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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EDWIN SILVER and DONNA SILVER,	)	Filed April 24, 1984 310
Plaintiffs-Appellees,	)	
vs.	)	4-13 / 83-379
UNITED FIRE & CASUALTY COMPANY OF CEDAR RAPIDS, IOWA,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Linn County—August F. Honsell, Jr., Judge.

Defendant insurer appeals from judgment for plaintiffs in an action seeking to establish liability under an insurance policy. AFFIRMED.

David F. McGuire, Cedar Rapids, for defendant-appellant.

R. Fred Dumbaugh, Mt. Vernon, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson, and Snell, JJ.

OXBERGER, C.J.

Defendant-insurer appeals from judgment for plaintiffs in an action seeking to establish liability under an insurance policy, asserting: (1) the trial court should have determined as a matter of law that the property in question was used for business purposes and was thus subject to an exclusion from coverage under the policy; (2) the evidence was insufficient to support submitting the case to a jury and insufficient to support the jury's verdict; (3) the court should have specifically instructed the jury that operation of a business does not require actual profit; and (4) that statements made by plaintiffs in separate litigation relating to the property in question constitute binding admissions that the property was used as a business. We affirm.

I. Matter of Law

Appellant, United, submits that the trial court erred by not construing the coverage under the policy as a matter of law. " ' Construction' of a contract, the process of determining its legal effect, is always a matter of law to be resolved by the court. "Interpretation," the process of determining the meaning of words used, is also a matter for the court to decide as a matter of law, unless it depends upon extrinsic evidence or a choice among reasonable inferences to be drawn from it." Farm Bureau v. Mutual Ins. Co. v. Sandbulte, 302 N.W.2d 104, 107-08 (Iowa 1981) (emphasis added).

In this case, both sides offered evidence to aid in the interpretation of the word "business." United claims the word encompassed a situation such as this where husband and wife had terminated previous employment, had acquired a building specifically built to house foxes, and had foxes contained within the building that were worth approximately $74,000. United claims the fact that the Silvers had no actual income from the fox operation is irrelevant: the significance, contends United, lies in Silver's profit motive.

The Silvers, on the other hand, argue that this was not a business, but a

hobby. They claim that they did not intend to make a living off the fox operation in 1981. They support their argument with the contentions that they did not sell any foxes alive or as pelts, they took no business expense deductions on their tax return, and they realized no income or profit from the operation.

A jury question may present itself when there is no conflicting extrinsic evidence as to the facts surrounding the making of the contract but there is conflicting evidence as to the facts to which the contract must be applied. See Brammer v. Allied Mutual Insurance Co., 182 N.W.2d 169, 173 (Iowa 1970). Such was the case here. The court in this case instructed the jury on the meaning of the word "business" and left it to the jury to decide whether this fact situation fell within the meaning given. Our case law indicates such to be proper. Cf. Youngwirth v. State Farm Mutual Insurance Co., 258 Iowa 974, 140 N.W.2d 881 (Iowa 1966); Eckard v. World Insurance Co., 250 Iowa 782, 96 N.W.2d 454 (Iowa 1959). Therefore, we affirm the trial court's decision to submit this issue to the jury.

II. Judgment Notwithstanding the Verdict

In determining whether a jury question was engendered when a party seeks a directed verdict, dismissal, or judgment notwithstanding the verdict, the trial court views the evidence in the light most favorable to the party against whom the motion was made regardless of whether such evidence is contradicted and every legitimate inference which may be reasonably be deducted therefrom must be carried to the aid of the evidence and if reasonable minds can differ on the issue it is for the jury. Meeker v. City of Clinton, 259 N.W.2d 822, 828 (Iowa 1977). On review, our function is to determine whether the evidence was sufficient so the trial court was justified in submitting the question to the jury as the trier of facts. See id. at 828.

The evidence in this case reveals that Mr. and Mrs. Silver had no steady employment from 1979 through 1981 and supported themselves by selling property

that they owned. In 1979 the husband liquidated his construction business by trading equipment worth approximately $25,000 for 46 foxes which he housed in a 20' x 112' utility building. When the building was destroyed by fire in 1981, the number of foxes had grown to more than 150 and he was paid between $73,000 and $75,000 for their loss under a separate insurance policy. Plaintiffs did not sell any foxes or pelts prior to the fire and in tax returns filed after this litigation was commenced they claimed no deductions for business expenses arising out of the fox operation. As indicated before, Mr. Silver described the fox operation as a hobby without any intent to make a living from it deferred for the additional three or four years that would have been necessary for crossbreeding to have produced the coloring he desired. Conversely, United described the operation as a business.

