IN THE COURT OF APPEALS OF IOWA

No. 1-199 / 00-1105
Filed June 29, 2001

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CLERK SUPREME COURT

KEVIN SCHARF,
Plaintiff-Appellant,

vs.

GREG'S LAWN SERVICE, INC., and GREG SCHARF,
Defendants-Appellees.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

Kevin Scharf appeals following a trial on his action against his brother and his brother's lawn care service. **AFFIRMED.**

Webb L. Wassmer of Simmons, Perrine, Albright & Elwood, P.L.C., Cedar Rapids, for appellant.

Kevin H. Collins and Sarah J. Gayer of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellees.

Heard by Sackett, C.J., and Huitink and Streit, JJ.

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STREIT, J.

A business relationship between brothers fell apart because of indefinite terms and poor performance. We affirm the trial court's finding the dealings between the brothers were too uncertain to be an enforceable contract.

I. Background Facts & Proceedings.

In the mid-1990s, Kevin Scharf and Greg's Lawn Service, Inc. had a mutually beneficial relationship. Kevin (Best Lawn Fertilizing Service) fertilized many of Greg's Lawn Service's customers. Kevin sued Greg and Greg's Lawn Service after this relationship disintegrated.

Kevin formed Best Lawn Fertilizing Service in 1993 or 1994. Greg testified he and Kevin agreed "[i]f he could do the [fertilizing] job, he would have our customers for as long as he was doing a satisfactory job." Kevin claimed they also orally agreed he would pay Greg's Lawn Service for supplying him with customers when he became "financially secure." He further testified they agreed he would not mow lawns and Greg's Lawn Service would not fertilize.

Greg's Lawn Service supplied Kevin with nearly all of his customers. As explained by Greg, he "did the sales, got [Kevin's] contracts signed." This worked reasonably well through 1994. In the spring of 1995 Greg's Lawn Service refused to give Kevin his customer-signed contracts until he agreed he would pay Greg's Lawn Service a percentage of his revenues.[1] After he received the contracts, he began to neglect some of his job-related responsibilities. He did not timely respond to his customers' concerns and complaints, did not complete

[1] The terms of this written agreement are unspecified. There was no written agreement offered into evidence.

some jobs, and did not bill for others. Kevin was suffering from mental health problems at the time.

In January 1996 Greg told Kevin that it "just isn't working out, we're going to take back the customer base." A few months later, Kevin was involuntarily committed to a mental health center. He was an in-patient at the center for fifteen months. He has never returned to fertilizing.

In 1998 Kevin filed suit against Greg and Greg's Lawn Service. In his petition he asserted claims of breach of contract, civil conspiracy, tortious interference with a contract, tortious interference with a prospective business relationship, intentional infliction of emotional distress, and misappropriation of trade secrets. Kevin dismissed the latter two claims before trial. The trial court directed verdicts in favor of Greg and Greg's Lawn Service on the breach of contract and civil conspiracy claims, and the jury found in favor of Greg and Greg's Lawn Service on the remaining tortuous-interference claims. The trial court denied Kevin's subsequent motion for new trial.

Kevin appeals. He claims the trial court erred in directing verdicts on his breach of contract and civil conspiracy claims, excluding evidence of Greg's alleged attempt to force their father Dale out of Greg's Lawn Service, and denying his motion to compel.

II. Directed Verdicts.

We review the trial court's decision to direct verdicts on Kevin's breach of contract and civil conspiracy claims for the correction of errors of law. Iowa R. App. P. 4. "A defendant's motion for directed verdict should be denied if there is

substantial evidence to support the plaintiff's claim." *Determan v. Johnson*, 613 N.W.2d 259, 261 (Iowa 2000). "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990).

A. Breach of Contract Claim.

Greg and Greg's Lawn Service moved for a directed verdict on Kevin's breach of contract claim arguing Kevin "failed to prove the contract . . . with any degree of specificity such that the Court could determine the relative duties of the parties." The trial court directed a verdict for Greg and Greg's Lawn Service on the claim.

