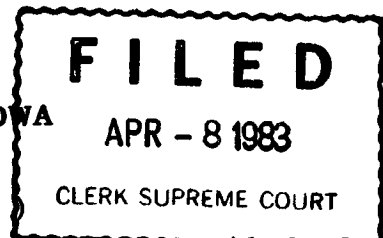


IN THE COURT OF APPEALS OF IOWA



**POLK COUNTY BOARD OF SUPERVISORS,
AND THE STATE OF IOWA, ex rel.
DAN L. JOHNSTON, POLK COUNTY ATTORNEY,**

Plaintiffs-Appellees,

vs.

**FRANK J. RENDA, MORTON S. FINGERT,
AND IOWA F & R COMPANY,**

Defendants-Appellants.

Filed April 8, 1983

2-445

2-67829

Appeal from Polk District Court, Van Wifvat, Judge.

Defendants appeal from the district court decision granting plaintiffs injunctive and other relief with regard to their operation of a sexually oriented business, asserting that the evidence was insufficient to support the trial court's finding that the business was used as a house of prostitution. **AFFIRMED IN PART, REVERSED IN PART.**

Joseph L. Marks and Victoria L. Meade of Marks, Marks & Marks, Des Moines, for defendants-appellants.

David W. Hibbard, Assistant County Attorney, for plaintiffs-appellees.

Heard en banc.

OXBERGER, C.J.

Defendants appeal from the district court decision granting plaintiffs injunctive and other relief with regard to their operation of a sexually oriented business, asserting that the evidence was insufficient to support the trial court's finding that the business was used as a house of prostitution. The parties have stipulated that the decision in Renda v. Polk County, 319 N.W.2d 250 (Iowa 1982), is controlling and requires reversal on grounds not discussed by the parties but that the prostitution issue remains to be decided. We affirm in part, reverse in part.

Defendants Fingert and Renda and their corporation, Iowa F & R Company, Inc., have operated the Denmark Bookstore at its present location since June, 1978. In that month, the Polk County Board of Supervisors adopted portions of the Polk County Zoning Ordinance regulating the use of property as a massage parlor, adult bookstore, adult mini-motion picture theater, and adult motion picture theater. The Zoning Ordinance was amended on March 3, 1981, to include regulation of sexual activity centers such as nude modeling studios and nude encounter studios. Establishments in operation at the time of passage of this ordinance were given twelve months to cease operation from the time of enactment of the ordinance. This twelve-month period had expired by the time plaintiffs filed their petition, except as it applied to sexual activity establishments. That period ended on March 8, 1982.

On January 14, 1981, Des Moines police officer Bruce Elrod went to the Denmark Bookstore at the request of the plaintiffs and inquired about a nude modeling session. He paid about \$25 for that session, and for another \$20, he was offered and received a massage from a female employee which included the employee's removing all of her clothes and massaging his chest, legs, and genitalia with her hands and breasts.

On April 29, 1981, Des Moines police officer Claude Carlson, posing as a customer, paid \$20.60 for a nude encounter session. During this session, a female

employee of the Denmark Bookstore, Roxanne Richards, removed all of her clothing and talked with the officer. She then offered to perform sexual intercourse for \$50, fellatio for \$40, and to masturbate the officer for \$20.

Evidence was introduced demonstrating that the services and products available at the Denmark Bookstore were all sexually oriented. Among the services advertised were such activities as the use of dildoes on the genitalia of female employees by other employees as customers watched, nude posing by female employees for customers, and nude photography sessions.

The trial court found that the defendants were operating a massage establishment and a sexual activity establishment, that the Denmark Bookstore was a place where prostitution occurred and was a public nuisance, and that its owners and the owners of the land and building in which it was located knew, or should have known, that it was a place where prostitution occurred. The court therefore issued a permanent injunction and restraining order against the defendants and their employees and agents, prohibiting their use of the premises as a massage establishment as that term is defined in the Polk County Zoning Ordinance. The court issued other orders designed to prevent the building's being used for such activities.

It is from these orders of the court that the defendants appeal. Their appeal is based upon their contention that since the plaintiffs failed to introduce any evidence to show that either Fingert or Renda had knowledge of any solicitation for prostitution at the bookstore or that the Denmark had a reputation as a house of prostitution, the trial court's finding that it was an establishment of prostitution was erroneous.

In support of this contention, the defendants cite Iowa Code section 99.14, which provides that in an action to establish that a building or place is being used

for the purpose of prostitution, "evidence of the general reputation of the place shall be competent. . . and shall be prima facie evidence of such nuisance and of knowledge thereof and of acquiescence and participation therein on the part of the owners. . . ." Iowa Code § 99.14 (1981). Defendants' argument is based upon the premise that section 99.14 imposes a requirement or a necessary condition upon one who would prove that such a public nuisance exists. This is a complete misreading of the statute. It provides merely that evidence of the general reputation of the place may be introduced in order to establish that it is a house of prostitution. Such evidence is not necessary, and the statute was clearly designed to facilitate proof that a place was indeed a house of prostitution, rather than to make it more difficult.

Defendants argue further that the testimony of Officer Carlson as to one alleged act of solicitation for prostitution was not sufficient to establish that the Denmark Bookstore was a house of prostitution or a public nuisance. They point to the testimony and deposition of plaintiff Fingert and of Roxanne Richards. Fingert testified that he was careful not to hire prostitutes, and that he stressed, both when hiring his female models and frequently thereafter, that they were not to touch the customers or engage in any action that might be construed as an act of prostitution or as a massage. Ms. Richards testified that she had been warned by Fingert that there was to be no physical contact with customers and no acts of prostitution, and that she understood that if she were caught performing either, she would be fired immediately. She also testified that she followed those rules during her session with Officer Carlson.

In State v. Clark, 189 Iowa 492, 496, 178 N.W. 419, 421 (Iowa 1920), the court considered a situation similar to this one and concluded: "though the evidence in this case shows but one transaction, it does not follow that that was the only act. It is a proper inference from the circumstances that the business was being

carried on there." Section 99.14 of the Code permits the court to infer, from competent evidence that acts of prostitution are occurring in a place, that its owners know the use to which the premises are being put.

In this equity action, we have reviewed the record de novo. From our review, we conclude that there was no error in the court's finding that the Denmark Bookstore was a house of prostitution and a public nuisance. The testimonial and documentary evidence and the circumstantial evidence were clearly sufficient to justify the court's arriving at that conclusion.

We affirm the findings and the orders of the trial court, insofar as they bear on the issue discussed herein. In all other respects, the trial court's judgment is reversed, in accordance with the parties' stipulation.

AFFIRMED IN PART, REVERSED IN PART.