IN THE COURT OF APPEALS OF IOWA

No. 0-747 / 00-461
Filed April 27, 2001

ISLAND LAND & CATTLE CORP.,
d/b/a MUSCATINE IRRIGATION SERVICES,
Plaintiff-Appellee,

vs.

HILBERT E. HINKHOUSE, a/k/a
GENE HINKHOUSE,
Defendant-Appellant.

FILED
APR 27 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Louisa County, John G. Linn, Judge.

Hilbert Hinkhouse appeals following an adverse jury verdict in an action on an open account. **AFFIRMED.**

David Scieszinski, Wilton, for appellant.

Richard R. Phillips, Muscatine, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

ZIMMER, J.

Hilbert Hinkhouse appeals an adverse jury verdict on an open account. He claims the district court erred in: (1) overruling his hearsay objection to an exhibit; (2) refusing to allow him to use certain other exhibits in the cross-examination of a witness; and (3) refusing his offer of proof on these exhibits. We affirm on appeal.

Hinkhouse purchased an irrigation system for his farmland from Island Land & Cattle Company (ILCC), doing business as Muscatine Irrigation Services. On June 29, 1998, a wind storm damaged the irrigation system. Hinkhouse decided to replace the old system with a new system from ILCC. The purchase price for the new system was $25,617.75.

Hinkhouse maintained an open account with ILCC. Prior to April 27, 1998, his balance had been paid in full. After April 27, 1998, he purchased several items, including the new irrigation system. Exhibit 12, a statement dated October 20, 1998, showed that over the time period from April 27, 1998, to October 20, 1998, Hinkhouse purchased items worth $26,072.68, and made payments of $17,568.32, leaving a balance of $8504.36. ILCC demanded payment of the balance due, and Hinkhouse refused.

On December 16, 1998, ILCC filed suit against Hinkhouse seeking a judgment for $8504.36, plus interest. Hinkhouse filed a counterclaim, alleging delays in the installation of the new irrigation system caused crop loss to his corn field for the 1998 season. The case was tried to a jury. The jury returned a verdict finding Hinkhouse owed ILCC $8504.36, plus interest. The jury denied

Hinkhouse's counterclaim against ILCC. The district court entered judgment against Hinkhouse, and he appeals.

I. SCOPE OF REVIEW

In this action on an open account, we review for correction of errors at law. Iowa R. App. P. 4.

II. EXHIBIT 12

Hinkhouse contends the district court should not have admitted Exhibit 12 because it was hearsay and did not come within any of the exceptions to the hearsay rule. ILCC claims the exhibit was admissible under the business records exception found in Iowa Rule of Evidence 803(6). It also claims Exhibit 12 was cumulative to other evidence admitted without objection during the trial.

Michael Riggan, the owner of ILCC, identified Exhibit 12 as a statement dated October 20, 1998, for $8504.36. He stated it was a business record of his company concerning Hinkhouse's account. Exhibit 12 is a statement showing charges and payments on Hinkhouse's account from December 31, 1997, to October 20, 1998. The charges against Hinkhouse's account were also shown by individual invoices, which constituted Exhibits 4 through 11.[1]

In the case of hearsay rulings, our review is for correction of errors at law. *State v. Ross,* 573 N.W.2d 906, 910 (Iowa 1998). The admission of hearsay evidence is presumed to be prejudicial, unless the contrary is shown. *Id.* However, we will not find prejudice if the hearsay evidence is merely cumulative

[1] The only charge on Exhibit 12 which is not represented by a separate invoice is a finance charge for $1.18, dated August 3, 1998.

to other evidence in the record. *State v. Hildreth,* 582 N.W.2d 167, 170 (Iowa 1998).

Under the facts of this case, we need not decide whether the district court erred in concluding Exhibits 12 was admissible under the business records exception. Even if Exhibit 12 did not come within the business records exception, it was cumulative to other evidence in the record. Hinkhouse did not object to Exhibits 4 through 11, which showed the same charges against his account. There is no prejudice in the admission of hearsay evidence if substantially the same evidence is in the record without objection. *Egli v. Troy,* 602 N.W.2d 329, 334 (Iowa 1999); *State v. McKettrick,* 480 N.W.2d 52, 60 (Iowa 1992). We conclude Hinkhouse was not prejudiced by the admission of Exhibit 12.

III. EXHIBITS D and E

Hinkhouse asserts the district court abused its discretion in refusing to allow him to use Exhibits D and E during cross-examination of Riggan to test the accuracy and truthfulness of Exhibit 12.[2] Exhibit D is a copy of a check from Hinkhouse to ILCC dated January 26, 1998. Exhibit E is a copy of a check from Hinkhouse to ILCC dated April 1, 1998.

Hinkhouse sought to show Exhibit 12 was not accurate because in relation to Exhibit D he had been credited with $40 more than he paid, and for Exhibit E he had been credited with $30 less than he paid. ILCC objected, claiming Exhibits D and E were not relevant because the parties agreed Hinkhouse's

[2] Hinkhouse also raises an argument concerning Exhibit F. Exhibit F was never offered by Hinkhouse, and therefore, his arguments concerning Exhibit F have not been preserved for our review. We do not consider issues raised for the first time on appeal. *Jones v. Madison County,* 492 N.W.2d 690, 693-94 (Iowa 1992).

balance with ILCC immediately prior to April 27, 1998, was $0. ILCC sought payment only for charges made on and after April 27, 1998. The district court determined Exhibits D and E should not be admitted.

The admission or exclusion of evidence rests within the trial court's discretion, and we will interfere with its evidentiary rulings only if an abuse of discretion has occurred. *Beachel v. Long,* 420 N.W.2d 482, 485 (Iowa Ct. App. 1988).

We find the district court did not abuse its discretion in refusing to admit Exhibits D and E. The evidence was not relevant to any issue before the jury. Evidence which is not relevant is not admissible. Iowa R. Evid. 402. If anything, the evidence only showed Hinkhouse owed ILCC $10 more than it was claiming in this case.

IV. OFFER OF PROOF

Hinkhouse also claims the district court erred by refusing his offer of proof concerning Exhibits D and E. Outside the presence of the jury, the parties argued the relevancy of these exhibits, as discussed above. The transcript shows the following exchange then took place:

> MR. SCIESZINSKI: Your Honor, could I make an offer of proof offering Defendant's Exhibit D and E?
> THE COURT: All right.
> The record will show an offer of proof was made. The Court is going to --
> You object to D and E?
> MR. PHILLIPS: Yes, Your Honor, I will object.
> THE COURT: I will sustain the objection. Exhibit D and E will not be admitted.

The record clearly shows an offer of proof concerning Exhibits D and E was made.

We affirm the judgment entered on the jury's verdict.

AFFIRMED.