IN THE COURT OF APPEALS OF IOWA

No. 1-329 / 00-0278
Filed December 12, 2001

FILED
DEC 12 2001
CLERK SUPREME COURT

FREDRICKSBURG FARMERS COOPERATIVE,
Plaintiff,
vs.

STANLEY and ELWOOD FARMS, A Partnership, STANLEY BOE, ELWOOD BOE, and FIRST NATIONAL BANK, Spring Valley, MN,
Defendants.

STANLEY and ELWOOD FARMS, A Partnership, STANLEY BOE and ELWOOD BOE,
Cross-Petitioners-Appellants,
vs.

FIRST NATIONAL BANK, Spring Valley, MN,
Cross-Defendant-Appellee.

Appeal from the Iowa District Court for Chickasaw County, Margaret L. Lingreen, Judge.

The cross-petitioners appeal a district court judgment, following a jury trial, dismissing their action against First National Bank for negligent supervision of a bank employee, breach of fiduciary duty, and interference with contracts. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

Frank L. Burnette II of Burnette & Kelley, Des Moines, and Robert W. Thompson of Thompson Law Office, Reinbeck, for appellants.

Lewis W. Churbuck and Christopher F. O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, New Hampton, and Timothy D. Moratzka of Mackall, Crounse & Moore, Minneapolis, Minnesota, for appellee.

Heard by Mahan, P.J., and Zimmer and Miller, JJ.

MAHAN, P.J.

The cross-petitioners appeal a district court judgment, following a jury trial, dismissing their action against the cross-defendant for negligent supervision of a bank employee, breach of fiduciary duty, and interference with contracts. The cross-petitioners contend the district court erred in: (1) giving ten instructions to the jury that, singularly and collectively, compromised the jury's ability to properly exercise its role as fact finder; (2) refusing to give two instructions defining intentional interference and improper conduct; (3) sustaining the Bank's motion in limine; and (4) granting a directed verdict on the issue of breach of fiduciary duty. We affirm in part, reverse in part and remand.

Background Facts and Proceedings. Elwood Boe and Stanley Boe (Boes) were brothers doing business as Stanley and Elwood Farms. The Boes maintained a farming operation in Iowa and Minnesota. They purchased goods and supplies from Fredericksburg Farmers Cooperative (Coop), located in Fredericksburg, Iowa. They obtained financing for their farming operation from the First National Bank, Spring Valley, Minnesota, (Bank), through its branch office in LeRoy, Minnesota.

In early 1997, the Boes entered into discussions with loan officer Doug Wessels concerning financing for that year's crops. On April 16, 1997, the Boes discovered Wessels had been fired from the Bank for embezzlement. Wessels embezzled about $66,000 from the Boes' account. The Bank restored this amount to the Boes.

The Boes discussed future financing with Bank officials. Joseph Grandgeorge, the Bank CEO, indicated the Bank's willingness to finance the

1997 crop year by extending the Boes' debt limit. Grandgeorge prepared a new loan proposal for the Boes, which was not signed by the parties at that time. The Bank sent a letter to the Boes stating their credit lines had been frozen and all farm proceeds were to be paid to the Bank until a new loan proposal was accepted.

Bank officials and the Boes met on April 24, 1997, and the Bank indicated it would issue a cashier's check to cover all rent payments and supplier accounts. However, the Bank wanted a release of liability as a precondition for the loan. The release covered claims for damages in excess of the amounts actually embezzled by Wessels. The Boes refused to sign the release, and the Bank refused to finance their operations. The Boes subsequently lost their farm leases and defaulted on their supplier accounts, including the Coop.

The Coop filed an action against the Boes, their farm partnership, and the Bank. The Coop sought payment from the Boes on their open account. The Coop raised claims of constructive trust, fraud, breach of contract, and guarantee against the Bank. The Coop subsequently reached an agreement with the Bank, and these claims are not part of the appeal.

The Boes filed a cross-petition against the Bank claiming (1) the Bank was negligent in supervising its employees, (2) the Bank breached its fiduciary duty to them, and (3) the Bank interfered with their current and prospective contractual relationships with third parties.

The Bank filed a motion in limine requesting the court limit testimony concerning Wessels' embezzlement, any negotiations regarding 1997 financing, and the release. The court granted the motion. The Boes made an offer of

proof. After further consideration, the court determined evidence of the parties' negotiations and the release could be presented to the jury.

A jury trial was held solely on the issues raised in the cross-petition. The district court granted the Bank's motion for a directed verdict on the issue of breach of fiduciary duty. The jury reached a verdict in the Bank's favor on the other issues, and the district court entered judgment dismissing the Boes' action. The Boes filed a motion for new trial, which the district court denied. The Boes appeal.

I. Negligent Supervision

The Boes contend the district court improperly instructed the jury on the issue of negligent supervision. Our review of a challenge to a jury instruction is for the correction of errors at law. *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co.,* 606 N.W.2d 376, 379 (Iowa 2000). We review jury instructions to decide if they are a correct statement of the law and are substantially supported by the evidence. *Bride v. Heckart,* 556 N.W.2d 449, 452 (Iowa 1996).

The jury was instructed the Boes were required to prove "That Defendant in the exercise of ordinary care should have known that Douglas Wessels was embezzling funds from loan accounts," and that the Bank's negligent supervision was a proximate cause of plaintiffs' damages. The Boes wanted to include the following additional specifications of negligence: failure to maintain loan documentation, failure to follow up loan reviews, failure to discover representations to the Coop because of no loan documentation, and failure to discover Wessels' actions to cover up the embezzlement.

