FILED
AUG 27 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-116 / 91-157

WENDELL L. OLIVER,

Appellee,

vs.

CHAMBERLAIN MANUFACTURING CORPORATION,

Appellant.

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

Chamberlain appeals the jury verdict and the judgment entered by the district court. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Larry J. Cohrt of Swisher & Cohrt, Waterloo, for appellant.

Donald L. Carr II, of Scalise, Scism, Sandre, McConville, Miller, Holliday, Schwarz, Carr & Renzo, Des Moines, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

FACTS

Chamberlain Manufacturing Corporation hired Wendell Oliver on December 1, 1980. Oliver was a quality control manager at Chamberlain's plant in Albia, Iowa. The Albia plant manufactured storm doors and windows. Sears, Roebuck & Co. was Chamberlain's largest customer for those items. Sears purchased approximately seventy to eighty percent of all products manufactured at the Albia plant. Oliver was hired to address the complaints of poor quality of the doors being produced.

Gradually, Oliver was able to implement a successful quality control program and a manual. In 1980, his annual salary was set at $26,500. Although he worked in Albia, his home was in Cedar Rapids where his wife had been employed with the same company for twenty-nine years. Oliver commuted to work from Cedar Rapids.

In 1980, Chamberlain purchased Featherlight Manufacturing Corporation in Hot Springs, Arkansas. It decided to consolidate some of the production of its home improvement products at that facility. Oliver was asked to accept a position of group quality control manager in the Arkansas plant. His rate of pay would continue to be calculated on an annual basis but he would receive an annual pay raise of $4400. His fringe benefits would remain unchanged. He was required to move to Arkansas and the company would provide him with all benefits set forth in its manual concerning the transfer of employees.

Prior to accepting this new position Oliver considered his future with the corporation, the increase in salary, the necessity of selling his family residence in a depressed market, and the requirement that his wife leave her employment. It was well known by Oliver, and the other management team which was being transferred from Albia to Hot Springs, that it would take at least one and one-half to two years to implement the quality control program in Hot Springs. Oliver claims that if the job had been for less than one year, he would not have accepted it. It was Oliver's expectation that once the Hot Springs plant was implemented, he would move to other plants and continue his employment with Chamberlain.

Upon the decision to take the new job in Arkansas, Oliver negotiated the sale of his family residence at a price substantially below market value. His new position in Hot Springs commenced in February, 1982. Dissatisfied with Oliver's job performance in Arkansas, Chamberlain terminated his employment on September 10, 1982.

Oliver filled out between 1000 to 2000 job applications but only obtained minimal work. However, in 1987, he obtained full time employment as a quality control manager with a major corporation.

Oliver instituted these proceedings on September 27, 1983, with a petition alleging five separate theories of recovery. After the district court granted Chamberlain's motion for summary judgment, Oliver appealed, and the

matter was transferred to the court of appeals. See Oliver v. Chamberlain Mfg. Corp., No. 87-1736, slip op. (Iowa App. January 26, 1989). In that proceeding, we held there was sufficient evidence to support Oliver's claim against Chamberlain for breach of an implied contract.

Following remand to the district court, the jury was asked to determine whether Oliver proved his employment with Chamberlain was for a specific period of time not to exceed twenty-four months and whether Chamberlain was in breach of an implied contract for Oliver's continued employment.

The jury rendered its $152,883 verdict in favor of Oliver. The jury was asked to quantify the damages. It designated $41,125 for wages that should have been paid to Oliver during the contract period that were not paid. It awarded Oliver $23,500 as the cash value of fringe benefits Oliver should have been paid during the contract period. Finally, it calculated that Oliver should be entitled to $88,258 for wages not earned after the end of the contract period and before January 1, 1987. In response to Chamberlain's motion notwithstanding the verdict, the district court reduced the jury's award by $20,500.

Chamberlain appeals; Oliver cross-appeals.

ANALYSIS

Our review is for errors of law. Iowa R. App. P. 4. As a preliminary matter, we find it necessary to address Chamberlain's assertion that Arkansas law should apply because Oliver's employment contract was to be performed primarily in that state. We ruled on this issue in the previous case of Oliver v. Chamberlain Mfg. Corp., No. 87-1736, slip op. (Iowa App. January 26, 1989). In that proceeding, we stated, "Arkansas law was neither pled or proved in the trial court. We therefore assume the law to be the same as Iowa's." Id. at 3 (citing Zeman v. Canton State, 211 N.W.2d 346, 349 (Iowa 1973)). In accord with our previous holding, we will apply Iowa law.

I. **Motion for Directed Verdict.**

Chamberlain argues the trial court erred in overruling its motion for directed verdict. We disagree.

