IN THE COURT OF APPEALS OF IOWA

No. 1-256 / 90-1103

FILED
SEP 24 1991
CLERK SUPREME COURT

DAVE REITTINGER,

Appellee,

371

vs.

DAVID J. BALLSTAEDT, JR.,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Allen L. Pearson, Judge.

In this breach of contract action defendant asserts the jury verdict is contrary to the evidence, and he challenges the trial court's jury instructions. **AFFIRMED.**

Dennis J. Naughton of Naughton Law Firm, Dubuque, for appellant.

John J. Goen, Dyersville, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

HAYDEN, J.

Plaintiff, Dave Reittinger, operates a general construction business in Dyersville, Iowa. Defendant, David Ballstaedt, hired Reittinger to remodel a building he owned and operated as a car dealership. Under the terms of the parties' agreement, Reittinger was to perform dry wall hanging and finishing and also exterior stucco work for $11,500.

Reittinger started the job during the month of November. Because of inclement weather and an unfinished roof on Ballstaedt's building, rain leaked into the work area. Reittinger built a plastic tent around Ballstaedt's building in an attempt to continue the construction. When Reittinger arrived at the job site on November 26, 1988, the plastic tent had blown down. Therefore, Reittinger terminated his work and left the job site. The parties disputed whether Reittinger said he would return to finish the job. Because Ballstaedt believed Reittinger abandoned the project, he hired another contractor to complete the work. Reittinger claimed he did not abandon the project but intended to wait for suitable weather to complete the job.

Reittinger filed a small claims action seeking to recover $1,815 for the labor he performed. This matter was tried in district court because Ballstaedt filed a counterclaim for $6,500 to recover the expenses resulting from Reittinger's failure to complete the project. The

jury returned a verdict in favor of Reittinger, and Ballstaedt appeals.

Our scope of review is errors at law. Iowa R. App. P. 4. Ballstaedt first contends the jury verdict against him is against the weight of the evidence. We are bound by the jury's findings if supported by substantial evidence. Iowa R. App. P. 14(f)(1). A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. Briggs Transp. Co. v. Statt Sales Co., 262 N.W.2d 805, 808, (Iowa 1978). In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. Id. Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mutual Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the judgment. Id.

With these principles in mind, we determine the jury's verdict is supported by substantial evidence. Reittinger testified there was only a plywood roof on the building when he was working at the job site. Therefore, rain leaked into the work area causing water to freeze behind the stucco material. Reittinger's testimony was reinforced by other workers on the project, including the contractor Ballstaedt hired after Reittinger terminated his work. The contractor testified he might have been unable to finish the project because of the weather had the roof not been

completed. According to another witness, however, rain was not draining down the walls of the work area when Reittinger was working on the construction. The parties disagree whether Reittinger said he would return to finish the job. The resolution of these disputes rests with the jury in determining the credibility of the witnesses. We are prohibited from weighing the evidence or the credibility of the witnesses. Voeltz, 431 N.W.2d at 785. Based on this evidence, the jury could reasonably infer Reittinger did not abandon the project, but rather intended to wait until the weather improved to complete the job. Therefore, we affirm on this issue.

Ballstaedt also claims the jury was instructed on several options to find for Reittinger. However, the instructions were void of circumstances under which Ballstaedt might recover, including his right to complete the construction contract after Reittinger failed to perform. As a result, Ballstaedt contends the jury instructions overemphasized Reittinger's rights and were confusing to the jury.

The trial court has a duty to ensure that the jury understands the issues it must decide. Clinton Land Co. v. M/S Assocs., Inc., 340 N.W.2d 232, 234 (Iowa 1983). Thus, the court must "instruct with reasonable fullness on pleaded issues supported by substantial evidence." Id. The trial court also has a duty to ensure that the jury understands the law it must apply. Sanders v. Ghrist, 421

N.W.2d 520, 522 (Iowa 1988). In evaluating this, we read all of the instructions together, not piecemeal or in artificial isolation. Id.; Clinton Land Co., 340 N.W.2d at 234. Our courts have consistently held "[e]ven correct statements of law, if repeated to the point of undue emphasis, may constitute reversible error." Clinton Land Co., 340 N.W.2d at 234 (citing Eickelberg v. Deere & Co., 276 N.W.2d 442, 447 (Iowa 1979)); accord Andrews v. Struble, 178 N.W.2d 391, 400 (Iowa 1970).

In the present case, the jury was instructed on each party's legal theories of recovery. Instruction nine specifically explained if Reittinger failed to prove at least one theory of recovery by a preponderance of the evidence Ballstaedt was entitled to recover. Instruction fifteen embodied Ballstaedt's right to have the work completed after Reittinger failed to perform and instructed the jury how to compute damages if they found for Ballstaedt. We conclude the jury instructions neither overemphasized Reittinger's rights nor confused the jury. Accordingly, we affirm on this issue.

Costs of this appeal are taxed to Ballstaedt.

AFFIRMED.