IN THE COURT OF APPEALS OF IOWA

No. 1999-352 (9-605) / 98-1841
Filed March 29, 2000

D&E SANITATION CO., An Iowa Corporation, and EVERETT J. VERMEER, Individually and as President of D&E SANITATION,
Plaintiffs-Appellees,

vs.

CITY OF HAWARDEN, IOWA, a political subdivision of the State of Iowa,
Defendant-Appellant.

FILED
MAR 29 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Sioux County, Gary E. Wenell, Judge.

A Sioux County jury found that Defendant-Appellant the City of Hawarden, Iowa, had intentionally and improperly interfered with Plaintiff-Appellee D & E Sanitation Company's contracts to haul commercial waste in defendant city. The jury awarded plaintiff damages of $110,760.00 and this appeal follows. The defendant contends that there is not substantial evidence to support the verdict. We find plaintiff failed to introduce substantial evidence the city's conduct was intentional and improper. **REVERSED AND DISMISSED.**

James R. Villone of Klass, Stoos, Stoik, Mugan, Villone & Phillips, L.L.P., Sioux City, for appellant.

Martha M. McMinn, Sioux City, for appellees.

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

SACKETT, C.J.

A Sioux County jury found that Defendant-Appellant the City of Hawarden, Iowa, had intentionally and improperly interfered with Plaintiff-Appellee D&E Sanitation Company's contracts to haul commercial waste in defendant City. The jury awarded plaintiff damages of $110,760.00 and this appeal follows. The defendant contends that there is not substantial evidence to support the verdict. We find plaintiff failed to introduce substantial evidence the city's conduct was intentional and improper. We reverse the district court and dismiss the action.

Before 1983 the defendant City hauled its own residential and commercial garbage. Then in 1983 the City put the garbage hauling out for bids. In 1983 and 1991 defendant and plaintiff entered into contracts, which provided plaintiff would haul garbage in the city. After the 1983 contract was executed plaintiff began hauling both residential and commercial garbage in Hawarden. When the second contract was ready to expire in late 1994 the City offered plaintiff a six-month extension of the existing contract. Plaintiff wanted a longer contract and refused the offer. Plaintiff does not contend that he told the City at that time he would continue to haul commercial garbage after the contract expired.

City officials believed during these negotiations that the City's contract with plaintiff had covered both residential and commercial hauling. Consequently, on December 19, 1994 the City contracted with another company for six-month garbage service. An ad was placed by the City in the local newspaper stating that as of January 1, 1995, plaintiff would no longer collect

garbage and the City had contracted with another for pick up. Included in the ad was information about residential and commercial routes.

After the ad appeared plaintiff wrote a letter addressed to his valued customers telling them he was not out of the garbage hauling business and he would continue his same service. Confused customers called the City and were told the City had contracted for service for the next six months.

In late December the city attorney was asked by a city employee whether the City's contract with plaintiff provided that the new hauler would be mandated to pick up all commercial garbage. The city attorney was not aware of any garbage hauling contracts. He reviewed them in the first week of January of 1995. At that time the city attorney gave the opinion that the City's contract with plaintiff only covered the hauling of residential waste and did not cover commercial waste pick up. After the City received the city attorney's opinion they told businesses who called they could decide for themselves on their garbage hauler.

The City followed up with a second ad saying plaintiff had refused the City's offer for a six-month contract to collect residential waste and it had contracted with another for this pick up. The ad also said that the new hauler wanted to serve commercial customers and the City regretted confusion caused by the transition.

In August of 1996 plaintiff brought this suit. It was pled as an action for tortious interference with a business relationship. Plaintiff's statement of the case says it is an action for interference with existing business relationships.

However it was submitted to the jury on the theory that plaintiff claimed to have contracts with a number of businesses in Hawarden to haul garbage and that the City and its employees interfered with these contracts. The jury's verdict found interference with contracts, not with a business relationship.

The City contends there is not substantial evidence to support the verdict in that plaintiff failed to prove (1) it had a contract with the commercial businesses; (2) defendant knew plaintiff had a contract with the commercial businesses; and (3) defendant intentionally and improperly interfered. Plaintiff agrees error was preserved on these issues by defendant filing a motion for directed verdict and for a new trial.

In our review of a trial court's ruling on a motion for directed verdict or judgment notwithstanding the verdict the question is whether the evidence, when viewed in the light most favorable to the plaintiff, was sufficient to generate a jury question. *Nesler v. Fisher & Co.*, 452 N.W.2d 191, 193 (Iowa 1990). Even if the facts are not in dispute, if reasonable minds might draw different inferences from them, a jury question is engendered. *Toney v. Casey's General Stores, Inc.*, 460 N.W.2d 849, 852 (Iowa 1990).

