FILED
APR 20 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BAXTER INSURANCE AGENCY,

Plaintiff-Appellee,

vs.

CENTRAL IOWA MUTUAL INSURANCE ASSOCIATION,

Defendant-Appellant.

Filed April 20, 1988

5

7-423
87-131

Appeal from the Iowa District Court for Jasper County (No. 97-40), Van Wifvat, Judge.

Defendant appeals from a jury verdict in the district court finding for the plaintiff on claims of intentional interference with an existing and prospective contractual relationship. **AFFIRMED.**

Michael D. Huppert of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for defendant-appellant.

Lee M. Walker and John E. Billingsley of Walker, Knopf & Billingsley, Newton, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ., but considered en banc

HABHAB, J.

6

Defendant appeals from the jury verdict rendered in favor of plaintiff for intentional interference with an existing and prospective contractual relationship. The jury awarded compensatory and punitive damages. We affirm.

Plaintiff Baxter Insurance Agency and defendant Central Iowa Mutual Insurance Association had an insurance agency contract for several years. Central Iowa terminated the contract for the alleged reason of unfavorable loss ratios resulting from a tornado which caused a great deal of damage among Central Iowa members. Baxter at that time had farm customers who owned shares in Central Iowa (it is a mutual insurance company) in excess of seven million dollars.

Baxter felt that Central Iowa had other reasons for terminating the contract and did not agree with Central Iowa's calculations of the loss ratio. He asked that it be recalculated. Central Iowa refused. Baxter offered to make financial concessions in order to retain his agency. Central Iowa President and Chief Executive Officer, James Faga, told Baxter representatives that the proposed concessions would be presented to Central Iowa's Board of Directors, but this was never done. Central Iowa, through Mr. Faga, declined Baxter's offer.

Baxter then entered into an agreement with W. E. Brown of Tri-County Insurance to be the successor agent for Baxter's accounts and to share with Baxter the income from insurance contracts which Central Iowa might choose to accept or renew. Baxter sent Brown clients and commissions were shared Mr. Meckley was one such client, and he was Baxter's client that had the largest tornado loss. His insurance was renewed by Central Iowa and the commission was shared between Baxter and Brown.

After these initial referrals took place, Central Iowa told Brown that he could not share business with Baxter. Central Iowa then treated Brown dif-

ferently than other agencies insofar as transferring accounts from Baxter to Brown was concerned. Central Iowa required Brown to treat all referrals from Baxter as new business, which meant that Brown would have to go to each farm, take pictures, and obtain a new application. On the other hand, Central's agent in Mingo, a competitor of Baxter, merely had to file a change of agent form which automatically transferred the policy from Baxter to Mingo.

Baxter filed a petition seeking compensatory and punitive damages from Central Iowa on theories of breach of contract, intentional interference with an existing contract, and intentional interference with prospective contractual relationship. The jury found for Central Iowa on the breach of contract claim, but found for Baxter on its claims of intentional interference with an existing and prospective contractual relationships. The jury awarded Baxter $100,000 in compensatory damages and $50,000 in punitive damages. Central Iowa appeals

Appellant Central Iowa claims the trial court erred in: (1) denying its motion for directed verdict and motion for judgment notwithstanding the verdict, and (2) submitting a claim for punitive damages against a county mutual insurance association. Our scope of review on actions at law is on assigned error only A jury verdict is binding upon the court unless the record lacks substantial evidence. Iowa R. App. P. 4 and 14(j)(1).

As it relates to the legal principles regarding the evidence required to withstand a motion for a directed verdict, each element of a claim must be supported by substantial evidence. If not, a directed verdict or a judgment notwithstanding the verdict is appropriate. Kurth v. Van Horn, 380 N.W 2d 693 (Iowa 1986). In addition, the trial court has considerable discretion in determining whether evidence is sufficient to submit a claim to the jury. Oberreuter v. Orion Industries, Inc., 398 N.W.2d 206 (Iowa App. 1986).

8

Compensatory Damages. With regard to the first issue, if we find there was substantial evidence to support the findings of fact at the trial level, those findings of fact are binding on us. Iowa R. App. P. 344(j)(1). It is not the court's function to weigh or test the credibility of testimony. We need only determine whether there was substantial evidence to support the verdict. Northrup v Miles Homes, Inc. of Iowa, 204 N.W.2d 850 (Iowa 1972). In determining whether or not there was substantial evidence, we apply the following principles: (1) in considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made; (2) direct and circumstantial evidence are equally probative; and (3) even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them a jury question is engendered. Iowa R. App. P. 14(f)(2)(16)(17). Under the record here, we determine that there is substantial evidence to support each element of the claims by the plaintiff.

