

FILED

OCT 27 1981 481

IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

BOB MARTIN d/b/a)
MARTIN HEATING, PLUMBING)
AND EXCAVATING,)

Plaintiff-Appellant,)

Filed October 27, 1981

vs.)

GLEN COHEE, BOB ROBINSON,)
LYNN WAITE,)

1-317
2-66293

Defendants-Appellees.)

Appeal from Appanoose District Court - James D. Jenkins, Judge.

Plaintiff excavating contractor appeals from judgment for defendant builders in this case arising from defendants' unauthorized use of plaintiff's crawler tractor which had been left unattended at a construction site. AFFIRMED.

Kristin M. Fasano, Des Moines, Iowa, for plaintiff-appellant.

Thomas Anders, Centerville, Iowa, for defendants-appellees.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff excavating contractor appeals from judgment for defendant builders in this case arising from defendants' unauthorized use of plaintiff's crawler tractor which had been left unattended at a construction site. Plaintiff's contentions on appeal are: (1) that the trial court's finding that plaintiff failed to establish negligence on defendants' part is not supported by substantial evidence; (2) that the trial court's finding that plaintiff failed to establish that defendants' unauthorized use of plaintiff's crawler tractor was the cause of engine damage is not supported by substantial evidence; and (3) that the trial court erred in not finding plaintiff had satisfactorily proved the extent of his damages and in excluding relevant evidence of such damages. We consider only such issues as are dispositive of the result in the appellate court.

Plaintiff's petition alleges that defendants had used his crawler tractor without his permission, causing \$8,239.26 in engine damage. The petition contains several counts, including negligence, conversion, and trespass. No issue concerning the conversion theory is argued on appeal.

The trial court found that plaintiff had established that defendants were guilty of trespass and that "as such they are liable for any damages which may have been caused." However, the trial court further ruled that plaintiff had failed to establish that there was a causal connection between defendants' unauthorized operation of the tractor and the engine damage which is the subject of plaintiff's claim. The result of plaintiff's challenge to this finding of the trial court on the issue of causation is necessarily determinative of his success on this appeal. If plaintiff's case fails on this point, the issues of negligence¹ and damages become moot. Where, as here, the trial court has found that plaintiff has failed to carry his burden of proof on an element essential to recovery, we cannot disturb the result unless we find that that element has been established as a matter of law. Roland A. Wilson v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976). In this regard, where a general finding as to the insufficiency of the evidence is coupled with specific findings as to particular matters, the findings are to be construed liberally in favor of the judgment. Bahnsen v. Rabe, 276 N.W.2d 413, 414 (Iowa 1979).

¹ The trial court's finding in plaintiff's favor on the alleged trespass, together with the conclusion that "As such, they are liable for any damages which may have been caused" also renders moot any issue as to alleged negligence.

When plaintiff's contentions on appeal are judged by these standards, we find that he has demonstrated no right to relief from the trial court's judgment. Plaintiff's claim that defendants' use of the tractor caused the engine damage in question is based upon a theory that the cooling system had been drained and as a result the engine overheated. But defendants offered expert testimony that, based upon the condition of the grease and paint on the outside of the engine, the engine had not overheated. Defendants also offered evidence that other causes were a likely source of the trouble. Based upon this record, we cannot say that plaintiff established the issue of causation as a matter of law. The trial court's finding on this issue must therefore stand and is dispositive of the result. The judgment of the district court is affirmed.

AFFIRMED.