IN THE COURT OF APPEALS OF IOWA

No. 9-018 / 98-0062

DOUG TRUCKE,

Plaintiff-Appellee,

FEB 24 1999

vs.

CRYSTAL BRETTHAUER and FARM BUREAU MUTUAL INSURANCE COMPANY,

Defendants-Appellants.

Appeal from the Iowa District Court for Monona County, Dewie J. Gaul, Judge.

Defendants appeal from the jury verdict entered for plaintiff. **REVERSED AND DISMISSED.**

Angela A. Swanson of Morain, Burlingame & Pugh, P.L.C., West Des Moines, for appellants.

Peter A. Goldsmith of Boerner & Goldsmith, P.C., Ida Grove, for appellee.

Heard by Sackett, C.J., and Streit and Mahan, JJ.

PER CURIAM.

Defendants-appellants Crystal Bretthauer and Farm Bureau Mutual Insurance Company appeal from the jury verdict entered for plaintiff-appellee Doug Trucke. Plaintiff sued claiming damages for an uninsured hail loss to his farm crops. Plaintiff contends he was uninsured because defendants breached a contract in failing to furnish him with information on coverages. Defendants contend the district court erred in (1) failing to grant a directed verdict because there was not sufficient evidence of a contract, (2) failing to grant a new trial because the jury verdict was the result of compromise, and (3) upholding the verdict based on comparative fault principles. We reverse and dismiss.

Plaintiff is a farmer. Defendant Bretthauer is an insurance agent selling insurance to cover crop loss and damages. Defendant Farm Bureau insures for certain crop damages. Plaintiff had a multi-peril crop insurance policy in place for the crop years 1993 to 1995 with an agent not a party to this litigation. During the same period, plaintiff had in place a policy for hail insurance with defendant Farm Bureau purchased through defendant Bretthauer.

In March 1996, plaintiff talked to defendant Bretthauer about switching his crop insurance. There was discussion covering a new insurance program termed "crop revenue coverage." This program provided multi-peril crop insurance based on loss of crop revenue. At the time, plaintiff and defendant Bretthauer also discussed plaintiff's need for a separate hail insurance policy.

On March 11, 1996, plaintiff purchased the crop revenue coverage from defendant Bretthauer. A separate hail insurance policy was not written at that time. There was evidence after the crop revenue coverage was purchased plaintiff and defendant Bretthauer again talked about plaintiff buying hail insurance. There was also evidence plaintiff asked about the cost of hail insurance coverage and the nature and extent of the crop revenue coverage. The cost of crop revenue coverage depended on the crop yield from plaintiff's fields in prior years. To figure the costs, defendant Bretthauer needed information from plaintiff's prior agent about plaintiff's prior years' yields.

In June 1996, a hailstorm damaged plaintiff's crops. At the time, plaintiff did not have a separate hail insurance policy in effect. Plaintiff had partial coverage from the crop revenue coverage policy, though the hail loss was not covered to the extent it would have been had a separate hail insurance policy been written. It was stipulated if plaintiff had a hail insurance policy in place, he would have recovered an additional $23,410.

Plaintiff filed this petition against defendants alleging (1) negligence in failing to provide him with information to determine the amount of hail insurance needed, and (2) breach of contract.

At trial, plaintiff admitted he was aware at the time of the hail loss he had not purchased a separate hail policy, and he could not guarantee he would have purchased a separate hail insurance policy had he received the requested information.

The jury returned a verdict for plaintiff in the amount of $11,705. The jury found the parties had a contract to procure information and defendant Bretthauer breached that contract. The jury further found defendant Bretthauer was at fault for not procuring the information but found her conduct was not the proximate cause of plaintiff's damages.

