IN THE COURT OF APPEALS OF IOWA

No. 1-481 / 90-1420

FILED
MAR 24 1992
CLERK SUPREME COURT

RALPH G. PRIDGEON,

Appellant,

vs.

MARSHALL COUNTY RURAL ELECTRIC COOP,

Appellee.

Appeal from the Iowa District Court for Marshall County, Dale E. Ruigh, Judge.

Plaintiff appeals the adverse district court judgment denying his claim for damages arising out of the removal of three trees from property he rents. **AFFIRMED.**

Ralph G. Pridgeon, pro se, appellant.

Timothy C. Hogan of Duncan, Jones, Riley & Finley, P.C., Des Moines, for appellee.

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

OXBERGER, C.J.

Plaintiff Ralph G. Pridgeon rents a house in a rural area near Marshalltown, Iowa. The property is owned by Dianne Berry and her children. The Berrys also own some adjoining farmland which is rented by Clare Long. Long keeps some equipment in buildings behind the house, and he uses the residential driveway to access the buildings.

In March 1988 Long talked to the Berrys about having some limbs cut from a box elder tree which hung over the driveway. Long felt the limbs were impeding his ability to bring larger equipment in over the driveway. Long stated he believed the Marshall County Rural Electric Coop (REC) would remove the limbs because they were almost touching a power line. The Berrys gave their permission to have the limbs removed.

On March 31, 1988, Dale Dolash, an employee of the REC, met with Long at the Pridgeon residence. Long told Dolash he wanted the box elder tree removed. Dolash and two other REC employees removed the box elder tree and two smaller mulberry trees which were nearby. Dolash admitted he knew Long was not the owner of the property, and he was not sure who was the owner. In any event, neither Pridgeon nor the Berrys were contacted by the REC about removing the trees.

The box elder tree was between sixty to seventy feet tall and about fifty to sixty years old. The two mulberry trees were between twenty to thirty feet tall and were

described as "volunteer" trees. The trees gave the Pridgeon residence shade. The trees also gave a certain amount of privacy from Highway 30, which runs adjacent to the property, and The Beat Club, a discotheque across the highway.

Pridgeon brought this suit alleging the REC was negligent in cutting down the trees. Dianne Berry assigned her interest in the lawsuit to Pridgeon. The case was tried before a jury. The district court refused to instruct the jury on treble damages pursuant to Iowa Code section 658.4 on the ground that Pridgeon failed to present any evidence of willful injury by the REC. The jury found for defendant. Pridgeon now appeals.

Our scope of review in this law action is on assigned error only. Iowa R. App. P. 4. If supported by substantial evidence and justified as a matter of law, the judgment should not be disputed on appeal. Cook v. State, 431 N.W.2d 800, 805 (Iowa 1988). An appellate court is not bound by the district court's determination of law. Id. at 806.

Pridgeon claims the district court should have given a jury instruction concerning section 658.4. This section provides:

> For willfully injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or city lot, or on the public grounds of any city, or any land held by the state for any purpose whatsoever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property.

Pridgeon apparently believes section 658.4 provides for a lesser degree of fault than required for ordinary negligence actions.

In order to receive treble damages under section 658.4 a plaintiff must show that the defendant acted intentionally and deliberately without regard to the rights of others. Bangert v. Osceola County, 456 N.W.2d 183, 188 (Iowa 1990). A willful act, as used in this section, is an act done wantonly and without any reasonable excuse. Id. at 189. We find section 658.4, contrary to Pridgeon's argument, imposes a higher degree of fault than that required for ordinary negligence actions.

In any event, even if the district court erred in failing to instruct the jury on the issue of treble damages under section 658.4, such error was cured by the jury verdict in favor of defendant. See Berding v. Thada, 243 N.W.2d 857, 862 (Iowa 1976); Shannon v. Gaar, 234 Iowa 1360, 1365, 15 N.W.2d 257, 260 (1944). Pridgeon was not awarded any damages, and so it does not matter whether the award of damages in this case could be trebled.

We have considered all issues presented by Pridgeon. We affirm the jury's verdict and the judgment entered thereon by the district court.

AFFIRMED.