Reasonable minds might draw different inferences from these facts; therefore a jury question is engendered. See Andrews v. Sturble, 178 N.W.2d 391, 398 (Iowa 1970). The ruling of the trial court denying the motions for directed verdict and judgment notwithstanding the verdit was correct.

III. New Trial

Motions for new trials can be granted pursuant to Iowa Rule of Civil Procedure 244(f) if a jury verdict is not sustained by sufficient evidence. A trial court has broad discretion in passing on motions for new trials and only when there is a clear abuse of that discretion will we interfere with a ruling upon the motion. Thompson v. Rozeboom, 272 N.W.2d 444, 446 (Iowa 1978).

In the case at bar, the jury could have found that at this point in time, the fox operation was strictly a hobby and that the Silvers had hope of one day turning the hobby into a business, but that such an occurrence was several years in the future. They could have found that even though the operation was referred to as a business on several occasions, the evidence more strongly favored the Silvers' view that they were strictly breeding foxes with no business pursuits in mind at the present time. As such, we find no abuse of the trial court's discretion in denying

United's motion for a new trial on that ground.

United also contends that the motion should have been granted because the court erred by failing to properly instruct the jury that actual profit was not necessary to constitute a business or business pursuit.

In determining whether there is an error in the trial court's failure to submit a requested instruction, we look to all the relevant instructions. Palleson v. Jewell Cooperative Elevator, 219 N.W.2d 8, 17 (Iowa 1974). If the substance of the requested instruction is covered in instructions given it is not error to refuse the request made. Id. at 17.

The court gave the following instructions concerning the meaning of business.

> . . . The term business as used herein denotes a continuous or regular activity for the purpose of earning a livelihood such as a trade, profession, or occupation, or a commercial enterprise.
>
> To constitute a business purpose or pursuit there must be two elements: First continuity and, secondly, the profit motive.

The court subsequently gave an additional instruction which stated in part:

> . . . "Pursuit" means: An activity that one pursues or engages in seriously and continually or frequently as a vocation or profession.
>
> . . . "profit motive" is defined as such activity as a means of livelihood, or gainful employment, or means of earning a living, or procuring subsistence or profit, or commercial transactions or engagements.

Even though the instruction was not couched in the terms suggested by United, we find the real issue complained of is covered in these instructions. See Wong v. Waterloo Community School District, 232 N.W.2d 865, 870 (Iowa 1975). We do not believe that the stated instructions overtly suggest that actual profit is a requisite. It is a well-known economic principle that one can pursue an activity as a means of earning a living or as a commercial transaction and fail to make any profit on that activity; the jury is certainly cognizant of that fact. Therefore, we see no reason to call undue attention to a fact which may inadvertently favor one

party. Cf. Boyer v. Iowa High School Athletic Assoc., 152 N.W.2d 293, 297 (Iowa 1967). Accordingly, we find no error in the trial court's refusal to instruct on actual profit.

IV. Binding Admissions

United argues that the Silvers admitted that the fox operation was a business in another proceeding. As such, claims United, the admission is binding and the jury verdict is contrary to the evidence. However, we do not find the statements in the pleadings in question to be judicial admissions and conclusively binding. Cf. Hofer v. Bituminous Casualty Corp., 148 N.W.2d 485, 486 (Iowa 1967). They are, instead, evidentiary admissions and open to the party to give evidence that the pleading was filed upon incorrect information. See McCormick On Evidence § 265 (2nd ed. 1972). The weight to be given the admission is a question for the jury, see Katcher v. Heidenwirth, 118 N.W.2d 52, 59 (Iowa 1962); the opposite party is entitled to introduce inconsistent pleadings relating to the same issue into evidence for whatever the jury might find it worth in arriving at the truth of the controversy. Id. at 59. Such was done in this case.

Having found no reversible error, the judgment of the trial court is affirmed in total.

AFFIRMED.