The City first advances that the only contract that plaintiff had to haul garbage in Hawarden was the contract that plaintiff had with the City. The City contends therefore the plaintiff has no claim. We agree that a party to a contract cannot be liable for tortious interference with that contract. See *Jones v. Lake Park Care Center, Inc.*, 569 N.W.2d 369, 377 (Iowa 1997).

The contracts that the plaintiff had with the City clearly provided for residential hauling. Whether the contracts also provided for commercial hauling is not so clear.

Both parties concede the 1991 contract provided that arrangements for commercial pick up were to be privately negotiated. The City contends this was intended to mean only that plaintiff would negotiate for pick up times. The plaintiff contends pick up had a broader meaning as used in the contract and argues the contract anticipated plaintiff would have its own commercial garbage service in the city.

The contract in addition to the language about pick up established the base rates for each classification of commercial pick up and required the plaintiff to carry insurance to cover commercial hauling. Additionally the City had a Solid Waste Committee with jurisdiction to resolve both residential and commercial garbage pick up disputes. The City also had an ordinance on the issue. Though poorly drafted it provides, "The City (may, at its discretion,) (shall) provide solid waste collection services to institutional or commercial establishments . . . ."

The City retained certain regulatory power over commercial garbage hauling. We need not decide if the only contract plaintiff had was its contract with the City as the case is resolved on another issue.

Even if the plaintiff did prove the claimed contracts, plaintiff must also prove intentional interference with these contracts.

Intentional interference with a contract and intentional interference with prospective business relations both require proof that the defendant intentionally

and improperly interfered with the relationship at issue. *See Willey v. Riley*, 541 N.W.2d 521, 526-27 (Iowa 1995); *Robert's River Rides, Inc. v. Steamboat Dev. Corp.*, 520 N.W.2d 294, 303 (Iowa 1994). The distinction between these torts is that to recover for interference with prospective business relations, a plaintiff must prove the defendant acted with the sole or predominant purpose to injure or financially destroy the plaintiff. *See Willey*, 541 N.W.2d at 526-27; *Burke v. Hawkeye Nat'l Life Ins. Co.*, 474 N.W.2d 110, 114 (Iowa 1991).

Contracts terminable at will are more properly protected as a prospective business advantage rather than as a contract. *See Water Dev. Co. v. Board of Water Works*, 488 N.W.2d 158, 162 (Iowa 1992). Consequently, the higher standard of proof requiring substantial evidence that the defendant's predominant or sole motive was to damage the plaintiff is required. *See id.*

It would seem, as plaintiff contends, that they had a business relationship with the commercial customers in Hawarden rather than a contract. The plaintiff did not show any more than an agreement with its customers for pick up at a certain time for a certain amount of money. Plaintiff did not show substantial evidence his customers could not terminate the agreement at will.

Without deciding whether plaintiff proved a contract we address the City's contention that plaintiff failed to introduce substantial evidence of an intention to interfere with a contract, the theory under which the case was submitted.

The plaintiff's brief does not set out the evidence it claims supports this proposition. In reviewing plaintiff's brief in its entirety we determine the acts of interference the plaintiff claimed it proved were: (1) that the City, after plaintiff

refused the contract extension, called the commercial garbage accounts in the City and questioned them as to what they paid for garbage pick up, the times their garbage was picked up and their satisfaction with the current service; (2) in these calls to the commercial customers they were also told the City had a new garbage hauler; (3) that the City put an ad in the paper stating plaintiff would no longer collect garbage and the City had contracted with another hauler; and (4) after the city attorney gave his opinion the City put a second ad in the paper relating plaintiff had refused the City's offer for a six-month contract to collect residential waste, and it had contracted with another for residential garbage pick up and the other service wanted to serve commercial customers.

The most this evidence shows is that the City had a legitimate basis to assure that commercial customers in the city continued to have garbage-hauling service at a reasonable price and that the commercial garbage in the city was picked up. This conduct is entirely consistent with the City's obligations and responsibilities to commercial businesses in the city. There is nothing inherently improper in the City checking on garbage service and arranging and assuring service is available. Once the city attorney rendered the opinion that plaintiff continued to have the right to haul commercial garbage, the City ceased advising citizens that plaintiff's commercial contract had terminated. While the City placed an ad informing that the new hauler wished to service commercial customers this did not violate any obligation to plaintiff. Plaintiff does not claim any rights through a contract with the City.