The defendant first contends the plaintiff failed to produce substantial evidence of any improper conduct of the defendant. In this respect, the plaintiff had to produce substantial evidence that defendant's conduct was improper as well as intentional. Wolfe v. Graither, 389 N.W.2d 643, 659 (Iowa 1986) (existing contract); Harsha v. State Savings Bank, 346 N.W.2d 791, 800 (Iowa 1984) (prospective business relations). We hold the plaintiff met this burden. In reaching this determination we agree with the trial court that when the evidence is considered as a whole, it rises well beyond the level of speculation or conjecture. A reasonable jury could find from the evidence that Central Iowa did act improperly and intentionally. A jury could find that Central Iowa used economic coercion to intimidate W. E. Brown into discontinuing his relationship with Baxter. The jury could further infer impropriety from the fact that Mr. Faga intentionally misled Baxter when he told Baxter that he would and had

presented Baxter's offers of concessions to the Board when in fact he did not do so. We find no error here.

The defendant next contends that the plaintiff failed to produce substantial evidence of the existence of a valid contract. It goes without saying that the plaintiff had to produce substantial evidence that a contract or business relationship existed between Baxter and Brown. The trial court record indicates there was discussion between representatives of Baxter Insurance Agency and W E. Brown of Tri-County Insurance Agency about Brown handling members of Baxter's clientele after Central Iowa terminated its contract with Baxter Brown proposed that he would split commission or pay a finder's fee to Baxter After this, clients were sent to Brown and income was shared. It is clear that a business relationship was established. There is no error here.

The defendant further contends that the plaintiff failed to produce substantial evidence of defendant's intent to injure or destroy plaintiff's business The plaintiff, of course, had the burden to produce substantial evidence of defendant's intent to injure or destroy plaintiff's business. A jury could find that Central Iowa acted to sever or prevent a relationship between Baxter and Brown which would permit Baxter to maintain much of the clientele it had developed over the years, while at the same time Central Iowa sought to encourage the development of that clientele with Mingo Insurance, a competitor of Baxter A jury could also find that the disparity of treatment by Central Iowa between Brown and Mingo Insurance was intended to favor Baxter's rival at the expense of Baxter. As a result of this evidence at trial, a jury could find that Central Iowa acted with an intent to harm or destroy plaintiff's business. There is no error here.

Punitive Damages. The defendant's final two arguments are (1) that the plaintiff failed to produce substantial evidence of legal malice and (2) that punitive damages are not recoverable from a mutual insurance company.

The purpose of punitive damage awards is to punish the wrongdoer and to deter others from committing a like or similar offense. Briner v. Hyslop, 337 N.W.2d 858 (Iowa 1983). Such damages are not allowed as a matter of right and are always discretionary. Young v. City of Des Moines, 262 N.W.2d 612, 620 (Iowa 1978). It is not nor has it ever been the purpose of punitive damages to compensate the victim for such damages for they are granted only by grace and gratuity of the law. Briner, 337 N.W.2d at 865.

In this respect, an individual may be liable for punitive damages if his actions towards his victim are properly classified as grossly negligent, wanton, malicious, willful, or reckless misconduct. Campbell v. Van Roekel, 347 N.W 2d 466 (Iowa 1984). That person's "individual liability rests on his personal misconduct." Briner, 337 N.W.2d at 662.

Although it has been clear under Iowa law that an individual may be held liable for punitive damages, it was less clear prior to Briner as to the circumstances that had to attach before a corporation was liable for such damages Id. It was in Briner that the court accepted with favor the "complicity" rule as opposed to the "course of employment rule" when determining whether a corporate employer could be held liable for punitive damages. Id. at 867.

Under the "complicity" rule, a corporate employer is liable for punitive damages only when the corporate employer wrongfully authorized, contributed to, or ratified the outrageous conduct which caused plaintiff's injuries. Id at 861. This rule is readily distinguishable from the more liberal "course of employment" rule where an employer may be liable for punitive damages whenever the employee acts within the scope of employment. Id. at 861.

As previously stated, Iowa has rejected the "course of employment" rule in favor of the "complicity" rule. Id. at 867. In expressing preference for the complicity rule Iowa adopted, through Briner, § 217C of the Restatement (Second) of Agency (1979) and the nearly-identical Restatement (Second) of Torts § 909 (1979). Section 217C provides:

> Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if:
>
> (a) the principal authorized the doing and the manner of the act, or
>
> (b) the agent was unfit and the principal was reckless in employing him, or
>
> (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or
>
> (d) the principal or the managerial agent of the principal ratified or approved the act.

Restatement (Second) of Agency § 217C (1979).

Thus, under the Restatement rule an employer may be responsible for punitive damages as a result of the principal's own conduct or because of the conduct of an employee who is acting in a managerial capacity. Restatement (Second) of Torts § 909 comment b (1979), Briner, 337 N.W.2d at 867. Returning to the case before us, there is no disagreement that Mr. Faga, at the time of the incident(s) in question, was employed in a managerial capacity and was acting within the scope of his employment. Therefore, applying the standards of section 217C of the Restatement, punitive damages may be assessed against the defendant if the other necessary elements for recovery of punitive damages are satisfied.