Defendants filed a motion for new trial alleging, in part, the verdict was the result of a compromise because the parties stipulated to the amount of recovery. The district court denied the motion, finding:

> The defendants assert that there was insufficient evidence that the parties agreed upon the same thing in the same sense, that there was consideration, or what the terms of the contract were. The jury found the parties agreed upon a contract, and the evidence was such that the jury could find there was an agreement that defendant Bretthauer would advise plaintiff as to a price for hail insurance so plaintiff could determine whether to buy such. The jury could find this was to be done within a reasonable time and that it was not and that defendant failed to timely furnish the information. As a result, plaintiff did not get hail insurance. The jury could find that if the promised information had been furnished, plaintiff would have bought the insurance. The jury may have felt that there was only a 50-50 chance plaintiff would have bought the insurance, and therefore reduced the verdict. That the jury gave a lower verdict than what the parties stipulated plaintiff would have been entitled to if he had bought the insurance is not something of which defendants may complain. Defendants assert there was insufficient evidence of consideration, but the jury had evidence that plaintiff experienced or would experience a detriment. Whether the terms of the contract were sufficiently specific was for the jury. When a time for performance is indefinite, the jury may conclude the parties intended performance within a reasonable time.

Our scope of review is for errors at law. Iowa R. App. P. 4; *East Broadway Corp. v. Taco Bell Corp.*, 542 N.W.2d 816, 819 (Iowa 1996).

Defendants first contend there was not substantial evidence to support the verdict. Defendants advance there was not evidence of an oral contract for a separate hail insurance policy. Defendants further advance while defendant Bretthauer agreed to provide plaintiff with information on the hail insurance policy, there was not evidence plaintiff specifically requested defendant Bretthauer to procure the hail insurance. Defendants further advance there was no offer and no opportunity for acceptance because plaintiff had not said he wanted the coverage.

Plaintiff contends there was substantial evidence supporting the verdict. He contends he asked for the per acre cost of hail insurance on March 10 and defendant Bretthauer promised to get this information for him but said she needed the history of crop yields. Plaintiff signed a release to allow his former insurance company to give the information to defendant Farm Bureau. Plaintiff contends there is evidence he had three telephone conversations with defendant Bretthauer in the next two and one-half months, and defendant Bretthauer told plaintiff she would get the crop revenue coverage cost and coverage information and the yield history. Plaintiff contends defendant Bretthauer's agreement to get the crop revenue coverage cost and coverage information and yield history was sufficiently specific to form a contract.

Plaintiff further argues defendants are confusing the issue, which is not whether a contract for the purchase of the hail insurance was breached, but whether there was an oral contract for defendant Bretthauer to provide plaintiff with the necessary information about the cost and coverage of the crop revenue coverage.

If a jury verdict is supported by substantial evidence and justified as a matter of law, the judgment will not be disturbed on appeal. *Luddington v. Moore*, 261 Iowa 641, 646, 155 N.W.2d 428, 432 (1968). Further, we must construe the evidence in the light most favorable to the jury verdict, and this court will not weigh the evidence or pass on the credibility of witnesses. *See id.* The real test is the sufficiency of the evidence to support the conclusion of the fact finder. *Id.*; *see also Life v. Best Refrigerated Express, Inc.*, 443 N.W.2d 334, 336-37 (Iowa App. 1989).

If a written draft of an agreement is prepared, submitted to both parties, and each of them expresses his unconditional assent thereto, there is a written contract. *Service Employees Int'l Local No. 55 v. Cedar Rapids Community Sch. Dist.*, 222 N.W.2d 403, 407 (Iowa 1974). So far as the common law is concerned, the making of a valid contract requires no writing; and even if there is a writing, there need be no signatures unless the parties have made them necessary at the time they expressed their assent and as a condition modifying that assent. *See id.* at 407-08.

When the terms of an agreement are definitely fixed so nothing remains except to reduce the terms to writing, an oral contract will be upheld unless the parties intended not to be bound until the agreement was reduced to writing. *Marti v. Ludeking*, 193 Iowa 500, 503-04, 185 N.W. 476, 477-78 (1921). The terms are sufficiently definite if the court can determine with reasonable certainty the duty of each party and the conditions relative to performance. *Severson v. Elberon Elevator, Inc.*, 250 N.W.2d 417, 420 (Iowa 1977); *Janssen v. North Iowa Conference Pensions, Inc. of the Methodist Church*, 166 N.W.2d 901, 907 (Iowa 1969).

There was not substantial evidence to support the finding of an oral contract. Plaintiff admitted he could not guarantee he would have purchased a separate hail insurance policy had defendant Bretthauer obtained the requested information. There was no binding agreement. The verdict must be reversed. We find it unnecessary to address defendants' other challenges.

REVERSED AND DISMISSED.