IN THE COURT OF APPEALS OF IOWA

No. 2-253 / 91-1759

FILED
OCT 27 1992
CLERK SUPREME COURT

WILLIAM F. TERRELL,

Appellant,

vs.

STAR COAL COMPANY, SUPERIOR COAL COMPANY, IOWA COAL MINING COMPANY, JAMES EDWARD HUYSER, BILLIE E. WILLIAMS, CHRISTOPHER WILLIAMS and BIG D MINING, INC.,

Appellees.

BIG D MINING, INC., BILLIE E. WILLIAMS and CHRISTOPHER WILLIAMS,

Third-Party Plaintiffs-Appellees,

vs.

STAR COAL COMPANY, SUPERIOR COAL COMPANY, IOWA COAL MINING COMPANY, JAMES EDWARD HUYSER and ELITE ENERGY, INC.,

Third-Party Defendants-Appellees.

Appeal from the Iowa District Court for Marion County, Thomas Bown, Judge.

Terrell appeals from the district court's interpretation of the parties' contract which denied payment of royalties from defendants' coal mining operations. **AFFIRMED.**

David A. Johnson of Johnson, Lane & Vogel, Knoxville, for appellant.

Randall C. Stravers of Pothoven, Blomgren & Stravers, Oskaloosa, for appellees Star Coal Company, Superior Coal Company, Iowa Coal Mining Company, and James Edward Huyser.

Paul M. Goldsmith of Goldsmith Law Office, Chariton, until his withdrawal, for appellee Big D Mining.

Billie and Christopher Williams, Knoxville, pro se.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

In June 1977, William Terrell entered into an agreement with James Edward Huyser, part owner of Star Coal Company. The agreement provided Terrell would furnish information concerning the location of coal and limestone deposits in Lucas, Marion, and Monroe Counties. Terrell was to be paid five cents per ton of coal mined and was to receive a minimum royalty of $10,000 so long as coal was being produced. The agreement also required Star Coal to transfer its interest in any leases to Terrell in the event mining operations were abandoned. Finally, the agreement required Star Coal to pay Terrell twenty percent of any net profit if any of the properties were sold.

The validity of this agreement was upheld by this court in a decision filed on September 21, 1982. See Terrell v. Star Coal Co., No. 2-208/2-66247 (1982). From 1983 to 1988, Huyser and his coal companies were actively involved in mining and paid Terrell the royalties and annual minimum of $10,000 pursuant to the contract.

In 1987, Huyser began to diversify the coal mining operation and became involved in a joint operation with a landfill. Because Monroe County passed a zoning ordinance which precluded the landfill operation, Huyser ceased actual mining operations in 1988 due to lack of profitability. Huyser remained involved in reclamation work and assigned certain coal leases to Billie and Christopher Williams and Big D Mining, Inc. from which

Huyser received royalties. Huyser also negotiated a sale of shares of Iowa Coal Mining with George Ide & Associates and received a $250,000 down payment.

The sale was never consummated. On June 20, 1989, Terrell instituted these proceedings alleging Huyser failed to make an accurate accounting and failed to pay the royalties to which Terrell believes he is entitled.

The parties reached a settlement which resulted in a partial judgment entry in favor of Terrell against Huyser and his coal companies for $33,000 to cover any royalties owed for coal mined by Big D. Because the partial judgment left some matters unresolved, the remaining portions of the suit proceeded to trial. At trial the district court rejected Terrell's arguments that he was entitled to additional royalties. The court believed that the contract gave Terrell the right to minimum royalties for only so long as mining production continues. Because Huyser intended to resume mining operations once litigation with the County and State was resolved, the court concluded that defendants had not abandoned the mining operations. Terrell appeals.

Scope of Review.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4. Findings of facts in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. Grinnell Mut. 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 trial court's judgment. Id. We are prohibited from weighing the evidence or the credibility of the witnesses. Id.

> A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

"Evidence is substantial or sufficient when a reasonable mind could accept it as adequate to reach the same findings." Waukon Auto Supply v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989) (citation omitted). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reinsurance Co., 431 N.W.2d at 785 (citation omitted).

With these principles in mind, we turn to the issues raised on appeal.

Discussion.

