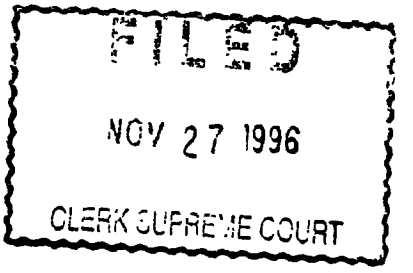
IN THE COURT OF APPEALS OF IOWA

No. 6-338 / 95-1541



CLAUDIA NEHRING,

Appellee,

vs.

PERRY L. UPCHURCH,

Appellant.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge.

Perry Upchurch challenges the order entering judgment on the jury verdict in Claudia Nehring's favor on her interference with potential contract claim. **AFFIRMED.**

William T. Talbot of the Parker Law Firm, Nevada, for appellant.

Joseph R. Cahill of the Cahill Law Offices, Nevada, for appellee.

Heard by Cady, P.J., Huitink, and Streit, JJ.

CADY, P.J.

The primary issue in this appeal is whether substantial evidence supports a jury verdict on a claim for intentional interference with a prospective business relationship. We affirm the judgment entered by the district court.

Claudia Nehring owned and operated a florist business in Nevada, Iowa. She purchased the business in 1986, and operated it under the name of "Flowers by Claudia."

Perry Upchurch managed the building which housed Nehring's florist business. Nehring had been a tenant in the building from the time she started her business. Upchurch purchased the building in November 1993. Nehring claimed Upchurch told her prior to purchasing the building he wanted her to commit to a ten year lease. Nehring agreed, but a written lease was never signed.

In December 1993, Nehring approached Sabine Peterson, an employee of Nehring's, and inquired if she was interested in purchasing the business. The discussions eventually led to an offer by Peterson to purchase the business on contract for $75,000. Peterson communicated this offer to Nehring on February 18, 1994. Nehring told Peterson she would consider the proposal and give her a reply in a few days.

On February 23, 1994, Peterson told Nehring she was no longer interested in purchasing the business. The next day, Upchurch told Nehring her lease was terminated effective May 31, 1994.

Nehring subsequently learned Peterson had discussed the possible purchase of the flower business with Upchurch. Upchurch told Peterson the business was overpriced. Peterson and Nehring also discussed an arrangement for Peterson to manage a flower business which Upchurch would open.

Nehring brought this action against Upchurch, Peterson and Upchurch's wife. The district court dismissed all the claims except the claim against Upchurch for interference with her prospective contract with Peterson. Following the trial, the jury awarded Nehring $56,250, but denied her request for emotional and punitive damages.

Upchurch appeals. He claims the district court erred in failing to direct a verdict in his favor on the claim for intentional interference with a prospective contract. He also claims the district court erred in instructing the jury on damages.

I. Scope of Review

Our review is at law. When reviewing a trial court ruling on a motion for directed verdict, we review all the evidence to determine whether or not a jury question was generated. *Toney v. Casey's General Stores, Inc.*, 460 N.W.2d 849, 852 (Iowa 1990). The evidence is viewed in a light most favorable to the party opposing the motion. *Id.* If reasonable minds might draw different inference's from the facts, a jury question is engendered. *Id.*; Iowa R. App. P. 14(f)(17).

II. Tortious Interference

The tort of intentional interference with prospective contract or business relationship imposes liability on a person who intentionally and improperly interferes with a person's business expectations, such as causing a third person not to enter into a prospective business relationship or contract. *Gordon v. Noel*, 356 N.W.2d 559, 563 (Iowa 1984). It is similar to the tort of intentional interference with a contract, except a greater degree of proof is required to establish the motive element of intentional interference with a prospective contract. *Burke v. Hawkeye Nat'l Life Ins. Co.*, 474 N.W.2d 110, 114 (Iowa 1991). In a claim involving interference with a prospective contract, the plaintiff is held to a strict standard of substantial proof the defendant acted with a predominately improper purpose. *Holdsworth v. Nissly*, 520 N.W.2d 332, 336 (Iowa App. 1994). It requires the plaintiff to prove the defendant intended to financially injure or destroy plaintiff. *Id.* at 336. This strict standard serves "to avoid opening the door to virtually limitless suits of a highly speculative and remote nature." *Page County Appliance Center, Inc., v. Honeywell Inc.*, 347 N.W.2d 171, 178 (Iowa 1984).

