IN THE COURT OF APPEALS OF IOWA

FILED
DEC 17 1987
CLERK SUPREME COURT

DAVID B. STEVENS,

Plaintiff-Appellant,

vs.

FRANK WATSON, JR., and **SEERY AND DOLLAR,** A Partnership,

Defendants-Appellees.

7-221
86-1197

440

Appeal from the Iowa District Court for Polk County (No. CL 45-26213), Richard A. Strickler, Judge.

Both parties appeal the district court's determination of damages for tortious interference and conversion. **AFFIRMED.**

Dwight W. James and Dennis P. Ogden of James & Galligan, P.C., Des Moines, for plaintiff-appellant.

Robert W. Seery of Seery & Dollar, Des Moines, and John J. Gajdel of Watson & Gajdel, Des Moines, for defendants-appellees.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

The plaintiff has appealed the district court's award of damages. He contends the evidence required a larger award of actual damages in the case of one client, Cora Hatcher. He also contends the district court erred by failing to award punitive damages and by failing to increase his actual damages by a factor corresponding to the rate of inflation since the damages were incurred in 1980.

The defendants have cross-appealed the award of the damages. They contend the evidence did not support the district court's award of actual damages in the case of a certain client, Carol Palmer. They also contend the district court should have reduced Stevens' damage award by the amount of certain bonuses to which Watson was allegedly entitled under his employment contract with Stevens. We affirm.

This is an appeal from the district court's award of damages following our remand to the court for a determination of damages. Our scope of review is for the corrections of errors at law. Iowa R. App. P. 4. Since this matter was tried to the court, the court's findings of fact have the force of a special verdict and are binding on us if supported by substantial evidence. Iowa R. App. P. 4; Iowa R. App. P. 14(f)(1). Substantial evidence is evidence that a reasonable mind would accept as adequate to reach a conclusion. C.F. Sales, Inc. v. Amfort, Inc., 344 N.W.2d 543, 553 (Iowa 1983). We view the evidence in the light most consistent with the judgment. R.E.T. Corp. v. Frank Paxton Co., 329 N.W.2d 416, 419 (Iowa 1983). Our deference to the trial court's finding of facts does not extend to its determinations of law. Id.; Blunt, Ellis & Loewi, Inc. v. Igram, 319 N.W.2d 189, 192 (Iowa 1982). The facts leading to this appeal are set forth fully in our August 29, 1985 opinion and will not be repeated here. We will recite the relevant facts as we review the issues presented.

The first issue presented is whether the trial court's order of fees to the plaintiff in the Cora Hatcher case is supported by substantial evidence. The trial court found the total number of hours spent on the Hatcher case was 346.3. The court also found that the defendant spent 180 hours on the matter after leaving the plaintiff's firm. The court then awarded the plaintiff the balance of the fee plus interest.

Plaintiff claims the court erred because it relied on the testimony of the defendant rather than the time sheets prepared during the case. He claims the defendant only spent 10.9 hours on the case. The defendant in his testimony stated he spent most of his time on this and one other case. The defendant also presented evidence that, after the Industrial Commissioner rendered a decision, he had to resist the administrative appeal and initiate the personal injury litigation. The case settled five months later.

Presented with this conflicting evidence, the trial court had to make a determination of which was more credible. The court found the defendant's statements as to time spent to be conclusive. These statements, in connection with the nature of the case and the time frame involved, constitute substantial evidence and support the trial court's determination of the fee award. We hold, therefore, the court's award was supported by substantial evidence and we will not disturb it.

The second issue presented is whether the trial court erred in failing to award the plaintiff a "make whole" inflation factor on converted fees. The trial court awarded the plaintiff both prejudgment and postjudgment interest, but the court did not include a "make whole" factor to account for inflation.

The plaintiff contends this "make whole" award was necessary because plaintiff could not be made whole since the effects of inflation have reduced the value the dollar since 1980 when the tortious conduct occurred. The defendant

argues there is no basis in Iowa law, statutory or case law, which would allows such an award. We agree with the defendant.

