IN THE COURT OF APPEALS OF IOWA

No. 0-412 / 99-1382
Filed January 10, 2001

ESTATE OF JAMES H. DICKENS,
Plaintiff-Appellee,

vs.

STANLEY W. HAAG and STANLEY W. HAAG, P.C.,
Defendants-Appellees.

FILED
JAN 10 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Jack D. Levine, Judge.

The defendant appeals from the district court's judgment for the plaintiff-decedent on his claims for the intentional interference with a prospective business relationship and breach of an oral contract regarding the failed attempt to sell his one-half interest in a pharmacy partnership with the defendant. The defendant claims that there was insufficient evidence to establish a breach of any oral modification of the partnership agreement or that the defendant improperly interfered with the decedent's prospective business advantage for the sale of his interest. The defendant further claims that the decedent suffered no damages because the transfer would have been voided because he allegedly improperly attempted to sell a greater share of the partnership profits than he was entitled to receive. **AFFIRMED.**

Michael F. Burger and Beau T. Greiman of Dreher, Simpson and Jensen, P.C., Des Moines, for appellant.

James A. Albert of Galligan, Tully, Doyle & Reid, P.C., Des Moines, for appellees.

Heard by Streit, P.J., and Vogel and Miller, JJ.

MILLER, J.

The defendant, Stanley W. Haag, appeals from the district court's denial of his motion for judgment notwithstanding the verdict following a jury verdict in favor of the plaintiff-decedent, James H. Dickens, on Dickens' claims for breach of an oral contract and intentional interference with a prospective business relationship. The claims arose from Dickens' failed attempt to sell to a third party, Donald Cassady, Dickens' interest in a pharmacy partnership with Haag. Haag claims there was insufficient evidence to establish his breach of an oral modification of that part of the written partnership agreement covering their partnership in the pharmacy, and that there was insufficient evidence he improperly interfered with Dickens' prospective business relationship with Cassady involving the sale of Dickens' interest in the pharmacy to Cassady. Haag further argues Dickens suffered no damages because Cassady would have eventually voided his contract with Dickens when he discovered Dickens had purported to sell a larger share of pharmacy partnership profits than he was entitled to sell. We affirm.

I. BACKGROUND FACTS AND PRIOR PROCEEDINGS

Dickens and Haag were physicians and partners in the practice of medicine at the Hilltop Medical Clinic, later Mercy Hilltop Clinic, from 1972 to 1993 when Dickens retired. In 1982 Dickens and Haag entered into a written partnership agreement. It contained provisions covering their partnership in the practice of medicine, and separate provisions covering their partnership in a related business, the Hilltop Pharmacy. However, the written agreement did not provide for any division or distribution of pharmacy partnership profits. In fact,

the agreement specifically states that it "does not constitute the full and complete agreement of the undersigned concerning the ownership, operation, and business of the Hilltop Pharmacy." A supplemental oral agreement provided that profits on the sales generated by Dickens and Haag would be divided between them based on the percentage of sales generated by each, and profits or sales generated by others would be divided evenly between them. Therefore, each partner's percentage of profits from the pharmacy varied somewhat from year to year. It appears that at the time of the events giving rise to this lawsuit Dickens was receiving forty-five percent of the pharmacy profits and Haag was receiving fifty-five percent. Provisions of the written agreement concerning the pharmacy required that a retiring partner sell his interest in the pharmacy partnership to the remaining partner in exchange for a series of payments totaling one-half the value of the pharmacy inventory.

As Dickens approached retirement, in about 1992 he told Haag about his dissatisfaction with the retirement provisions of the agreement because it did not provide any compensation for good will and other assets of the pharmacy. They agreed to attempt to sell the pharmacy to another person or persons, but their efforts were unsuccessful. It is undisputed that if they had been successful in selling both partners' interests, each would have received one-half the proceeds. They thereafter agreed that Dickens could sell his interest to a third party. It is the nature or extent of the interest they agreed Dickens could sell that led to a dispute and this lawsuit. Dickens asserts that the parties agreed he could sell his *share of the pharmacy*, a fixed fifty percent share which included the right to one-half the profits, to a third party. Haag claims he orally agreed to a modification of

the agreement to permit Dickens to sell his *share in the inventory* to a third party. This oral agreement to modify took place in approximately July of 1993.