Although Upchurch broadly challenged the sufficiency of the evidence to support the tort of intentional interference with a prospective contract, the thrust of the claim on appeal targets the motive element. Thus, we must decide if the record reveals substantial proof Upchurch was primarily motivated to financially injure or destroy Nehring in interfering in her prospective contract with Peterson.

We review Upchurch's actions, together with any inferences reasonably drawn from the facts and circumstances to resolve this issue. *See Economy Roofing & Insulating v. Zumaris*, 538 N.W.2d 641, 652 (Iowa 1995). Although the issue is close, we believe substantial evidence exists to support a finding Upchurch intended to drive Nehring out of business so he could enter the flower business with less competition. This motive is sufficient to establish Upchurch intentionally and improperly interfered with the relationship between Nehring and Peterson.

Upchurch abruptly terminated the lease with Nehring shortly after Peterson told Nehring she was no longer interested in purchasing the business. Peterson met with Upchurch prior to rejecting Nehring's offer, and Upchurch told her the offer was too high. More importantly, there was testimony Peterson discussed plans with Upchurch to manage a flower business which Upchurch would open.

It is also important to recognize Nehring and Upchurch had a good relationship over a period of many years, yet Upchurch terminated the lease without explanation. Furthermore, Nehring understood from her prior discussions and negotiations with Upchurch that she would be a long-term tenant in the building. Nehring never violated the terms of the lease. She gave Upchurch no reason to abruptly and inexplicably terminate the tenancy. We believe it is reasonable to infer, in light of the nature and timing of the other surrounding circumstances, an improper motive or purpose in interfering with the prospective contract between Nehring and Peterson. *Nesler v. Fisher Ampebard Co., Inc.*, 452 N.W.2d 191, 198 (Iowa 1990) (must

consider motive behind acts rather than acts themselves in determining whether conduct is improper). A jury could reasonably infer Upchurch predominately intended to financially injure Nehring so she would be eliminated as a competitor to his planned business operation.

Upchurch argues competition is not an improper interference. We acknowledge the scope of conduct which can be considered to be improper interference is narrowed when the interference comes from a competitor. Restatement (Second) of Torts § 768 (1979). When one party seeks to acquire a prospective contractual relation, the other is generally privileged to try to acquire it as well. Restatement (Second) of Torts § 768 cmt. a (1979).

Upchurch never asserted the special privilege of competition at trial. Thus, the issue has not been preserved on appeal. *See Whewell v. Dobson*, 227 N.W.2d 115, 119-21 (Iowa 1975). Even so, the privilege to compete relates to the diversion of business from a competitor, not the restraint of competition. Restatement (Second) of Torts § 768 cmt. a, f (1979).

We conclude substantial evidence supports all the elements of interference with a prospective contract, including the element that Upchurch's conduct revealed a primary motive to financially harm Nehring's business to advance his own financial interests. The trial court correctly overruled Upchurch's motion for a directed verdict. The jury was presented with sufficient evidence to find Upchurch improperly interfered with Nehring's prospective business relationship with Peterson. *See*

Hunter v. Board of Trustees, 481 N.W.2d 510, 518 (Iowa 1992) (jury may rely on its common feel for the state of community mores and how they would operate upon the facts in deciding whether conduct is improper).

III. Jury Instructions

Upchurch claims the district court erred in instructing the jury on the measure of damages and failing to give the jury a requested instruction on mitigation of damages. Upchurch claims there was insufficient evidence of lost profits and lost benefits from the prospective contract to support the damage instruction. We conclude Upchurch failed to preserve error.

We are a court of review and only consider objections to jury instructions if properly raised before the district court. *Collister v. City of Council Bluffs*, 534 N.W.2d 453, 454 (Iowa 1995). In this case, Upchurch failed to lodge at the time of trial the specific objections to the damage instructions articulated on appeal. Furthermore, Upchurch merely submitted a written requested instruction on mitigation of damages to the district court prior to the time the court prepared its instructions. This was insufficient to preserve error. *See Bauer v. Cole*, 467 N.W.2d 221, 224 (Iowa 1991). When the district court asked counsel to make objections and exceptions to the jury instructions prior to closing statements, Upchurch was required to preserve error by asserting an objection and specifically alerting the trial court of its failure to include the requested instructions.

See id. This was not done, and we must decline to consider the grounds of error.

AFFIRMED.