The evidence shows the City first believed that it would lose commercial waste hauling when its contract with the plaintiff expired, and they made a decision to investigate the current situation of the businesses and to assure that a second hauler would be in place when plaintiff's contract expired. There is not substantial evidence that this decision was motivated by anything other than the City's desire to serve its citizens and to assure that waste was promptly removed. *See Berger v. Cas' Feed Store, Inc.*, 543 N.W.2d 597, 599 (Iowa 1996) (a party does not improperly interfere with another's contract by exercising its own legal rights in protection of its own financial interests); *Wilkin Elevator v. Bennett State Bank*, 522 N.W.2d 57, 62 (Iowa 1994) (defendant's exercise of its legal rights to protect its financial interests did not support a finding that the defendant acted with the predominant purpose to injure or destroy the plaintiff); *Water Dev. Co.*, 488 N.W.2d at 162 (court affirmed a summary judgment for defendant public water works against plaintiff, a private water company's claim for intentional interference with prospective contract; the court found that while the termination of the plaintiff's water contracts was the result of the public water works installing a new system, it did not believe an improper motive was the primary consideration, and there was no substantial evidence the predominant purpose of the installation of the system was to terminate the plaintiff's contracts); *Preferred Mktg. Assocs. Co. v. Hawkeye Nat'l Life Ins. Co.*, 452 N.W.2d 389, 395-96 (Iowa 1990) (court reversed denial of defendant's motion for directed verdict on finding there was no evidence plaintiff improperly interfered with prospective contractual or business relationships of plaintiff as defendant did

nothing more than it was entitled to do under its contract with defendant that is, terminate a contract at will).

The City's efforts to assure commercial garbage service was available while having the incidental effect of adversely affecting the plaintiffs, does not provide substantial evidence it intentionally and improperly interfered with Plaintiff's contract if it had one. Therefore, we conclude as a matter of law the plaintiffs cannot recover on their claims of intentional interference with contract rights. We reverse the trial court and dismiss the case.

REVERSED AND DISMISSED.

MILLER J. (specially concurring).

The plaintiff D&E claims it had contracts with commercial establishments within the defendant's city limits to pick up and dispose of their solid waste. I fully agree, if D&E proved it had such contracts with those establishments, there is not substantial evidence the defendant City intentionally and improperly interfered with those contracts. However, when the evidence is viewed in the light most favorable to D&E, I do not believe there is substantial evidence D&E had contracts with those commercial establishments that were of the nature D&E claims.

The City's solid waste disposal ordinance, the City's request for quotations (bids) to provide solid waste pick up and disposal, the contract between D&E and the City, and certain city ordinances establishing rates for solid waste collection services are in evidence and are undisputed. The solid waste disposal ordinance, major portions of which date from 1974, sets forth a comprehensive plan for solid waste disposal. Under that ordinance, solid waste includes "commercial solid waste." The City's 1983 advertisement for bids for a contract to provide solid waste pick up and disposal clearly included commercial solid waste. It provided, among other things, pick up sites were to include every commercial unit within city limits, all commercial solid waste was to be collected and transported to an identified landfill, and the part of the bid which related to commercial customers was to be stated in terms of a cost per stop per month per cubic yard or fraction thereof. It also provided commercial pick up frequency was to be by agreement between hauler and customer.

A series of city ordinances in January 1992, January 1993, January 1994 and June 1994, set and increased monthly rates for not only residential pick up but for industrial and commercial pick up as well. D&E's contract with the City provided "arrangements for Commercial . . . pickup are to be privately negotiated and determined . . . ."

Any "arrangement" between D&E and a commercial establishment dealt only with frequency of pick up (and perhaps classification as light, medium or heavy, as rates varied by such classifications and the contract between D&E and the City provided the City would form a solid waste committee that would decide any disagreement concerning classification). Everything else was controlled by city ordinances and D&E's contract with the City. The ordinances provided a comprehensive plan for solid waste disposal and set rates to be paid by residences and commercial and industrial establishments. The contract gave D&E the right, and obligation, to provide solid waste services to the commercial establishments.

D&E's complaint is the City tortiously interfered with D&E's contracts with commercial establishments to provide solid waste services to them. However, D&E's "arrangements" with commercial establishments were extremely limited in scope and nature and were made and existed only as a result of D&E's contract with the City. D&E's contract to provide solid waste services to commercial establishments was a contract with the City, not contracts with those commercial establishments.

Zimmer, J., joins this special concurrence.