A directed verdict is appropriate in cases where each element of the claim is not supported by substantial evidence. Oberreuter v. Orion Indus., Inc., 398 N.W.2d 206, 209 (Iowa App. 1986) (citation omitted). A court ruling on a motion for directed verdict must view the evidence in the light most favorable to the nonmoving party. Beitz v. Horak, 271 N.W.2d 755, 757 (Iowa 1978) (citation omitted); Iowa R. App. P. 14(f)(2). The movant is considered to have admitted the truth of all evidence offered by nonmovant and every favorable inference that may

be deduced from it. B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 279, 284 (Iowa 1976). To overrule the motion, the court must find substantial evidence in support of each element of nonmovant's claim. Beitz, 271 N.W.2d at 757 (citation omitted). If reasonable minds could differ, an issue is for the jury. Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984) (citation omitted). The trial court is vested with considerable discretion in determining whether evidence is sufficient. Hoover's Hatchery, Inc. v. Utgaard, 447 N.W.2d 684, 687 (Iowa App. 1989) (citation omitted).

We find the district court did not err in overruling Chamberlain's motion for directed verdict. There was substantial evidence to establish the existence of an employment contract for a specified period of time. We affirm the district court on this issue.

II. Future Damages.

Chamberlain argues the district court erred in overruling its objections to any evidence of future wage loss. Chamberlain further claims the district court erred in submitting Jury Instruction #12 and Interrogatory #4 to the jury. Oliver objects to the portions of Instruction #12 and Interrogatory #4 which provide for damages relating to income Oliver did not earn during the time period after the termination of the contract and before he became employed elsewhere. Chamberlain contends that even if an

employment contract existed, damages for future wages are not an available remedy. Under the factual setting here, we agree.

The court instructed the jury with respect to the measures of damages. The court allowed the jury to consider an award of damages in three categories:

> 1. Wages that the plaintiff would have received, had the contract been fulfilled, but did not receive because of the defendant's breach;
>
> 2. The value of fringe benefits plaintiff would have received had the contract been fulfilled, but did not receive because of the defendant's breach;
>
> 3. Income that plaintiff would have earned after October 31, 1982, the end of his income from defendant and before January 1, 1987, but did not earn because of the defendant's breach.

The jury was then asked to quantify these damages, if any, in question No. 4 of the interrogatories submitted to the jury. Interrogatory No. 4 stated as follows:

> What has Plaintiff proved by a preponderance of the evidence that he has suffered in damages in each of the following categories, if any damage at all:
>
> 1. Wages that should have been paid to Plaintiff during the contract period that were not paid;
>
> 2. Cash value of fringe benefits that should have been paid to Plaintiff during the contract that were not paid;
>
> 3. Income that Plaintiff did not earn after the end of the contract period and before January 1, 1987, that he would have earned except for the Defendant's breach.

As previously noted, the jury returned a verdict of $41,125 in Category No. 1, $23,500 in Category No. 2, and

$88,258 in Category No. 3. It is the amount of damages under Category No. 3 and the submission of future damages that is assigned as error under this heading.

We are cited to the case of Hunter v. Board of Trustees of Broadlawns Medical Center, No. 90-1078, slip op. (Iowa January 22, 1992), where the Iowa Supreme Court recognized an award of future damages in a breach-of-contract action. In allowing such damages, the court in Hunter noted, an "award of future damages is consistent with both the traditional damage award for breach of contract as well as the award contemplated by our employment contract case law." Id.

But, Hunter did not involve an employment for a definite term. In the case at bar, Oliver stated in his petition, "Defendant's actions constituted an implied contract to employ Plaintiff for a minimum of one year from February 1982." The jury, without objection by Oliver, was asked (and it answered) by way of a special interrogatory:

> Question 2: What has plaintiff proved, by a preponderance of the evidence, that the duration of the contract was, in months, from and after February 1, 1982, the date the contract was entered into, not to exceed 24 months?
>
> 24 months

Thus we have a factual situation where Oliver claims he has an implied contract of employment for a term of not less than one (1) year. In return, the jury was asked to fix that term and it did so for a period of twenty-four months and allowed damages of $41,125.

The jury found, as it relates to Oliver's discharge during that twenty-four-month-period again by a special interrogatory, that Oliver's discharge was not for good cause. Therefore, as a wrongfully-discharged employee, he was entitled to the total amount of the agreed-upon salary for the expired term of employment, less, of course, what he could earn by making a diligent effort to obtain similar employment. Kitchen v. Starkman Nat'l Life Ins. Co., 192 N.W.2d 796 (Iowa 1971).

Oliver's damages, as in any action for breach of contract, are limited to those injuries which may reasonably be considered as arising naturally from the breach of the contract itself or such as may be reasonably supposed to have been in the contemplation of the parties, at the time of contracting, as a probable result of the breach. DeWaay v. Muhr, 160 N.W.2d 454, 458-59 (Iowa 1968). They cannot be speculative; and again there must be proof of a rational basis from which the amount can be inferred or proximated. Id.; Metro. Transfer Station, Inc. v. Design Structures, Inc., 328 N.W.2d 532 (Iowa 1982).

Recovery is limited to what the promisee has actually lost. He should not be placed in a better position than he would be in had the contract not been broken. DeWaay, 160 N.W.2d at 458-59.

