

IN THE COURT OF APPEALS OF IOWA

No. 0-161 / 89-1019

FILED

JUN 26 1990

CLERK SUPREME COURT

JANET M. HICKS,

Appellee,

vs.

LOWELL D. GOEMAAT,

Appellant.

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Appeal from the Iowa District Court for Jasper County,
J. W. Jordan, Judge.

Lowell Goemaat appeals a district court ruling against him for \$10,598.88. The district court found Janet Hicks had loaned Goemaat \$13,598.88 and he had only repaid \$3000 of the debt. Goemaat contends the court's findings are not supported by substantial evidence. Goemaat also claims the court erred as a matter of law in failing to find the parties had entered into an accord and satisfaction.

AFFIRMED.

Bert A. Bandstra, Knoxville, for appellant.

Lee M. Walker and John E. Billingsley of Walker, Knopf & Billingsley, Newton, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

In January 1984 Janet Hicks and Lowell Goemaat began living together in her apartment in Grinnell. In March 1985 they moved to Lowell's farm near Lynnvile. They resided at the farm until July 1987, when their relationship terminated and Janet moved out. During the time they cohabited Janet loaned money to Lowell. Contending Lowell had not repaid her, Janet filed this action in August 1988.

Following a bench trial, the district court found Janet had loaned Lowell \$13,598.88 and Lowell had repaid \$3000. The district court entered a judgment against Lowell in the amount of \$10,598.88. Lowell appeals the district court's ruling.

On appeal, Lowell contends there is not substantial evidence in the record to support the district court's findings. Specifically, Lowell claims the court erred by finding he was not a credible witness and that his exhibits C and D, which purported to show that Lowell had repaid Janet, were not reliable. Lowell also claims the district court erred as a matter of law in failing to find the parties had entered into an accord and satisfaction of the alleged debt.

Where a case is tried at law, our review is on error and the district court's findings of fact have the effect of a jury verdict and are binding if supported by substantial evidence. Grinnell Mut. Reinsurance Co. v.

Voeltz, 431 N.W.2d 783, 785 (Iowa 1988); Iowa R. App. P. 4, 14(f)(1). On appeal from a law action tried to the court, we must construe the evidence in the light most favorable to the trial court's judgment, and we will not weigh evidence or pass on the credibility of witnesses. Carson v. Mulnix, 263 N.W.2d 701, 705 (Iowa 1978).

A review of the record reveals there is substantial evidence to support the ruling of the trial court. At issue was money allegedly loaned by Janet to Lowell for both his personal use and for improvements to his farm home. The parties stipulated Janet had a series of checks which she asserted documented the loans totaling \$13,589.88.

There was conflicting testimony as to whether Lowell considered the money invested in the home as a loan. There was also conflicting evidence as to how much of the loaned amounts had been repaid. Relying on his notations in his business calendar, Lowell claimed the entire debt had been repaid. Janet claims only \$3000 of the debt was repaid. It is also controverted whether amounts of money Lowell may have given Janet were for repayment of the loans or for other purposes.

Lowell's threats made in a tape-recorded phone conversation and his later denials in his deposition regarding the threats and the existence of the debt made his credibility clearly suspect. The trial court was acting well within its fact-finding province when it chose

to disbelieve Lowell's version of events in favor of Janet's.

Lowell contends the trial court erred as a matter of law in failing to find that an accord had been entered into and satisfied. "Accord and satisfaction" is a method of discharging a claim whereby the parties agree to give and accept something in settlement of the claim and perform the agreement; the "accord" being the agreement, and the "satisfaction" its execution or performance. Robinson v. Norwest Bank, Cedar Falls, 434 N.W.2d 128, 130 (Iowa App. 1988). "It is a new contract substituted for an old contract, which is thereby discharged, or for an obligation or cause of action which is settled." Id. The defendant bears the burden to prove an accord and satisfaction by a preponderance of the evidence. RMP Industries, Ltd. v. The Linen Center, 386 N.W.2d 523, 524 (Iowa App. 1986).

Lowell claims the parties reached an accord and satisfaction on September 27, 1986. Janet denied that any such settlement was ever reached by the parties. Under the circumstances of this case where the evidence was controverted and the credibility of the parties was at issue, we cannot find the trial court erred as a matter of law in failing to find the parties had reached an accord and satisfaction.

AFFIRMED.