The central issue in this case is whether Terrell is entitled to additional proceeds, pursuant to the contract between the parties, arising out of Star Coal's business transactions.

Terrell contends the contract is ambiguous or, in the alternative, requires payment of the annual royalty even if

it is not ambiguous. The contract provisions at issue state: "after mining commences, a minimum overriding royalty of not less than $10,000 per year shall be paid to Terrell by Star," and "in the event of production on the properties described in Exhibit A, it is understood that the overriding royalty interest of Terrell shall continue so long as production continues." Terrell contends the contract is ambiguous because only one of the two sentences which refer to the royalty also refers to the production contingency.

When construing a written contract, we are guided by the rule that the intent of the parties controls and, except in cases of ambiguity, intent is determined by what the contract itself says. Anderson v. Aspelmeier, Fisch, Power, Warner & Engberg, 461 N.W.2d 598, 600 (Iowa 1990); Iowa R. App. P. 14(f)(14). An ambiguity exists when, after application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty exists concerning which of two reasonable constructions is proper. Berryhill v. Hatt, 428 N.W.2d 647, 654 (Iowa 1988).

We do not find the language of this contract ambiguous. The fact that one clause refers to the production contingency and the other refers only to the royalty itself does not render the contract ambiguous.

In the alternative, Terrell contends the annual royalty is required since production continues. While he does not

contest Huyser's statements that no coal has been brought from the ground and sold since June 1988, Terrell contends "production" includes Huyser's extensive involvement in the coal mining business.

When a court is asked to interpret a contract which the parties made for themselves, the object is to ascertain the meaning and intention of the parties as expressed in the language used. Allen v. Highway Equipment Co., 239 N.W.2d 135, 138 (Iowa 1976), quoting State v. Starzinger, 179 N.W.2d 761, 764 (Iowa 1970). We give effect to the language of the entire contract in accordance with its commonly-accepted and ordinary meaning. Allen, 239 N.W.2d at 139.

Resolution of this issue turns on the meaning of "production" as referred to in the contract. Production is defined as "Process or act of producing that which is produced or made; i.e. goods." Black's Law Dictionary 1209 (6th ed. 1990).

We can find no other logical meaning of "production" as it relates to this contract than bringing coal from the ground, processing it, and selling the final product. Owning a coal-washing plant, active involvement in reclamation work, and intent to mine coal in the future do not, contrary to Terrell's argument, constitute coal production.

It is undisputed that coal production, i.e., bringing coal from the ground for sale, has ceased at Huyser's

operations. We interpret the contract to mean Terrell will receive minimum royalties provided coal is brought from the ground for sale. Accordingly, we hold Terrell is not entitled to royalties in the absence of coal production.

Terrell next contends a sale, as contemplated by the contract, was made although final sales were never consummated. Terrell contends there were three transactions which qualified as "sales": (1) a sale, which was never finalized or consummated, of all corporate stock; (2) a joint venture, again not finalized; and (3) assignment of leases to Big D.

In the case of the sale of the corporate stock, the evidence is undisputed the final sale never materialized. Although Huyser received a $250,000 down payment, no part of the principal payment was made and the sale subsequently fell through. The joint venture was also contemplated but never consummated. Finally, Terrell argues the assignment of leases to Big D constituted a sale. However, this agreement merely allowed Huyser to receive royalties from Big D, which he in turn would pay in royalties to Terrell. There is a judgment for $33,000 to cover any royalty owed for coal mined by Big D during that time period.

Since none of the proposed sales or assignment of leases resulted in an actual sale or transfer of ownership, we hold substantial evidence supports the district court's finding there had been no transactions which would entitle Terrell to proceeds.

Terrell next contends Huyser has abandoned the mining operations, which entitles Terrell to the transfer of the property pursuant to the contract.

The district court found substantial evidence that Huyser did not abandon mining operations. The evidence presented indicated Huyser initially halted operations due to lack of profitability and actions of the Monroe County Board of Supervisors. Huyser testified at length regarding his efforts to resume mining operations. In addition, Huyser has attempted to resolve the penalties and abatement issues with the State of Iowa.

Based on this, we hold there was substantial evidence in the record to support the district court's findings. Accordingly, we affirm the district court on all issues.

AFFIRMED.