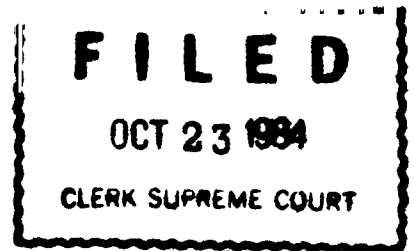


IN THE COURT OF APPEALS OF IOWA



NEWT HEATON and MARCELLA HEATON,
d/b/a H & H TOWN AND COUNTRY,

)

309

Plaintiffs-Appellees,

)

Filed October 23, 1984

vs.

)

4-334
84-77

ROGER STOOKER, an individual,

)

Defendant-Appellant.

)

Appeal from the Iowa District Court for Fremont County--Glen M. McGee
Judge.

Defendant appeals from the trial court's denial of his counterclaim for
damages caused by allegedly defective diesel fuel sold by plaintiff. **AFFIRMED.**

Donald G. Beattie of Skinner, Beattie & Wilson, P.C., Altoona, for
defendant-appellant.

Richard B. Maher, Sidney, for plaintiffs-appellees.

Heard by Donielson, P.J., Schlegel and Sackett, JJ.

The plaintiffs/appellees Heatons owned and operated a business that was involved in the bulk sale of diesel fuel. Defendant/appellant Stooker contracted with Heatons for the purchase and delivery of 4,000 gallons of fuel. The fuel was delivered to Stooker in three batches in late April and early May of 1983.

Stooker testified that after putting the fuel delivered by Heatons in his tractors he experienced problems with clogged fuel filters. Stooker had the fuel tested, and the tests indicated there was water and sediment in the fuel. Stooker then tendered to Heatons the purchase price of the fuel less \$1,500 which Stooker claimed as the expense he incurred to effectively use the fuel. The tender was refused. Heaton filed suit for the price of the fuel and Stooker counterclaimed for his damages. The trial court found in favor of Heatons and against Stooker on his counterclaim.

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Stooker contends that the judgment entered by the trial court was contrary to the evidence. His only request for relief is that this court enter judgment for him on his counterclaim in the amount of \$1,500.¹

¹The only relief sought by Stooker is that we correct the finding of the trial court and enter judgment for him on his counterclaim of \$1,500. Iowa Rule of Appellate Procedure 3 provides: ". . . no appeal shall be taken in any case, . . . , where the amount in controversy, as shown by the pleadings, is less than \$3,000 unless the Supreme Court or a justice thereof certifies that the cause is one in which appeal should be allowed . . ." Judgment was entered against Stooker on Heatons' petition for \$3,779.79, the amount claimed in the petition. Stooker's notice of appeal stated he was appealing from the judgment entry entered in this matter. The notice indicated that he was appealing from the trial court's judgment in favor of Stooker, as well as the denial of his counterclaim. But the controversy submitted to us is less than \$3,000. The appellees have not raised this issue of jurisdiction and because of our disposition of this cause we elect not to raise it. We do not, however, in any way condone the utilization of our court's time on a \$1,500 controversy which has not been certified as a cause in which appeal should be allowed by the Supreme Court.

The sole point of dispute concerns the source of the defect in the fuel. The trial court determined it was not satisfied that the problem with the fuel resulted from anything Heatons did. Stoker claims that the trial court ignored or rejected certain of testimony and drew the wrong conclusion from other testimony. The findings of fact in this action are binding on us if supported by substantial evidence. Ia. Rules App. Procedure 14(f)(1).

The fuel was delivered in a normal manner. There was a quantity of fuel that had been in the tank all winter when the first delivery was made. The tank sloped toward the area where the pump drew the fuel. Stoker installed a clean-out plug after the second delivery. The installation of the plug required welding and drilling. There was substantial evidence to support the trial court's finding that Stoker had failed to prove the allegations of his counterclaim.

AFFIRMED.