IN THE COURT OF APPEALS OF IOWA

No. 6-292/95-346

FILED
OCT 25 1996
CLERK SUPREME COURT

LARRY P. CROUCH,
Appellant,

vs.

EARL BRANDT,
Appellee.

Appeal from the Iowa District Court for Sioux County, Michael S. Walsh, Judge.

Larry Crouch appeals the district court judgment entered following a jury trial awarding him damages for wrongful conversion of cattle. **AFFIRMED.**

Karen A. Bates-Crouch, Omaha, Nebraska, and Patrick C. McCormick, Sioux City, for appellant.

Lloyd W. Bierma of Oostra, Bierma & Schouten, Sioux Center, for appellee.

Heard by Sackett, C.J., and Habhab and Vogel, JJ.

VOGEL, J.

Larry Crouch appeals the district court judgment entered following a jury trial awarding him damages for wrongful conversion of cattle and the ruling granting summary judgment in favor of Earl Brandt dismissing his claim of punitive damages.

Ten head of cattle were gifted to plaintiff Larry Crouch on February 12, 1992. On June 3, 1992, Crouch requested defendant Earl Brandt turn over the gifted cattle which had been cared for by Brandt on his property. When Brandt refused, and demanded payment for feed and other expenses, Crouch filed a petition claiming Brandt had converted his cattle. In October of 1994, a jury returned a verdict awarding Crouch $3056 and also awarded Brandt $1416 for his costs in keeping the converted cattle. The latter judgment was vacated by the district court. Crouch contends the district court erred in: (1) denying his motion for new trial; (2) denying his request for instructions on punitive damages; and (3) admitting irrelevant evidence on the issue of damages which prejudiced the jury. We affirm.

I. ***Motion for New Trial.*** Crouch contends the district court erred in denying his motion for new trial. Our review of the district court's refusal to grant a new trial is for an abuse of discretion. *McDonnell v. Chally*, 529 N.W.2d 611, 614 (Iowa App. 1994).

Among the instructions submitted to the jury were the following:

Instruction No. 13

The plaintiff claims that he would have developed the original cattle that existed at the time of the conversion by the defendant into a herd rather than raise the cattle for slaughter. The plaintiff is therefore claiming damages for loss of use of the cattle for this purpose. . . . [Y]ou shall consider the market value as of the time of this trial of the original gifted cattle and the continuing offspring which may have been born from the date of the gift to the present time.

If you have determined that the plaintiff was damaged because of loss of use of the cattle, then you must deduct expenses associated with developing the herd to the time of trial and deduct that amount from the market value of the herd and use the resulting amount of damages to answer the special verdict.

. . . .

Instruction No. 15

The defendant claims that he is entitled to reimbursement for expenses associated with keeping the cattle. If you find that there has been a conversion, under the law in this case, the defendant is only entitled to the reasonable cost, if any, of maintaining the cattle from the date of the gift of the cattle to the plaintiff until the date of the conversion. You shall determine this amount and use it to answer the special verdict.

Conversion is not limited to a one-time act. It can continue for as long as a person is in wrongful possession of another's cattle.

A person who sells cattle belonging to another while in wrongful possession of those cattle commits an act of conversion.

One who slaughters cattle belonging to another while in wrongful possession of those cattle commits an act of conversion.

The Special Verdict Form stated the following:

Issue No. 1: Did the defendant convert the plaintiff's cattle?
Answer "yes" or "no."
Answer: _____ (If your answer is "no," do not answer any further questions.)

Issue No. 2: Was the conversion of the cattle by the defendant a proximate cause of damages to the plaintiff?
Answer "yes" or "no."
Answer: _____ (If your answer is "no," do not answer any further questions.)

Issue No. 3: What is the amount of damages, if any, sustained by the plaintiff?

Answer: $_____

Issue No. 4: What is the amount of expenses, if any, sustained by the defendant for maintaining the cattle from the date of the gift of the cattle to the plaintiff to the date of conversion?

Answer: $_____

None of the instructions were objected to by the plaintiff as far as method of determining damages to the plaintiff. Whether the correct theory of relief in accordance with the law of conversion was part of the jury instructions was not preserved for appeal. As such, we are limited in our review as to what relief, if any, can be afforded the plaintiff. "If a verdict can be reconciled in any reasonable manner consistent with the evidence and its fair inferences, and in light of the jury instructions, we will uphold them." *Olson v. Prosoco, Inc.*, 522 N.W.2d 284, 292 (Iowa 1994). As we find substantial evidence supported the verdict the jury did reach, given the instructions provided to them, we affirm.

II. ***Punitive Damages Claim.*** The trial court sustained the defendant's motion for summary judgment dismissing plaintiff's punitive damages claim. For the plaintiff to go forward and present evidence to the jury on punitive damages, there must be a prima facie case that such a claim can be supported by admissible evidence. Iowa Code § 668A.1(3) (1993). Mere allegations will not suffice. Following the close of the evidence, plaintiff requested the jury be instructed on punitive damages. The court refused, ruling that evidence submitted did not support a claim for punitive

damages. "Substantial evidence must be presented at trial to support the submission of an instruction." *Coker v. Abell-Howe Co.*, 491 N.W.2d 143, 150 (Iowa 1992). We find the trial court did not err in sustaining defendant's motion for summary judgment and in not allowing the jury to be instructed on punitive damages.

Having considered all other issues raised by plaintiff, we affirm the trial court.

AFFIRMED.