IN THE COURT OF APPEALS OF IOWA

No. 1-155 / 99-2053
Filed June 13, 2001

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CLERK SUPREME COURT

R. K. RICHARDS,
Plaintiff-Appellee,

vs.

MATTHEW BOCKES, by his next friend, ROGER BOCKES,
Defendant-Appellant.

Appeal from the Iowa District Court for Tama County, L. Vern Robinson (summary judgment) and Douglas S. Russell (trial and posttrial motion), Judges.

Defendant appeals from the district court ruling granting the plaintiff damages in his action for recovery of a government farm program payment and denying the defendant damages for the plaintiff's wrongful termination of a farm lease. **AFFIRMED.**

Ronald J. Pepples, Parkersburg, for appellant.

R. K. Richards, Ames, pro se.

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

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HUITINK, P.J.

I. Background Facts and Proceedings.

R.K. Richards sued his former tenant Bockes to recover a $1938 farm program payment Bockes collected in anticipation of renewal of his 1996 farm tenancy. Bockes denied Richards' claims and counterclaimed for wrongful termination of his farm tenancy and resulting loss of income for crop years 1997, 1998 and 1999.

After a bench trial the district court found:

> In March 1997, Roger Bockes assumed the leases were still in effect and contacted the Plaintiff [Richards] about farming the tracts that year. He was told by the Plaintiff that he did not want to rent to the Bockes family. Roger asserted the Defendant's [Matthew Bockes'] right to farm the tracts in 1997. Robert Bockes, the Defendant's uncle, later met with the Plaintiff and indicated the family's interest in farming the tracts in 1997 but was also turned down. Finally, on the advice of his attorney, the Defendant mailed the 1997 rent checks to the Plaintiff for both tracts on April 29, 1997. The Plaintiff signed a postal receipt for the letter containing the rent checks on May 8, 1997, but returned the checks to Roger Bockes the same day with a letter of his own advising the Bockes family to "stay off the property." Thereafter, the Defendant took no steps to plant a crop in 1997, stating that he did not want to breach the peace following the trespass warning from the Plaintiff. The payment of the 1997 rent was effective on mailing, not on receipt, and so was timely made. Clearly, the Defendant did not waive his rights under the lease in 1997 and is not estopped from doing so. Accordingly, the Defendant was entitled to farm the tracts in 1997 and is entitled to recover any income he would have earned that year from the Plaintiff as damages.
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> The fact of the matter is, and the evidence shows, that Plaintiff actually did farm the tracts in 1997. He planted corn as the Defendant would have done and obtained a verifiable yield of 106.74 bushels per acre which he was able to sell at $2.4196 per bushel, realizing an income from the sale of the crop of $26,954.69. The Court finds the Plaintiff's income figure more reasonable than that of the Defendant. The evidence indicates that taking this amount and adding to it the government support payments for

> 1997, the Defendant would have suffered a loss farming the tracts in 1997 using either his estimate of expenses or the Plaintiff's actual statement of expenses. Accordingly, although the Defendant is entitled to the benefit of the leases for 1997, he suffered no damages.

Bockes' claims for damages for crop years 1998 and 1999 were denied. The court found he waived his rights to farm Richards' land by failing to timely pay cash rent for crop years 1998 and 1999. The district court also determined that Richards was entitled to the farm program payment under applicable U.S.D.A. regulations and entered judgment against Bockes for the amount claimed.

On appeal Bockes argues the district court's finding that he suffered no damages in 1997 lacks sufficient evidentiary support. Bockes also contends he was entitled to damages for the 1998 and 1999 crop years and that the court improperly found he was required to tender payment in 1998 for the continuation of the lease. Finally, Bockes argues the court improperly found that Richards was entitled to the USDA advance payment.

II. Standard of Review.

In a law action, we review a district court's determinations for errors in its application of legal principles and conclusions of law. Iowa R. App. P. 4; *Data Documents, Inc. v. Pottawattamie County*, 604 N.W.2d 611, 614 (Iowa 2000). Where the trial court sits as the finder of fact, the court's findings have the effect of a jury verdict and bind us if substantial evidence supports them. *Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. *Bluffs*

Dev. Co. v. Board of Adjustment, 499 N.W.2d 12, 14 (Iowa 1993). Evidence is not insubstantial merely because it would have supported contrary inferences. *Grinnell Mut. Reinsurance Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988).

