FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-420 / 88-625

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JOHN M. ZIELINSKI, d/b/a **IOWA HERITAGE GALLERIES**,

Appellant,

vs.

SUTHERLAND PRINTING COMPANY, INC., and **SUTHERLAND PUBLISHING COMPANY**,

Appellees.

Appeal from the Iowa District Court for Poweshiek County, Dan F. Morrison, Judge.

This appeal arose from plaintiff's action for: breach of contract; misappropriation of business name; tortious interference with contract; and fraud. The parties had entered into a contract for the publication, distribution, and marketing of plaintiff's books. The district court ruled in defendants' favor and entered judgment on their counterclaim for $20,188.82. **AFFIRMED.**

Mary K. Hoefer of Mears, Zimmermann & Mears, Iowa City, for appellant.

C. M. Manly of the Manly Law Firm, Grinnell, and Roger Sunleaf of McNeil and Sunleaf, Montezuma, for appellees.

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

PER CURIAM

John Zielinski is a writer, photographer, and publisher who is best known for his regional photographs and books. He began publishing his works in 1974 with the book Portrait of Iowa. During the years 1974-1981 he continued his photography and publishing career with such books as The Amish, Children of Iowa, Mesquakie and Proud of It, Unknown Iowa, and From This Earth.

Until 1979 Zielinski used the name "Photo Art" as the name for his publishing business which he used to publish most of the above-named books. Beginning in 1979, Zielinski began using the name "Iowa Heritage" in connection with his publications.

In May of 1982, David Sutherland of Sutherland Printing and Sutherland Publishing (Sutherland) contacted Zielinski, and the two entered into the agreement which is now in dispute. The written portion of the agreement basically provided that Sutherland would print, promote, and market Zielinski's new works, and net profits, after deduction of production costs, would be split between the parties. The parties appear to agree the agreement allowed plaintiff to remove his books from Sutherland and distribute them himself, as long as he paid the full costs for production of the books. The previously published Zielinski works were governed by an oral agreement under which Sutherland would warehouse and distribute the works at a cost of $.50

per book. By May 1984, the parties increased the fee to $1.00 per book.

Plaintiff contends the defendants did not properly distribute income from the book sales. In addition to breach of contract, plaintiff alleged defendants had misappropriated plaintiff's name, tortiously interfered with his contractual relationships, and committed fraud. Sutherland filed a counterclaim alleging plaintiff owed $20,188.82 due on an open account.

The trial court ruled in defendants' favor on plaintiff's claims and entered judgment on the counterclaim for $20,188.82.

Plaintiff has appealed and maintains the district court erred in: 1) denying plaintiff's claims for breach of contract; 2) dismissing plaintiff's claim for tortious interference with contract; 3) ruling against plaintiff on his claim for misappropriation of business name; and 4) entering judgment for defendants on their counterclaim. Plaintiff also insists defense counsel's conduct at trial was improper and prejudicial.

Our review is for correction of errors at law. Iowa R. App. P. 4. The findings of fact in a law action are binding upon the appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). In reviewing the merits of plaintiff's claims, we have carefully reviewed both his brief and the document he filed

with the court on November 1, 1989. With regard to the latter, we remind plaintiff our scope of review is limited to issues raised before the trial court and preserved for appeal.

In claiming breach of contract, plaintiff claims defendant miscalculated the net profits resulting from the sale of his books. Specifically, it appears plaintiff challenges defendants' inclusion of promotional costs when determining production costs. Plaintiff testified as to his understanding that promotional costs would be subtracted from gross income only if he authorized the expenditures.

From our review of the record, it is apparent the trial court was correct in concluding plaintiff had failed to prove a breach of contract. The trial court found the "Marketing Agreement" (plaintiff's exhibit 55) was a written contract entered into by the parties. Section four of the contract specified sales income was to be reduced by production costs including the costs of promotional material.[1] Plaintiff failed to prove a miscalculation of profits, and he failed to refute information derived from defendants' business records and included in defendants'

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1. Unlike the copy contained in the appendix, the actual marketing agreement found in the trial court record does not contain lines through the words "promotion materials."

exhibits ten and eleven. Defendants' business records established the amount plaintiff owed for the production of books he removed for sale, and the trial court did not err in granting judgment for defendants' counterclaim.

Plaintiff challenges the trial court's dismissal of his claim for tortious interference with contract. The elements for the tort of interference with contractual relationships are: 1) an existing valid contractual relationship; 2) knowledge of the relationship; 3) intentional interference inducing or causing a breach or termination of the relationship; and 4) resulting damage. Conway v. Webster City Products Co., 431 N.W.2d 795, 799 (Iowa 1988); Kendall/Hunt Publishing Co. v. Rowe, 424 N.W.2d 235, 245 (Iowa 1988). The record is devoid of evidence of defendants' knowledge of, and intentional interference with, contracts plaintiff had with other parties. A directed verdict is appropriate if there is no substantial evidence in support of each element of a plaintiff's claim. Woodruff Const. Co. v. Mains, 406 N.W.2d 787, 789 (Iowa 1987). The trial court properly dismissed this claim.

Plaintiff alleges the trial court erred in ruling against him on his claim for the misappropriation of his business name. We note that the Marketing Agreement authorized defendants to use the name "Iowa Heritage

Galleries" in the ordinary course of business. In his brief, plaintiff indicates defendants actually registered the Iowa Heritage Galleries name as their own, yet he fails to direct this court to proof in the record to substantiate this claim. He cites us to only the statement of Catherine Sutherland, who testified "Iowa Heritage Gallery Publications" was an assumed name of Sutherland Printing Company. Plaintiff had contracted away the use of the name "Iowa Heritage Galleries" for the duration of the parties' agreement, and we find no misappropriation of the name under these circumstances.

We have examined plaintiff's claim that defense counsel's conduct at trial was improper and prejudicial, and we find it without merit.

AFFIRMED.