The fundamental principle of damages is to restore the injured party, as nearly as possible, to the position he would have been in had it not been for the wrong of the other party. F.S. Credit Corp. v. Shear Elevator, Inc., 377 N.W.2d 227, 234 (Iowa 1985); Ontario Livestock Comm'n Co. v. Flynn, 256 Iowa 116, 128, 126 N.W.2d 362, 369 (1964). The measure of damages in an action for conversion ordinarily is the fair and reasonable market value at the time and place of the taking. F.S. Credit Corp., 377 N.W.2d at 234. The measure of damages for tortious interference with contractual relations includes the pecuniary loss of the benefits of the contract; consequential losses for which the interference is a legal cause; and, emotional distress or actual harm to reputation if they are reasonably to be expected to result from the interference. Restatement (Second) of Torts § 774A (1977).

Iowa law allows for the consideration of inflation in determining future damages awards. See Schnebly v. Baker, 217 N.W.2d 708, 727-28 (Iowa 1974). The plaintiff is unable to cite authority in support of the allowance of a "make whole" inflation factor. This court has not found any such authority in Iowa law, and since the damage award in the Hatcher case places the plaintiff in nearly the same position he would have been in, we find no error in the trial court's refusal to award a "make whole" inflation factor.

The third issue presented is whether the trial court erred in failing to award plaintiff punitive damages. The plaintiff argues the defendant's conduct was wanton and willful and justifies an award of punitive damages.

Punitive damages are available for conversion and for tortious interference. Westway Trading Corp. v. River Terminal Corp., 314 N.W.2d 398, 404 (Iowa 1982) (tortious interference); Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393, 399

(Iowa 1977) (conversion). The defendant's actions must be characterized by legal malice. Midwest Mgt. Corp. v. Stephens, 353 N.W.2d 76, 82 (Iowa 1984). Legal malice can be established by showing wrongful conduct committed with willful disregard of another's rights. Id., Kimmel v. Iowa Realty Co., 339 N.W.2d 374 (Iowa 1983). Punitive damages are not recoverable as a matter of right and allowance of such damages is discretionary with the fact finder. We will reverse for abuse of discretion only when such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Rowen v. Le Mars Mut. Ins. Co. of Iowa,; Glenn v. Farmland Foods, Inc., 344 N.W.2d 240, 243 (Iowa 1984).

The trial court found there was an insufficient basis to find that the defendant's actions were wanton and with an utter disregard for the consequential results. While we do not approve of the defendant's conduct, we do not feel his actions support the imposition of punitive damages and that the trial court did not abuse its discretion in refusing the award.

The record shows the relationship between the parties has deteriorated and is now one characterized by acrimony and bitterness. The record also shows that the defendant's actions were taken in direct response to his perception of how the plaintiff would react to his leaving the firm. Through his actions, the defendant was found liable for both tortious interference and conversion. While the defendant's actions resulted in liability, the plaintiff has not shown defendant's actions were done in a wanton manner or in a utter disregard to the consequences. Furthermore, the record regarding the division of the fees shows that the defendant remitted a portion of the fees to the plaintiff. A dispute then arose between the parties over how much the fee should be. Beyond the failure to remit a larger fee, the plaintiff has not shown any reason punitive damages should be awarded.

We now address the defendant's cross-appeal. The defendant contends the trial court erred in its determination of the fees owed the plaintiff in the Palmer personal injury case. Again, the court was presented with substantial evidence on the amount of time spent on the case by each firm. He found that the defendant spent more time working on the case as a member of the plaintiff's firm. This result is consistent with the evidence. The record reveals the case arose out of a workers' compensation claim. Subsequent to the resolution of the workers' compensation claim, a personal injury suit was initiated. The evidence shows the personal injury case was being investigated and prepared concurrently with the workers' compensation claim. In light of this fact, we cannot say the trial court erred in the allocation of hours and awarding the plaintiff the larger portion of the fees.

The final issue presented is whether the trial court erred in failing to award Watson a bonus. The trial court found the record devoid of any evidence that would support an award for bonuses. The only evidence defendant can muster in support of his argument is that by agreement he was to receive bonuses. The amount of these bonuses was up to the discretion of the plaintiff. In contrast to this evidence, the defendant testified that he would not be entitled to a bonus on any case that was settled after he left the firm. The bonuses he now claims he is entitled to were for cases settled after leaving the plaintiff's firm. We hold, in light of the above evidence, that the trial court did not err in refusing to award the defendant any bonuses.

AFFIRMED.