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IN THE COURT OF APPEALS OF IOWA

407

Filed September 6, 1984

RONALD DEAN WOOD,

Plaintiff-Appellant,

vs.

AID INSURANCE COMPANY (MUTUAL)

Defendant-Appellee,

4-290
83-1395

Appeal from the Iowa District for Jones County—Thomas M. Horan, Judge.

On appeal, plaintiff asserts that the court should not have given certain jury instructions, and that the instructions prejudiced plaintiff's reasonable expectations case against the insurer by suggesting that he was not "reasonable." Further, plaintiff appeals from trial court's denial of his motion for new trial. AFFIRMED.

Steven K. Warbasse, of White & Warbasse, Cedar Rapids, for plaintiff-appellant.

John K. Von Lackum, of Elderkin, Tirnie, Von Lackum & Elderkin, Cedar Rapids, for defendant-appellee.

Considered by Oxberger, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

Nature Of The Case

This is an appeal by the plaintiff, Ronald Dean Wood, from the Verdict and Judgment entered in this matter. Plaintiff also appeals from the trial court's ruling denying plaintiff's Motion for New Trial.

This matter was tried to a jury and judgment was entered against the plaintiff pursuant to the verdict of the jury. Plaintiff filed a Motion for New Trial alleging principally that the trial court had erred in instructing the jury that if they found that Mr. Wood had engaged in certain conduct, such conduct would be evidence of negligence on his part. The plaintiff's motion was denied. Plaintiff appealed.

Facts

In 1970, the plaintiff purchased a farm with a horse barn. At all times relevant to this action, the plaintiff purchased his insurance through Arno Lawson d/b/a Lawson Insurance Agency, a defendant in this lawsuit but not a party to this appeal. This insurance coverage included casualty insurance for property damage. Defendant AID Insurance Company was the insurer for Mr. Wood through Lawson Insurance Agency.

In the late 1970's, the plaintiff undertook to remodel the existing horse barn. The initial construction involved installing an upper-level grain storage facility in which had been the haymow of the barn. The haymow occupied all of the second floor of the barn, which is a two-story facility. The first crop of grain was stored in the overhead bins in 1977 or 1978. The next project involved the installation of a hog farrowing facility on the main floor of the barn. The first set of pigs was farrowed in this facility on December 1, 1980, although some improvement still had to be made at that time.

At some point in time during the fall of 1980 the plaintiff was contacted by Vance Wickum, an agent for Farm Bureau Insurance. Mr. Wickum claimed he was

selling an all-risk policy, as opposed to a named perils policy, which would provide plaintiff with better coverage. The plaintiff went to his AID insurance agent, Mr. Lawson, to question him concerning the differences in coverage between the two policies. At this point there was some dispute at trial as to what was said at this meeting.

The plaintiff contends that he told Mr. Lawson that he was considering purchasing an "all risk policy," and Mr. Lawson stated that there was no such thing as an "all risk policy." Further, the plaintiff alleges that Mr. Lawson made statements that reassured plaintiff concerning the completeness and competitiveness of his present insurance coverage with AID. The plaintiff further contends, based upon his conversation with Mr. Lawson, he continued to purchase his casualty insurance through Mr. Lawson and from AID Insurance Company. On November 19, 1981, during the policy period of the policy he purchased as a result of his conversation with Mr. Lawson in December of 1980, plaintiff's barn collapsed in the early morning hours, causing the loss of several hundred hogs and several thousand bushels of grain. AID Insurance denied coverage for collapse of buildings with the exception that they did pay for the dead livestock, but no payment was made for grain or the structure and fixtures themselves.

It is Mr. Lawson's contention that he told the plaintiff "all-risk" did not mean all risk coverage, that plaintiff's policy with AID was not an all-risk policy but rather a standard perils policy. Lawson denied he was asked to compare any Farm Bureau policy with AID's policy. He denied he was asked to obtain an all-risk policy. He denied he was asked to obtain collapse coverage on Mr. Wood's barn.

There was testimony from four (4) experts at trial concerning the cause of the collapse of the plaintiff's barn. All four, one of whom had been hired by the plaintiff to determine the cause of the mishap, testified that wind played no

substantial role in the destruction of plaintiff's horse barn. The presence or absence of wind became a factor in this appeal, as Mr. Wood claimed he was covered under his policy. One, an engineer by the name of Richard Pugh, attributed the collapse to a serious overload of grain, which he estimated was in excess of 500 tons. There was evidence that the bin was poorly designed and constructed in that there was inadequate cabling and bracing of walls, coupled with inadequate floor joists. A weather expert testified that there was no significant wind in the area at the time of the incident.

Law And Application

In this appeal we are asked to decide the issue of whether the trial court erred in giving repetitive jury instructions containing language that certain conduct by the plaintiff-appellant constituted evidence of his own negligence. These instructions were given upon request from Defendant Lawson pursuant to his theory of contributory negligence on the part of the plaintiff. An additional basis for appeal is the issue of whether the court erred in overruling plaintiff's motion for a new trial on this ground.

This appeal is submitted to us for correction of errors allegedly committed by the court below. Our scope of review is limited and as a result the trial court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. of App. P. 14(f)(1)(1983). In ruling upon the motion for a new trial, the lower court had broad, though not unlimited, discretion in determining whether the verdict effectuated substantial justice between the parties. Iowa R. of App. P. 14(f)(3)(1983). The record in this case will be reviewed in a light most favorable to the judgment and any ambiguities will be construed to uphold rather than defeat the judgment. Moody v. Bogue, 310 N.W.2d 655,658 (Iowa Ct. App. 1981).

The trial court instructed based upon the issues between the parties. Between plaintiff and Defendant Lawson there involved the negligence theories

advanced by the plaintiff and the contributory negligence theories advanced by Lawson. Pleadings and evidence supported such theories. It was the court's duty to instruct on such issues. 5 AM.Jur.2d Appeal and Error §811. In the action against AID, the court instructed as to both theories of recovery advanced by the plaintiff. There were the theories of liability based upon coverage by the express language of the policy and, also, liability based upon plaintiff reasonably expecting that the loss he sustained would be covered by the policy. The plaintiff further requested an instruction explaining the doctrine of reasonable expectations, which was given.

Everhard v. Thompson, 202 N.W.2d 58 (Iowa 1972) controls the first basis of this appeal. In Everhard the court held that when no complaint is made as to instructions concerning the alleged negligence of the defendant, and the jury later determines that the defendant was not negligent, alleged errors involving instructions dealing with the contributory negligence theory involved in the case is harmless and as a matter of course nonprejudicial. Id. at 61. The alleged errors as to the contributory negligence instructions are mooted by the jury determination that there was no negligence on the part of the defendant. Id. at 62. We recognize the fact that even correct statements of law, if repeated to the point of undue emphasis, may constitute reversible error. Clinton Land Co. v. M/S Associates, Inc., 340 N.W.2d 232 (Iowa 1983). However, we do not believe that instructions 34(a)-(c), 35-38 were so repetitive in certain fact recitations as "evidence of negligence" so as to prejudice the jury against plaintiff's case.

In addition, based upon the issues before the trial court, the theories of recovery advanced by both parties and the evidence presented at trial, we find that there was substantial evidence to support the verdict of the jury. The verdict effectuated substantial justice between the parties to this lawsuit.

The granting or denial of a Motion for New Trial is discretionary with the trial court. We will defer to the lower court ruling if it effectuates substantial justice between the parties. Iowa R. of App. P. 14(f)(3). We find that it did.

AFFIRMED.