On the basis of his belief as to the meaning of the oral modification, Dickens entered into an agreement with a pharmacist, Donald Cassady, to sell Dickens' one-half interest in the pharmacy to him for $120,000 plus interest. Dickens asserts Haag was aware of this agreement and was actually a party to many of the precedent negotiations. Haag disputes this assertion. Eventually, approximately one month before Dickens was to retire in December 1993, Haag refused to sign a consent to allow Dickens' sale of a one-half interest to Cassady because of a difference in opinion regarding the meaning of the oral modification and what share of the profits from the pharmacy Cassady would receive as a result of the sale.

Dickens then retired in December of 1993 and sold his interest in the pharmacy to Haag for $56,000, the value of one-half the drug inventory of the pharmacy. Haag subsequently sold the entire pharmacy to Cassady for $215,000 within ten months of Dickens' retirement.

Dickens then brought action against Haag for intentional interference with his prospective business relationship, intentional interference with an existing contractual relationship, breach of a fiduciary duty, and breach of the oral contract between the parties.[1] The case proceeded to trial on the claims of breach of the oral modification of the written contract and interference with prospective business relationship. During trial, Haag moved for directed verdict on the following grounds: (1) the evidence was insufficient to establish the

[1] The petition was subsequently amended to include Stanley W. Haag, M.D. P.C. as a defendant as well. For purposes of this appeal we treat both named defendants as one and the same.

claimed oral modification of the partnership agreement; (2) the evidence was insufficient to establish any consideration for an oral modification; (3) a failure to establish any damage because of the effect of Iowa Code section 486.27; and (4) the absence of a valid oral modification meant there was no valid business expectancy (to be interfered with). The district court denied the motion.

The jury returned a verdict in favor of Dickens on both counts and awarded him $91,000 in damages. Specifically, the jury found: the parties did orally modify the 1982 partnership agreement to allow Dickens to sell his interest in the pharmacy to an outside buyer; Haag breached this oral agreement; Dickens did have a prospective business relationship with Cassady to purchase Dickens' interest in the pharmacy; and, Haag intentionally interfered with this prospective business relationship.

Haag filed a motion for judgment notwithstanding the verdict ("JNOV") asserting essentially the same arguments as in his motion for directed verdict. Specifically, that there was no evidence of an oral modification allowing Dickens to assign one-half interest in the partnership and thus he did not breach such modification or otherwise act improperly by withholding his consent to the assignment, nor did he interfere with any reasonable business expectation of Dickens' as there was none. Additionally, he asserted Dickens had failed to prove any damages due to the loss of the business relationship with Cassady as that relationship would have been voided eventually anyway. The district court denied Haag's JNOV motion and final judgment was entered against Haag. Haag timely filed this appeal from the denial of the JNOV motion.

II. STANDARD OF REVIEW AND PRESERVATION OF ERROR

We review the district court's grant or denial of a motion for JNOV for correction of errors at law. Iowa R. App. P. 4; *Magnusson Agency v. Pub. Entity Nat'l Co.-Midwest*, 560 N.W.2d 20, 25 (Iowa 1997). We view the evidence in the light most favorable to the party against whom the motion was made, taking into consideration every legitimate inference that may fairly and reasonably be made. Iowa R. App. P. 14(f)(2); *Magnusson*, 560 N.W.2d at 25. "The motion must stand or fall on the grounds raised in the motion for directed verdict." *Magnusson*, 560 N.W.2d at 25 (citing *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 538 (Iowa 1996)).

Our only inquiry is whether there is sufficient evidence to justify submitting the case to the jury. *Id.* The motion for JNOV should be denied if there is substantial evidence to support each element of the plaintiff's claims. *Id.* Evidence is substantial when a reasonable mind would find the evidence presented adequate to reach the same findings. *Id.*

Dickens argues Haag has not preserved error on the specific issues raised on appeal as they were not raised in his motion for directed verdict. As stated above, a JNOV motion must stand or fall on the grounds raised in the motion for directed verdict. *Magnusson*, 560 N.W.2d at 25. It is true Haag couched his arguments somewhat differently in the motion for directed verdict than in his JNOV motion and his appeal. However, it appears Haag raised essentially the same grounds in both motions, and they were similar to those raised on appeal. We believe this is sufficient to preserve the issues for appeal and thus, without deciding the question, we will proceed to address the merits. *See generally Berkley Int'l Co., Ltd. v. Devine*, 423 N.W.2d 9, 12 (Iowa 1988); *Jackson v. Roger*, 507 N.W.2d 585, 589 (Iowa App. 1993).