As this court has stated,

> To prove the existence of an oral contract, the terms must be sufficiently definite for a court to determine with certainty the duties of each party, the conditions relative to performance, and a reasonably certain basis for a remedy. Where a contract appears to exist, courts are reluctant to find it too uncertain to be enforceable. However, when the terms are not definite, courts are reluctant to impose reasonable terms on contracting parties.

Gallagher, Langlas & Gallagher v. Burco, 587 N.W.2d 615, 617 (Iowa Ct. App. 1998) (citations omitted).

Kevin contends the parties entered an oral contract in January 1993. According to Kevin, this contract had the following terms: (1) He would provide fertilizing and weed control services for Greg's Lawn Service's customers; (2) he would begin paying Greg's Lawn Service for supplying him with customers when he became "financially secure"; and (3) he would not provide mowing services and Greg's Lawn Service would not provide fertilizing or weed control services.

These terms are too indefinite for us to determine the parties' respective duties, the conditions relative to performance, and a reasonably certain basis for a remedy. *See Gallagher*, 587 N.W.2d at 617. We cannot, for example, ascertain the particulars of Kevin's payment obligation.[2] As noted above, Kevin testified he and Greg agreed he would begin paying Greg's Lawn Service for supplying him with customers when he became "financially secure." He defined "financially secure" as follows:

> To me it was . . . where I [could] afford to be able to move out of the neighborhood where I was, because on my block, on the southeast side of the town, there was a shooting on each side of the block, so I was really nervous about living there. Also to have my credit cards paid off and my equipment paid for at that point.

Kevin and Greg at best agreed Kevin would begin paying Greg's Lawn Service an unknown amount of money at an unknown time. This indefinite term is akin to an invalid agreement to agree. *See Whalen v. Connelly*, 545 N.W.2d 284, 293 (Iowa 1996). Kevin has not proven the existence of an oral contract. The duties and terms of agreement are too indefinite to give legal effect to the parties' purported oral contract.

Kevin argues "[s]ince the parties actually performed, an oral contract must have existed." *See In re Estate of Ohrt*, 516 N.W.2d 896, 901 (Iowa 1994) ("Courts spend every effort to avoid [finding a contract too uncertain to be unenforceable] and, in doing so, consider surrounding circumstances and conduct of the parties."). The parties' conduct after January 1993 is inconclusive. For example, Kevin notes that in 1993 and 1994 he provided fertilizing and weed

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[2] The alleged 1995 written agreement, not being introduced into evidence, has no bearing on these matters.

control services for some of Greg's Lawn Service's customers and never paid anything to the company for supplying him with those customers. Such conduct is consistent with Kevin's assertion his payment obligation did not begin until he was "financially secure"—but is also consistent with Greg's assertion the parties simply had an informal, nonbinding arrangement whereby he supplied Kevin with customers and no money exchanged hands. Neither this conduct nor any of the other conduct noted by Kevin proves the parties had an enforceable oral contract.

We agree the parties had a mutually beneficial relationship. A symbiotic relationship alone is not enough to prove the existence of a contract. The trial court properly directed a verdict on Kevin's breach of contract claim.

B. Civil Conspiracy Claim.

Greg and Greg's Lawn Service also moved for a directed verdict on Kevin's civil conspiracy claim arguing "[t]here was a complete and utter failure of proof." The trial court directed a verdict for Greg and Greg's Lawn Service on the claim.

"A civil conspiracy requires proof of an agreement or understanding [between two or more persons] to effect a wrong against another." *Robbins v. Heritage Acres*, 578 N.W.2d 262, 265 (Iowa Ct. App. 1998). "Civil conspiracy is not in itself actionable." *Basic Chems., Inc. v. Benson*, 251 N.W.2d 220, 233 (Iowa 1977). "Rather, in order for liability to attach, there must be an act causing injury, which is actionable, undertaken in furtherance of the conspiracy." *Lindaman v. Bode*, 478 N.W.2d 312, 317 (Iowa Ct. App. 1991).