Punitive damages may be awarded in cases of intentional interference with a contract or contractual relationship if such interference is done with legal malice. Edward Vantine Stud. v. Fraternal Composite, 373 N.W.2d 512

(Iowa App. 1985). That required element is not in dispute. But the defendant claims plaintiff failed to produce substantial evidence of legal malice. Legal malice may be shown by "wrongful or illegal conduct committed or continued with a willful or reckless disregard of another's rights." Pogge v. Fullerton Lumber Co., 277 N.W.2d 916, 920 (Iowa 1979); Klooster v. North Iowa State Bank, 404 N.W.2d 564 (Iowa 1987) (The malice may be actual (express), such as personal spite, hatred, or ill will, or it may be legal (implied), as when the defendant acts illegally or improperly with willful or reckless disregard for another's rights.)

We find there is substantial evidence in the record to support the award of punitive damages. Much of the evidence in this regard is the same evidence in the trial record from which a jury could find improper means, improper purpose, and intention to injure Baxter Insurance.

The jury could have found that the defendant acted with personal ill-will or spite toward Baxter. Certainly, there is competent evidence that touches on that subject. In addition, the jury might have found that the defendant acted improperly with reckless disregard of Baxter's rights. Again there is competent evidence in the record to support this contention. From the record as a whole, we conclude that a jury question was engendered as to whether the defendant should have punitive damages awarded against it. Thus, there is no error here

The defendant next contends that punitive damages may not be recovered against mutual insurance companies. In this respect, defendant relies on Rowen v LeMars Mut. Ins. Co. of Iowa, 282 N.W.2d 639 (Iowa 1979). In Rowen, the court stated:

> In this derivative action any recovery by Plaintiffs inures to the benefit of LeMars Mutual. That corporation then will fall heir to any punitive damages paid by Iowa Mutual. The loss will fall on the innocent policyholders of Iowa Mutual; the benefit will accrue to the innocent policyholders of LeMars Mutual. We believe this

> leads to an inequitable result because of the nature of mutual insurance companies, which have no stockholders. The policyholders, whom necessarily are numerous and scattered, traditionally take no part in the management of the company. Moulton v. Field, 179 F. at 675.

Rowen v. LeMars Mut. Ins. Co. of Iowa, 282 N.W.2d 639, 662 (Iowa 1979). The court went on to say, "...an assessment of punitive damages against Iowa Mutual would not serve the purposes such damages are designed to serve " Id. at 662. The court then set aside the award of punitive damages. Id. at 662

We believe that appellant is reading more into Rowen than factually exists In Rowen, there were two mutual insurance associations, both of which were guilty of virtually the same improprieties. Id. at 662. Given these facts the court found no legitimate purpose could be served in "penalizing one group of innocent policyholders and rewarding another for equally culpable conduct " Id. at 662.

The facts of this case involve only one mutual insurance association, appellant, and it is the only party that has been found liable for an impropriety As stated in the Briner case:

> There is little justification for awarding punitive damages against an innocent party, but it is reasonable to punish an employer for the reckless employment or retention of an employee, the ratification or approval of outrageous acts, or for outrageous acts performed by an employee acting in a managerial capacity. This is the rationale expressed by the drafters of the Restatement of Torts and we believe this rationale is consistent with the concern we expressed against punishing innocent policyholders in Rowen, 282 N.W.2d 639.

Briner v. Hyslop, 337 N.W.2d 858, 867 (Iowa 1983). The above-stated rationale In Briner should be applied in this case.

The court in Briner did state:

> Since Northrup [Northrup v. Miles Homes, Inc., 204 N.W.2d 850 (Iowa 1973)] was decided we have under special circumstances refused to allow punitive damages to be assessed against corporations. In Rowen v. LeMars Mutual Insurance Co., 282 N.W.2d 639, 662 (Iowa 1979), we did not permit punitive damages to be assessed against a mutual insurance company where innocent policyholders who had

> traditionally taken no part in management would have had to bear the loss. In Biessum v. Howard County Board of Supervisors, 295 N.W.2d 836, 850 (Iowa 1980), we approved the trial court's action in setting aside an award of punitive damages against a county board of supervisors to avoid a double recovery where two of the members of the board of supervisors were held liable for punitive damages and the third member did not participate in the wrongful conduct. We stated "[we] do not believe the same conduct of [the two participating board members] should cause punitive damages liability on the Board as an institution in addition to themselves." Cf. Dickerson, 332 N.W.2d at 104 (punitive damages not duplicative when both the mayor-councilman and the city held liable).

But punitive damages in each of those instances was denied because of the existence of special circumstances. The circumstances here do not fall within any of those exceptions.

Accordingly, we determine that assessing punitive damages to appellant Central Iowa, a mutual insurance association, was not an abuse of discretion We affirm the trial court on the claim for punitive damages.

AFFIRMED.