III. MERITS

Haag's first claim is that the district court erred in denying his motion for JNOV on the breach-of-contract claim. The court found there was sufficient evidence to support the jury's verdict. We agree.

Consistent with Iowa Civil Jury Instruction 2400.1 (1996) the district court instructed the jury that Dickens had to prove all of the following to succeed on his claim for breach of contract:

> 1. The parties were capable of entering into an oral modification of a written contract.
> 2. The existence of an oral modification.
> 3. Consideration or waiver.
> 4. The terms of the oral modification.
> 5. The plaintiff has done what the oral modification requires.
> 6. The defendants breached the terms of the oral modification.
> 7. The amount of any damages the defendants caused.

Haag argues Dickens presented no evidence in support of the sixth element, that he breached the oral modification.

Dickens testified Haag told him, "Why don't you sell your share," and he agreed he would. Haag testified that he told Dickens to "go sell the inventory or go sell your share of the inventory, something like that." Haag testified further he did not remember the exact words he used and that he did not think Dickens was wrong in his testimony but that there was merely a "misunderstanding." Dickens believed the modification allowed him to sell a fixed fifty percent share of the pharmacy partnership to an outside party, whereas Haag testified he believed the oral modification only allowed Dickens to sell his share of the drug inventory.

In support of his interpretation of the oral modification, Dickens offered the following evidence. Both Dickens and Cassady testified all three men met approximately four or five times in 1993 to discuss the sale by Dickens to

Cassady of Dickens' share of the pharmacy partnership. Cassady testified he had discussions with Haag about assuming Dickens' share of the business, about him wanting to be a fifty percent partner in the pharmacy, and the amount of rent he would have to pay. Cassady stated he would not be discussing rent with Haag if he believed he was only buying half the drug inventory of the pharmacy, as it is the owners who pay the rent in any business. He testified he would not have been interested in buying half the drug inventory because he had sold the drugs to the pharmacy at a markup, and could buy the same drugs from his own supplier without a markup. He testified he would absolutely not pay $120,000 for one-half of the inventory because one-half the inventory was worth only about $50,000.

Dickens also testified he discussed the transaction several times with Haag, including the price Cassady was going to pay him, and that throughout all his meetings with Cassady and Haag, as well as those between Haag and himself alone, Haag always agreed to everything and never questioned the price Cassady was paying.

We conclude the evidence presented by Dickens at trial to prove that the oral modification allowed him to sell a fixed fifty percent share of the pharmacy was sufficient to justify submitting the oral modification question to the jury. The jury was properly instructed on what was necessary to find that an oral modification existed and to determine the terms of such a modification. A reasonable mind could find the evidence presented here was adequate to reach the same findings as made by the jury on this issue.

After determining there was an oral modification the jury went on to find that Haag did in fact breach the modification. In doing so it implicitly but necessarily found that the modification was as urged by Dickens rather than as urged by Haag. There is no dispute that Haag refused to consent to the sale and purchase Dickens and Cassady had agreed to, thereby blocking the completion of the sale, based on his contention that the whole thing took him as a complete surprise and that he had never agreed to such a sale. Because there was sufficient evidence to support the jury's finding of the oral modification allowing for such a sale, the evidence of Haag's actions in thereafter refusing to consent to the sale was sufficient to submit to the jury the question of breach of the modification, and for the jury to find a breach.

VI. CONCLUSION

Viewing the evidence in the light most favorable to Dickens and taking into consideration every legitimate inference that may reasonably be made, we conclude there was substantial evidence to support each element of Dickens' claim that Haag breached the oral modification of their written agreement, and thus sufficient evidence to justify submitting the breach claim to the jury. The district court did not err in denying Haag's JNOV motion. As we have determined there was sufficient evidence to support the jury's verdict on the basis of the breach-of-contract claim, Haag's claim that JNOV should have been granted on the intentional interference claim is moot and we need not address it. We affirm the district court's denial of Haag's motion for JNOV.

AFFIRMED.