IN THE COURT OF APPEALS OF IOWA

No. 7-412 / 96-1280

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DENA RIGGINS COLBY,

Plaintiff-Appellee,

vs.

DENNIS M. STEPHENS,

Defendant-Appellant.

FILED
SEP 24 1997

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge.

Defendant appeals from the district court's judgment awarding plaintiff damages for the breach of the parties' contract for the sale of plaintiff's insurance business to defendant. **AFFIRMED.**

Randall E. Nielsen of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellant.

Charles H. Biebesheimer of Stillman, Goranson, Stone & Lovell, Clear Lake, for appellee.

Considered by Cady, P.J., Huitink, J., and Schlegel, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

SCHLEGEL, S.J.

Dennis Stephens appeals an adverse judgment in a breach of contract action arising out of the purchase of an insurance business from Dena Colby. The district court found Dennis breached the contract for the purchase of the business by failing to make payments due under the contract. The court also rejected his claims Dena made fraudulent or negligent misrepresentations. We affirm.

Dena and Dennis were in the business of selling insurance. Dena had thirty-five years of experience and at one time employed twenty-nine agents. She began to consider selling her insurance business and structuring the sale to provide additional retirement income. Dennis contacted Dena and began discussing the possibility of buying the business. Dena agreed to sell her client list to Dennis in exchange for a guarantee of $500 per month for ten years. To the extent Dena's renewals did not reach $500 in any given month, Dennis would make up the difference.

Dennis's attorney prepared a written agreement under which Dena would deliver her client list of approximately 3000 insurance clients to Dennis. In return, Dennis would guarantee Dena received renewals of $500 per month for ten years by making up the difference between actual renewals and $500. On July 1, 1990, Dena and Dennis executed the agreement. On June 12, 1992, Dennis wrote Dena and expressed his dissatisfaction with how the agreement was working. Ultimately, Dennis stopped making payments under the agreement.

The district court found Dena fully performed under the contract by delivering her client list to Dennis. The court found Dennis's claims of fraudulent or negligent misrepresentation were without merit. The court ruled Dennis breached the contract by failing to make the required payments, and awarded past and future damages. Dennis argues substantial evidence does not support the court's finding Dena fully performed under the contract and the court erred by finding no misrepresentation existed.

I. Scope of Review

This action was filed and tried as a law action, so our review is at law. Iowa R. App. P. 4; *Beckman v. Carson*, 372 N.W.2d 203, 206 (Iowa 1985). We review the district court's determinations for errors in its application of legal principles and conclusions of law. *Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995). When the district court has applied erroneous rules of law that materially affected its decision, we will reverse. *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 (Iowa 1995).

The district court's findings of fact carry the force of a special verdict and are equivalent to a jury verdict. Iowa R. App. P. 4; *Papenheim*, 530 N.W.2d at 671. We are bound by the court's factual findings if substantial evidence supports them. *Vaughn v. Ag Processing, Inc.*, 459 N.W.2d 627, 632 (Iowa 1990). Evidence is substantial if reasonable minds would find it adequate to reach the same findings,

even if we might draw a contrary inference. *Frontier Properties Corp. v. Swanberg*, 488 N.W.2d 146, 147 (Iowa 1992). The possibility of drawing two inconsistent conclusions from the same body of evidence does not prevent a finding from being supported by substantial evidence. *Baty v. Binns*, 354 N.W.2d 777, 780 (Iowa 1984); *see also Papenheim*, 530 N.W.2d at 671 (holding evidence is not insubstantial merely because it would have supported contrary inferences).

When determining whether evidence is substantial, we view the evidence in the light most favorable to upholding the district court's judgment. *Falczynski*, 533 N.W.2d at 230. We do so whether the evidence is contradicted or not, and we do not weigh the evidence or pass on the credibility of witnesses. *Carson v. Mulnix*, 263 N.W.2d 701, 705 (Iowa 1978). We construe the district court's findings broadly and liberally, and in case of doubt or ambiguity, construe the court's findings of fact to uphold rather than defeat the judgment. *Papenheim*, 530 N.W.2d at 671.

II. Performance

Substantial evidence supports the district court's finding Dena fully performed under the contract. In addition to her client list, Dena delivered her files and index cards to Dennis's office and these were placed in a special file cabinet. The list contained over 3000 names, and although Dennis testified he did not receive a list of 3000 names, other evidence was to the contrary and it was up to the district court as fact finder to resolve conflicts in the evidence.

Dennis's office manager testified she saw the client list Dena provided, and an insurance broker saw Dena deliver boxes of cards and files. At least three drawers of file cabinets were devoted to "Dena's files" and Dennis would not always return files after removing them. The contract, prepared by Dennis's attorney, provided Dena would deliver a client list. Dena testified the list contained names of persons to whom she or her agents had sold insurance Although Dennis was interested in life insurance clients, the agreement did not limit the client list to any particular type of client. Dennis worked under the agreement for two years without objection, only then maintaining the agreement "ha[d] not been good for [him]." In a memo to Dena, Dennis conceded some of the names on the index cards were clients of agents who had worked for her.

III. Misrepresentation

Dennis based his claims for rescission and equitable estoppel on alleged misrepresentations made by Dena. To prevail on his claims, Dennis had to show he relied on a false and material misrepresentation made by Dena. *Coachmen Indus., Inc. v. Security Trust & Sav. Bank*, 329 N.W.2d 648, 650 (Iowa 1983); *Grefe v. Ross*, 231 N.W.2d 683, 684 (Iowa 1975). Based on facts supported by substantial evidence, we hold the trial court correctly resolved these claims.

Dena informed Dennis not all the names on the client list were current. She did not indicate the clients would be exclusively life insurance clients, and Dennis

worked the files and list for two years before believing the agreement was not working out as he expected. Dena provided copies of her income tax returns to Dennis so he could verify her income. At most, the facts may suggest misunderstanding or mistake, but we do not express any opinion on this issue because it was not raised by the parties.

AFFIRMED.