FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

160

DENNIS TOBEN,

Plaintiff-Appellant,

vs.

MARY DODDEMA, DALE DODDEMA, and JANE DODDEMA,

Defendants-Appellees.

Filed September 21, 1982

2-222
2-67182

Appeal from Grundy District Court - Dennis D. Damsgaard, Judge.

Plaintiff appeals the denial of his petition for declaratory judgment regarding tenancy of certain farm real estate on the grounds that there was insufficient evidence to support the court's finding of an agreement to terminate. AFFIRMED.

Gary W. Kazragis of Rickert, Thompson & Kazragis, Reinbeck, for plaintiff-appellant.

David S. Kelsen, Waterloo, for defendants-appellees.

Considered en banc.

DONIELSON, J.

Plaintiff appeals the denial of his petition for declaratory judgment regarding tenancy of certain farm real estate. On appeal plaintiff asserts that the evidence was insufficient to prove an oral agreement to terminate plaintiff's farm lease at the end of the 1980 crop year as an exception to the lease termination procedures of Chapter 562, The Code (1979). He thus contends that the trial court erred in concluding that plaintiff was not entitled to possession of the real estate for the 1981 crop year. We affirm.

Our review is de novo. Escher v. Morrison, 278 N.W.2d 9, 11 (Iowa 1979). Iowa R. App. P. 4.

I.

Since 1977 plaintiff, Dennis Toben, farmed a 160 acre tract of land owned by his grandmother, defendant Mary Doddema, pursuant to an oral lease agreement. In February of 1980, plaintiff met with defendant and her two sons at defendants' home. In that meeting defendant told plaintiff that he could farm the land for the year 1980 and thereafter the land would be farmed by one of her two sons. Plaintiff was not, however, served with termination notice under Iowa Code § 562.7 (1979).

A disagreement arose between the parties regarding whether plaintiff's lease was terminated for the 1981 crop year. Plaintiff filed a petition for declaratory judgment requesting a determination of plaintiff's right to possession of the land. There is conflicting evidence on whether plaintiff orally agreed to terminate the lease but the court found as fact that the parties did agree to the termination. Further, the court found that the testimonies of plaintiff and his wife were not credible and that plaintiff had actual knowledge that he entered into the termination agreement. Accordingly, the court concluded as a matter of law that defendant met her burden to show that there was an applicable exception to the

requirement to give statutory notice of termination. See Boaie v. Nordstrom, 238 Iowa 866, 868, 29 N.W.2d 211, 213 (1945). When the parties make an agreement to terminate the farm tenancy, there is no requirement that a written notice under Iowa Code § 562.7 (1979) be served. Denton v. Moser, 241 N.W.2d 28, 30 (Iowa 1976). Having found this to be the case, the court dismissed plaintiff's petition and this appeal followed.

II.

Findings of fact by the trial court are equivalent to a jury verdict and will not be disturbed on appeal if supported by substantial evidence and justified as a matter of law. Northrup v. Foster, 204 N.W.2d 889, 890 (Iowa 1973). We view the record in the light most favorable to the judgment and do not weigh the evidence or pass on the credibility of witnesses. Id. at 890-91.

The only issue we face is whether there is substantial evidence to support the court's finding that there was a clear agreement to terminate the farm lease. We find that there is an abundance of such evidence. While the parties disagreed as to the understanding struck between them, the court had an opportunity to judge their credibility and was thus in a better position to rule on this issue of fact. Having found that the evidence supports this decision, we affirm.

AFFIRMED.