In discussing its decision, the district court stated:

> I'm not sure but I think plaintiffs, perhaps, are just maybe approaching this as the bank's negligence in and of itself without any aspect of supervision. The Court, however, is also concerned that there is insufficient evidence in this record to -- to submit that type of claim to the jury.
>
> Specifically, much of what I think plaintiffs were arguing yesterday by way of acts or non-acts by the bank, there's no showing of any proximate cause to the jury from some of those acts.
>
> In other matters, I don't think that there's sufficient evidence in this record to reflect what ordinary care would be in -- in this type of situation.

We agree with the district court's conclusions. An employer has a duty to exercise reasonable care in supervising individuals, who, because of their employment, may pose a threat of injury to members of the public. *Godar v. Edwards,* 588 N.W.2d 701, 709 (Iowa 1999). A defendant is liable, however, only if all the requirements of an action of tort for negligence exists. *Schoff v. Combined Ins. Co.,* 604 N.W.2d 43, 53 (Iowa 1999). Here, the Boes were not damaged by the incidents they sought to include as specifications of negligence. Or to put it another way, the alleged negligent actions of the Bank were not the proximate cause of any damages suffered by the Boes. We conclude that error, if any, in the jury instructions on negligent supervision did not prejudice the Boes.

II. Breach of Fiduciary Duty

The Boes claim the district court erred by granting the Bank's motion for directed verdict on the issue of breach of fiduciary duty. A directed verdict may be granted where a plaintiff's claim is not supported by substantial evidence. *Stover v. Lakeland Square Owners Assn.,* 434 N.W.2d 866, 873 (Iowa 1989).

Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Johnson v. Dodgen,* 451 N.W.2d 168, 171 (Iowa 1990).

A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relationship. *Weltzin v. Cobank, ACB,* 633 N.W.2d 290, 294 (Iowa 2001) (citing Restatement (Second) of Torts § 874 cmt. a, at 300 (1979)). There is typically no fiduciary relationship between a bank and its customers. *Id.* Our supreme court has stated that in a borrower-lender context, there is generally no fiduciary relationship outside of the actual servicing of the loan. *Id.*

We find there was not substantial evidence of a fiduciary duty in this case. There was no evidence of a special relationship between the Boes and the Bank. In fact, Elwood testified, "Oh, I really don't rely on anybody for advice . . . " and "I don't like to have people tell me what to do." We affirm the grant of a directed verdict on the claim of breach of fiduciary duty.

III. Intentional Interference with Contracts

A. Release

The Boes claim the district court should not have initially granted the Bank's motion in limine to preclude them from introducing evidence of the Bank's offer to provide financing in exchange for release of liability. They claim they were prejudiced because they were unable to present, from the beginning of the case, their theories on liability and damages.

In general, under Iowa Rule of Evidence 408, offers to compromise disputed claims are generally inadmissible as an admission of liability. *Graber v.*

City of Ankeny, 616 N.W.2d 633, 638-39 (Iowa 2000). In order for this rule to apply there must be a controversy between the parties at the time of the offer:

> However, there must be a controversy between the parties at the time of the alleged offer, for if there is no controversy there is nothing to compromise. * * * certainly no statement or admission will be excluded because of compromise connections unless it appears to have been made as part of, and under the motivating influence of, compromise negotiations pending or contemplated at the time.

Nehring v. Smith, 243 Iowa 225, 232, 49 N.W.2d 831, 835 (1951). *See also Springer v. Weeks & Leo Co.,* 475 N.W.2d 630, 634 (Iowa 1991) (A letter written when there was no litigation or controversy between the parties was not an offer to compromise.); 29 Am Jur. 2d *Evidence* § 511, at 591 (1994) (Where the point of threatened litigation has not been reached, communications between parties are not considered compromise negotiations.) Where there is no controversy an offer will be construed to be an admission and is admissible in evidence. *See Lewis v. Kennison*, 278 N.W.2d 12, 14 (Iowa 1979).

In the present case, the release was not an offer to compromise. Clearly there is no evidence there was any controversy between the parties at the time. No litigation had been started, and none was threatened. The Boes were not asserting any claims against the Bank, nor was the Bank disputing its liability for the embezzlement. This evidence of the release was relevant to the manner of the financing negotiations between the Boes and the Bank. The Boes' trial strategy and tactical considerations were thwarted by the court's initial decision, which prevented them from presenting their complete case to the jury.

In conjunction with their argument regarding the motion in limine, the Boes contend the district court should not have submitted jury instruction No. 16,

claiming it improperly instructed the jury that certain evidence was not relevant. This instruction provides:

> You may not consider the First National Bank's offer to renew the financing it provided to the Plaintiffs in exchange for a release of liability as any admission of liability by the bank or as evidence of the strength or weakness of either party's case.

Based on our findings above regarding the admissibility of the release, we find this instruction should not have been submitted. The instruction is a misstatement of the law as it applies to the facts in this case. Evidence of the release could be considered on the issue of the Bank's liability, and could be considered as evidence of the strength or weakness of either party's case. A jury instruction that is a material misstatement of the law constitutes prejudicial error. *Iowa Comprehensive,* 606 N.W.2d at 379. A material misstatement of the law warrants reversal. *Graber,* 616 N.W.2d at 642. We determine the Boes are entitled to a new trial on the issues of intentional interference with contracts and prospective contracts.

B. Other Jury Instructions

The Boes raise assertions that other jury instructions that were given did not properly instruct the jury on the issues of intentional interference with contracts and with prospective contracts. They also claim the court should have submitted two proposed instructions to the jury. In addition, the Boes contend these errors cumulatively denied them a fair trial. Because we reverse the judgment of the district court and remand for a new trial, we need not address the remaining issues raised by the Boes in their appeal.

We affirm the district court on the issues of negligent supervision and breach of fiduciary duty. We reverse and remand for a new trial on the issues of intentional interference with contracts and prospective contracts. Costs of this appeal are assessed one-half to each party.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.