We conclude that Oliver is not entitled to the award for future damages. Since we reverse on this issue, we need not address the merits of instruction No. 12 and

interrogatory No. 4. We reverse on the issue of future damages and direct that the judgment entry be amended so as to delete the sum of $88,258 therefrom.

III. Jury Instructions.

Chamberlain argues the district court erred in submitting Jury Instructions #9 and #11 to the jury. We disagree.

Jury instructions are designed to explain the applicable law to the jurors so the law may be applied to the facts proven at trial. State v. Freeman, 267 N.W.2d 69, 71 (Iowa 1978). Submission of issues that have no support in the evidence to the jury is error. W. T. Rawleigh Medical Co. v. Bane, 181 Iowa 734, 739, 165 N.W. 42, 43-44 (1917); accord Borough v. Minneapolis & St. L. R. Co., 191 Iowa 1216, 1223, 184 N.W. 320, 323 (1921); see Miller v. Int'l Harvester Co., 246 N.W.2d 298, 301 (Iowa 1976). Conversely, failure to submit issues that are supported by substantial evidence also is error. See Borough, 191 Iowa at 1223, 184 N.W. at 323; see also Miller, 246 N.W.2d at 301. The trial court must "instruct with reasonable fullness on pleaded issues supported by substantial evidence." Clinton Land Co., 340 N.W.2d at 234. "The sufficiency of the evidence to warrant submission of a pleaded issue to the jury is decided by giving the evidence the most favorable construction it will reasonably bear in favor of the party urging submission."

Collegiate Mfg. Co. v. McDowell's Agency, Inc., 200 N.W.2d 854, 858 (Iowa 1972); Campbell v. Martin, 257 Iowa 1247, 1251, 136 N.W.2d 508, 511 (1965).

We find there was substantial evidence to support the issue of "additional consideration" in Instruction #9. We find there was substantial evidence to support the issue of "discharge with good cause" in Instruction #11. We affirm the district court on this issue.

IV. Motion for New Trial.

Chamberlain argues the district court erred in overruling its motion for a new trial. Chamberlain contends Oliver's counsel repeatedly and intentionally violated the court's ruling on Chamberlain's motion in limine during the cross-examination of John Doody, by interjecting irrelevant and extremely prejudicial matters into the proceedings for the purpose of invoking the anger and passion of the jury. Chamberlain maintains this alleged conduct by opposing counsel was prejudicial to Chamberlain and prohibited Chamberlain from getting a fair trial. We disagree.

"Before a new trial will be granted for misconduct in argument, it must appear that prejudice resulted or a different result would have been probable, but for the misconduct." Moore v. Vanderloo, 386 N.W.2d 108, 116-17 (Iowa 1986) (citing Kester v. Bruns, 326 N.W.2d 279, 281

(Iowa 1982)). We do not find reversible error with respect to the conduct of Oliver's counsel. We affirm the district court on this issue.

V. Motion for Judgment Notwithstanding the Verdict.

In his cross-appeal, Oliver claims the district court erred in granting Chamberlain's motion for judgment notwithstanding the verdict and in reducing the damages for fringe benefits by $20,500. We disagree.

> A judgment notwithstanding the verdict must stand or fall on the grounds stated in the motion for directed verdict. On appeal, our review is limited to those grounds.
>
> When considering a motion for a judgment notwithstanding the verdict, the district court must view the evidence in the light most favorable to the party against whom the motion is directed. In reviewing . . . , we also view the evidence in the same manner. Simply put, we ask, was there sufficient evidence to generate a jury question?

Konicek v. Loomis Bros., Inc., 457 N.W.2d 614, 617 (Iowa 1990).

In the case at bar, the district court concluded damages regarding Oliver's house should not have been considered by the jury because there was nothing in the record to support a claim that there was an agreement to pay Oliver additional money for the house at a later date. Therefore, the district court removed $13,500, for the house, from the fringe benefit damages under Interrogatory #4, part 2. The district court also disallowed $7000 for 35 months of fringe benefits. The court found part 2 of

Interrogatory #4 was to show only the cash value of fringe benefits that should have been paid to Oliver during the contract period that were not actually paid. We agree with the district court's reduction in the damages for the fringe benefits.

Chamberlain claims that the remaining $3,000 of the judgment allowed for fringe benefits should also be removed. We disagree. The specific fringe benefits allowed by the jury are for the loss of health, dental, and life insurance coverage. We believe this part of the judgment should remain intact. We affirm the district court on the removing of the $20,500 from the fringe benefit allowance and affirm as to the allowance of the $3,000 fringe benefit judgment.

CONCLUSION

After considering all issues presented, we affirm the district court's order except with respect to the award of future damages. We conclude Oliver is not entitled to future damages and reverse and remand on that issue to the district court for the entry of judgment consistent with this opinion. The judgment entry should be amended so as to delete the sum of $88,258 therefrom.

Costs of this appeal are assessed equally to the parties.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.