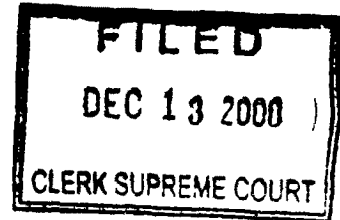


IN THE COURT OF APPEALS OF IOWA

No. 0-328 / 99-1110
Filed December 13, 2000



**TOM ELAND d/b/a ELAND
COMPANY,**

Plaintiff-Appellant,

vs.

FOWLER ELEVATOR,

Defendant-Appellee.

Appeal from the Iowa District Court for Wayne County, Dale B. Hagen,
Judge.

Plaintiff appeals from the district court ruling denying his motion for costs,
expenses, and attorney fees following a jury verdict in his favor in his breach-of-
contract action. **AFFIRMED.**

Jeffrey M. Ireland of Kirkley Law Offices, Cedar Rapids, for appellant.

Sidney E. Drake, Centerville, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

PER CURIAM

The plaintiff-appellant, Tom Eland, appeals the district court ruling denying his motion for costs, expenses, and attorney fees following a jury verdict in his favor in his breach-of-contract action. He claims the court erred by failing to sustain the motion as a sanction under Iowa Rules of Civil Procedure 80 and 134(c). We affirm.

After discussions with the elevator manager, Tom Eland did some work on a grain dryer at Fowler Elevator. The dryer had been damaged in a fire and also had some metal skins that were corroded. Eland sent two separate invoices for the work he did—one for the maintenance (\$5115.69) and one for the fire repairs (\$6351.59), because the fire repair work was covered by insurance. The invoices were sent in the same envelope, with the repair invoice marked “send to the insurance company.” The manager of the elevator apparently did not read the invoices carefully and thought they were both for the same work. Fowler promptly paid the “maintenance” invoice and forwarded the “repair” invoice to its insurance company, which paid Fowler the excess above the deductible. Eland continued to seek payment for the “repair” invoice, but Fowler refused.

Eland filed suit against defendant, Fowler Elevator, alleging Fowler breached one of two oral contracts to pay for Eland’s services in repairing a grain dryer. Before trial, Eland sent Fowler requests for admissions. Fowler admitted most, but denied three or four. Eland also asserted a claim based on quantum meruit, which he withdrew prior to submission to the jury. Fowler Elevator maintained throughout the dispute and trial that there was only one oral contract

and it had paid the amount owed. It claimed it had not ordered the maintenance work and that the skin replacement did not improve the grain dryer. The jury returned a verdict in Eland's favor on the contract claim for \$6351.59. He then filed a motion for costs, expenses, and attorney fees, claiming sanctions were appropriate under Iowa Rules of Civil Procedure 80 and 134(c). Eland claimed he proved the facts of the four denied requests for admissions. He also claimed Fowler raised a frivolous defense and needlessly increased the cost of the litigation. The district court denied the motion. Concerning the rule 134 claim, the court determined there was a "technical violation" of rule 134, but could "not say that defendant did not have a reasonable ground to believe that it might prevail on the matter with the defense asserted." Concerning the rule 80 claim, the court could not find the defendant's or counsel's actions met the requirements for sanctions.

We ordinarily review a trial court's orders regarding sanctions for abuse of discretion. *Slade v. M.L.E. Inv. Co.*, 566 N.W.2d 503, 505 (Iowa 1997). We accord the trial court discretion in assessing the appropriateness of a sanction. *Fields v. Iowa Dist. Court of Polk County*, 468 N.W.2d 38, 39 (Iowa 1991).

On appeal, Eland claims the court erred in not awarding costs and in not imposing sanctions. He basically argues that Fowler had no legitimate dispute as to the existence of the contract for Eland's services, or that the amount Eland billed was actually due and owing. Eland asserts Fowler and its attorney failed to make a good faith effort to settle the case, and instead insisted on mounting a

frivolous defense to his claims. He also claims certain costs should have been awarded to him as the successful party under Iowa Code chapter 625.

Fowler denies that it defended in bad faith. In the alternative, Fowler argues that, in the event the court determines Eland's claim for costs or expenses has merit, remand for a hearing would be necessary where Eland would be required to break down his costs, expenses, and attorney fees and to show which were related to matters that should have been admitted or not used as the basis of the defense.

Concerning the requests for admissions, although a trial may ultimately result in a finding that matters denied were true, this does not necessarily mean the matters were "unreasonably denied." *Koegel v. R. Motors, Inc.*, 448 N.W.2d 452, 456 (Iowa 1989). Concerning the defensive position taken by Fowler, the court found:

When [the elevator manager] got the statements, he did not read them, but assumed they were for the same thing, even though a quick reading of the statements would have revealed that they were different. Defendant's responses to the requests for admissions and answer to the petition for the most part were consistent with this position.

We find no abuse of discretion in the district court's denial of the motion for costs and sanctions.

AFFIRMED.