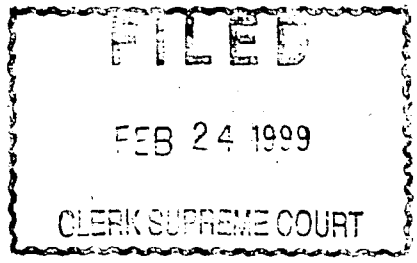
IN THE COURT OF APPEALS OF IOWA

No. 8-574 / 97-2310
Filed February 24, 1999

SHARON M. DUNLOP, f/k/a
SHARON M. GRACE,
Appellee,

vs.

THOMAS M. DUNCAN,
Appellant.



Appeal from the Iowa District Court for Polk County, Joel Novak, Judge.

On appeal from an adverse verdict in a breach of contract action, the appellant claims the trial court erred in finding the promissory note was an enforceable contract and in its determination of damages. **AFFIRMED.**

Thomas D. Hanson and Clark G. McDermott of Hanson, Bjork & Russell, L.L.P., for appellant.

Jeffrey N. Bump of Bump & Bump, Panora, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ. Zimmer, J., takes no part.

HUITINK, J.

Defendant-appellant Thomas Duncan appeals from an adverse verdict in a breach of contract action. We affirm.

Thomas Duncan made a promissory note payable to Sharon M. Dunlop (f/k/a Sharon M. Grace) in the amount of $8615. The note provides:

> FOR VALUE RECEIVED, the undersigned hereby jointly and severally promises to pay to the order of Sharon M. Grace . . . the sum of Dollars ($8,615.00), together with interest thereon at the rate of 1.325% per month on the unpaid balance. Said sum shall be paid in the manner following:
>
> 1. Have until the 5th of the month to pay without late interest.
>
> 2. Charged late interest on balance from 6th of the month until date of payment at rate of 1.325.
>
> 3. Late charge of $15.00 will be added after the 15th of the month (on the 16th day) if no payment is received by then.
>
> 4. All payments are due the first of the month.

After considering conflicting evidence, the district court found Duncan owed Dunlop $3703.09 principal, $846.01 interest, and $480 for delinquency. Judgment was entered for $5029.10 against Duncan.

Defendant appeals. He argues the trial court erred in finding the promissory note was an enforceable contract and in determining damages.

I. We review a case according to the way it was tried in the district court. *See Neuzil v. City of Iowa City*, 451 N.W.2d 159, 163 (Iowa 1990). Because this case was tried to the district court at law our review is limited to the correction of errors

at law. *See* Iowa R. App. P. 4; *Bricker v. The Maytag Co.*, 450 N.W.2d 839, 840–41 (Iowa 1990).

The trial court's factual findings are binding on us if they are supported by substantial evidence. *See* Iowa R. App. P. 14(f)(1). Evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings. *See Waukon Auto v. Farmers & Merchants Sav. Bank*, 440 N.W.2d 844, 846 (Iowa 1989). We construe the district court's findings broadly and liberally. *See Neuzil v. City of Iowa City*, 451 N.W.2d at 163. We are obliged to view the evidence in the light most favorable to sustaining the court's judgment. *See City of McGregor V. Jannett*, 546 N.W.2d 616, 617 (Iowa 1996).

II. Duncan contends the trial court erred in ruling Dunlop established the factors needed for recovery on her breach of contract claim. Specifically, Duncan claims Dunlop has not shown the existence of an enforceable contract between the parties. We disagree.

"To make any sort of a contract, there must be a meeting of the minds upon a given subject." *Lyon V. Willie*, 288 N.W.2d 884, 888 (Iowa 1980) (quoting *Breen v. Mayne*, 141 Iowa 399, 403–04, 118 N.W. 441, 443 (1909)). Such agreement must be definite and certain as to its terms to enable the court to give it an exact meaning. *See Palmer v. Albert*, 310 N.W.2d 169, 172 (Iowa 1981); *Davis v. Davis*, 261 Iowa 992, 1001, 156 N.W.2d 870, 876 (1968). Vagueness of expression, indefiniteness, or uncertainty as to any of the essential terms of the agreement may prevent the creation

of an enforceable contract. *See Gildea v. Kapenis*, 402 N.W.2d 457, 459 (Iowa App. 1987).

Duncan is primarily concerned with calculation of interest under the agreement. At issue is the date upon which interest would begin accruing each month in the event a monthly principal payment was not timely made. Significant testimony was received concerning the issue of interest calculations, but the record reveals this testimony was often unclear and seemingly contradictory. However, at the close of trial, the court made this final observation:

> THE COURT: Let me make sure I understand what your testimony is. You are saying that your interpretation of this note was that he would have until the fifth of the month to pay without late interest. So in other words, if he paid you on the fifth you were still going to charge him interest.
>
> THE WITNESS [GRACE DUNLOP]: Oh yes.

In light of the confusing and conflicting testimony in the record, we find it imperative to defer to the trial court's judgment in this matter. In determining the method for calculating interest due on the note, the trial court apparently found some portion of Dunlop's testimony to be a sufficiently credible understanding of the contract. We discern little ground in the record to challenge the court's ruling and determine it is supported by substantial evidence. The interest terms of the agreement are sufficiently definite to form a binding contract.

III. Duncan also contests the court's actual calculation of damages. He contends he preserved this issue by arguing at trial the excessiveness of Dunlop's claimed damages.

The issue raised on appeal is not whether the damages claimed by Dunlop were excessive, but rather whether the trial court improperly applied the interest formula. Alleging excessiveness during trial was insufficient to preserve error on the issue of improper calculation of damages by the court. Any objection to the trial court's ruling should have been made after trial via a Rule 179(b) motion. *See* Iowa R. Civ. P. 179(b). If there was concern regarding the court's ruling and application of the interest formula to the facts, Duncan should have afforded the trial court an opportunity to enlarge or amend its findings and conclusions. Because he did not do so, Duncan's challenge has not been preserved and it is therefore waived on appeal. *See State v. Rosenstiel*, 473 N.W.2d 59, 61 (Iowa 1991) (reiterating the long-standing norm that "a party who fails to alert the district court to its contentions at trial cannot thereafter rely on those contentions to seek reversal on appeal" and that to otherwise allow a litigant to raise an issue for the first time on appeal would seriously undermine the district court's original jurisdiction).

AFFIRMED.