FILED
APR 10 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

440

MFA MUTUAL INSURANCE COMPANY,

Appellant,

vs.

LOWELL L. KALLER & PAMELA L. KALLER,

Appellees.

Filed April 10, 1979

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2-61840

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Appeal from Wapello District Court - Arthur A. McGiverin, Judge.

Plaintiff insurer appeals from trial court judgment dismissing its petition in an action for breach of contract and negligence tried to the court on grounds that there was no substantial evidence to support trial court's findings. AFFIRMED.

Thomas M. Walter of Barnes & Walter, Ottumwa, Iowa, for appellant.

Wilbur R. Dull & Kenneth L. Keith of Dull, Keith & Beaver, Ottumwa, Iowa, for appellees.

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

PER CURIAM

Plaintiff insurer appeals from trial court judgment dismissing its petition in an action for breach of contract and negligence which was tried to the court. Plaintiff asserts that trial court erred (1) in finding there was no substantial evidence that defendants had smoked in the basement of the damaged house on the day of the fire; (2) in finding the defendants were not negligent; (3) in finding defendants' conduct was not the proximate cause of the fire and resulting damages; and, (4) in concluding that there were other possible or probable theories as to causation of the fire and that plaintiff failed to establish the allegations in the petition by a preponderance of the evidence. We affirm.

Our review of an action tried to the court at law is on assigned error only. Findings of fact in a jury-waived case have the effect of a special verdict and are equivalent to a jury verdict. Iowa R. App. P. 4; Northrup v. Foster, 204 N.W.2d 889, 890 (Iowa 1973). Such findings will not be disturbed on appeal if supported by substantial evidence and justified as a matter of law, even though we might arrive at a different conclusion from the evidence. We will not weigh the evidence or pass on the credibility of witnesses. Thomas Truck & Cast. Co. v. Buffalo Cast. & W. H. Corp., 210 N.W.2d 532, 536 (Iowa 1973); Northrup v. Foster, 204 N.W.2d 889, 890 (Iowa 1973). The findings of trial court are to be liberally construed and, in case of ambiguity, construed to uphold rather than defeat the judgment. Hammer v. County of Ida, 231 N.W.2d 896, 900 (Iowa 1975). Based on these principles, and a careful review of the record, we find trial court's factual determinations to be supported by substantial evidence and that trial court committed no error. Its judgment is affirmed.

AFFIRMED.