Kevin contends Greg conspired with Donna Scharf, Greg's wife, to take actions that violated the parties' oral contract. As was discussed above, the parties did not have an enforceable oral contract. Kevin thus does not have a viable civil conspiracy claim. *See id.* The trial court properly directed a verdict on Kevin's civil conspiracy claim.

III. Exclusion of Evidence.

We review the trial court's exclusion of evidence of Greg's alleged attempt to force Dale out of Greg's Lawn Service for a correction of errors at law. Iowa R. App. P. 4. "Relevancy and materiality of evidence are usually matters of trial court discretion." *Carter v. MacMillan Oil Co.,* 355 N.W.2d 52, 55 (Iowa 1984). "We will not interfere in those decisions unless the trial court clearly abused its discretion to the prejudice of the complaining party." *Iowa–Illinois Gas & Elec. Co: v. Black & Veatch*, 497 N.W.2d 821, 826 (Iowa 1993).

Greg and Greg's Lawn Service filed a motion in limine seeking to exclude any evidence regarding disputes involving other members of the Scharf family. Kevin resisted the motion, arguing evidence Greg forced their father, Dale, out of Greg's Lawn Service was relevant pursuant to Iowa Rule of Evidence 404(b). His offer of proof was as follows:

> Essentially, if Dale Scharf had been allowed to testify about his difficulties with Greg Scharf and Greg's Lawn Service, Dale would testify that he left the business or was forced out of the business in 1997. The original proposal to him was 50,000 over time and then Greg told him he could retire on that, settlement of 30,000. He didn't have much choice in accepting whatever Greg ended being [sic] the final offer because there was no buy/sell agreement between Greg and Dale for the lawn care business.
>
> That he is no longer employed for Greg's Lawn Care Service and that it had a substantial effect on him as well, and that the

> methodology that Greg used in forcing Dale out of it was similar to the methodology used to force Kevin out.

The trial court precluded Kevin from presenting such testimony.

Kevin argues the evidence "that the methodology that Greg used in forcing Dale out of [the lawn care business] was similar to the methodology used to force Kevin out" was relevant to whether Greg had a motive, intent, or plan to force him out of the fertilizing and weed control business for his own gain. The evidence in the record—including Kevin's offer of proof—does not sufficiently substantiate the similarities between Greg's "methodologies." Indeed, Kevin has only demonstrated that Greg may have treated him and their father somewhat poorly in distinctly different business situations. Evidence of sharp dealing is of marginal relevance to the issues in this case and likely would have misled the jury. *See* Iowa R. Evid. 403. The trial court did not abuse its discretion.

IV. Motion to Compel.

We review the trial court's denial of Kevin's motion to compel for a correction of errors at law. Iowa R. App. P. 4. "Discovery rules are to be liberally construed to effectuate the disclosure of relevant information to the parties." *Barks v. White*, 365 N.W.2d 640, 643 (Iowa Ct. App. 1985). However, "[t]he trial court has wide discretion in its rulings on discovery issues and will be reversed only when an abuse of discretion is found." *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384, 389 (Iowa 1983).

Kevin served seventeen interrogatories and forty-three requests for production on Greg and Greg's Lawn Service. After these parties objected to many of Kevin's discovery requests, he filed a motion to compel. The trial court

denied the motion stating, "The discovery requests are extraordinarily broad and clearly encompass a great deal of information before the parties had any business relationship and request information that could not possibly lead to the discovery of admissible evidence."

Kevin discusses six discovery requests he contends would have led to the discovery of admissible evidence relevant to the liability issues in this case. Some of these discovery requests were adequately addressed by Greg and Greg's Lawn Service's supplemental responses. The remaining discovery requests were much too broad. The trial court did not abuse its discretion.

V. Disposition.

We have considered all the arguments Kevin has raised on appeal, whether discussed in detail or not, and find them to be without merit. We affirm the trial court.

AFFIRMED.