III. Termination of Bockes' Farm Tenancies.

Termination of farm tenancies is controlled by statute. Iowa Code section 562.6 provides:

> **Agreement for termination.**
> If an agreement is made fixing the time of the termination of the tenancy, whether in writing or not, the tenancy shall cease at the time agreed upon, without notice. In the case of farm tenants, except mere croppers, occupying and cultivating an acreage of forty acres or more, the tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7 whereupon the tenancy shall terminate March 1 following. However, the tenancy shall not continue because of absence of notice if there is default in the performance of the existing rental agreement.

Holdover tenancies as well as those under an original lease are subject to the same requirements. *Ganzer v. Pfab*, 360 N.W.2d 754, 756 (Iowa 1985); *Davenport Bank & Trust Co. v. Krenz*, 256 Iowa 1171, 1176, 130 N.W.2d 698, 700 (1964); *Pollock v. Pollock*, 247 Iowa 20, 25, 72 N.W.2d 483, 486-87 (1955).

Service of the required notice is excused if the tenant fails to timely pay rent. *Riggs v. Meka*, 236 Iowa 118, 123, 17 N.W.2d 101, 104 (1945). A farm tenancy may also be terminated without the required notice by agreement of the parties, by proof of estoppel, or by waiver. *Laughlin v. Hall*, 236 Iowa 990, 992, 20 N.W.2d 415, 416 (1945).

Waiver is the voluntary and intentional relinquishment of a known right. *Iowa Grain v. Farmers Grain & Feed Co.*, 293 N.W.2d 22, 25 (Iowa 1980). The essential elements of waiver are the existence of a right, actual and constructive knowledge of that right, and an intention to relinquish that right. *Scheetz v. IMT Ins. Co.*, 324 N.W.2d 302, 304 (Iowa 1982).

There is no dispute concerning Richard's failure to serve the required notice of termination of Bockes' tenancy by September 1, 1996, or in subsequent years. Bockes' timely tender of the required rent for crop year 1997 and failure to do so in subsequent years is also undisputed.

Based on these facts the district court correctly determined Bockes' farm tenancy carried over to crop year 1997. These facts, combined with Bockes' knowledge of his rights as a holdover tenant, and failure to assert them support the district court's conclusion that Bockes waived his rights as a holdover tenant for crop years 1998 and 1999. His argument that tender of the rent for 1998 and 1999 was unnecessary fails to distinguish notice excused for default from that excused by waiver.

We affirm on this issue.

IV. Damages for 1997 Crop Year.

The resolution of this issue is controlled by our standard of review. *See generally Vaughn v. Ag Processing, Inc.*, 459 N.W.2d 627, 639 (Iowa 1990) (Harris, J., dissenting) ("It is for the finder of fact to determine the credibility of witnesses, weigh the evidence, and to decide what evidence to accept or reject."). The district court's determination of damages was based on Richards'

testimony as to the actual yield of the relevant farmland in 1997 and the prices at which it sold, accorded with Bockes' testimony as to his expected costs. Bockes was unable to point to any evidence demonstrating that his estimated yield and selling price would be more accurate figures for calculating damages than Richards' actual yield and selling prices. We therefore find Richards' testimony was sufficient to support the district court's damage award. We also affirm on this issue.

V. USDA Farm Service Agency Payment.

Finally, we also reject Bockes' assertion that the court erred in finding that he was not entitled to the 1997 USDA farm service agency advance payment. The Code of Federal Regulations section 1400.201 provides: "To be considered a person who is eligible to receive payments with respect to a particular farming operation, a person must be an individual or entity actively engaged in farming with respect to such operation." Because Bockes did not farm the disputed land in 1997, he cannot be considered to have been "actively engaged" in such activity. We therefore affirm on this issue.

VI. Summary.

We have carefully considered all of the remaining arguments raised by the parties and conclude that they are without merit or otherwise resolved by the foregoing. The judgment of the district court is affirmed.

AFFIRMED.

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