

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 26 1980

CLERK SUPREME COURT

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RICHARD A. MORTON,

)

Plaintiff-Appellee,

)

Filed February 26, 1980

vs.

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DEAN R. CAMPBELL, et al,

)

Defendant-Appellant.

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2-63106

Appeal from Dallas District Court - Anthony J. Critelli, Judge.

Defendant appeals trial court judgment awarding damages to plaintiff for defendant's breach of an agreement not to compete with plaintiff's business in a certain geographical area. AFFIRMED.

James B. Smith of Shirley, Smith, Shirley & Powell, Perry, Iowa, for defendant-appellant.

Michael Sellers of Des Moines, Iowa, for plaintiff-appellee.

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

PER CURIAM

Defendant appeals trial court judgment awarding damages to plaintiff for defendant's breach of an agreement not to compete with plaintiff's business in a certain geographical area.

The trial court's determination that defendant operated a competitive business within an area prohibited by a contract between the parties is not disputed on this appeal. The sole issue to be determined is whether there is sufficient evidence to sustain the trial court's findings of damages under Iowa R. App. P. 4, 14(f)(1). We conclude that there is and affirm the trial court.

Defendant asserts that plaintiff's damage evidence is based entirely upon the extent of the business which defendant performed in the prohibited area. It is urged that there is no competent evidence that business done by defendant represents business lost to the plaintiff. Several decisions in this jurisdiction have recognized that a plaintiff making a claim of the type involved in the present case is ordinarily not able to prove a precise sum abstracted from plaintiff's profits as a result of defendant's violation. These cases hold that the issues must be determined by resort to a fair approximation of the damages sustained. See Orkin Exterminating Co. v. Burnett, 160 N.W.2d 427, 430 (Iowa 1968); Eyerly v. Smith, 210 Iowa 1056, 1058-59, 231 N.W. 383, 385 (1930); Galucha v. Naso, 147 Iowa 309, 311, 126 N.W. 146, 147 (1910). See also cases collected in Annot. 127 A.L.R. 1152, 1156-65 (1933).

Applying this standard to the present case, we believe the evidence sustains the trial court's ultimate finding of damages. The trial court was justified in informing that the receipts of defendant sustained a causal relation to a corresponding loss of receipts to plaintiff. Eyerly, 210 Iowa at 1059, 231 N.W. at 385. From this premise the trial court made adjustments to comport with profit margins shown by the evidence to flow from gross receipts of the business. We do not disturb the trial court's award.

AFFIRMED.