

IN THE COURT OF APPEALS OF IOWA

DONALD D. NELSON,

Plaintiff-Appellant,

vs.

CROSSROADS FORD, INC.,

Defendant-Appellee.

FILED

APR 21 1981

CLERK SUPREME COURT

F-2
2-63504

Appeal from Black Hawk District Court - Carroll E. Engelkes, Judge.

Plaintiff, in an action for intentional infliction of emotional distress and for rescission, appeals from trial court order granting defendant's motion for judgment notwithstanding the verdict of the jury. REVERSED AND REMANDED.

James R. Norris of J. R. Norris & Associates, Cedar Rapids, Iowa, for plaintiff-appellant.

Larry J. Cohrt of Swisher & Cohrt, Waterloo, Iowa, for defendant-appellee.

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

PER CURIAM

Plaintiff, in an action for intentional infliction of emotional distress and for rescission, appeals from trial court order granting defendant's motion for judgment notwithstanding the verdict of the jury. We reverse and remand.

The action originally involved claims for negligence and breach of warranty as well as for intentional infliction of emotional distress and rescission. The rescission claim was in equity and tried to the court simultaneously with a jury trial on the legal issues. On the legal issues the jury found for plaintiff on the emotional distress claim and awarded \$15,000 actual damages and \$5,000 punitive damages. On the rescission claim the trial court found for plaintiff and awarded a monetary recovery of \$4,839. Subsequently, the jury's verdict on the law claims was set aside by the trial court pursuant to defendant's motion under Iowa R. Civ. P. 243.

I. The issue on appeal involves a very limited determination: whether the extent of the emotional distress suffered by plaintiffs, as shown by the evidence, was sufficiently "severe" or "extreme" to permit recovery of any award for emotional distress under the third element specified in Amsden v. Grinnell Mutual Reinsurance Co., 203 N.W.2d 252, 255 (Iowa 1972). This was the only ground relied upon by the trial court in granting defendant's motion for judgment notwithstanding the verdict. The trial court did not find in ruling on the motion that the other elements of this cause of action were lacking in evidentiary support. Nor has the appellee asserted either on cross-appeal or to save the judgment on appeal that the motion was sustainable on other grounds.

The primary circumstance upon which plaintiff relies to support his emotional distress claim is the action taken by defendant to remove from plaintiff's closed garage a "loaner" vehicle which defendant had furnished plaintiff during an involved and lengthy series of repairs to an automobile plaintiff had purchased from defendant. The evidence viewed in the light most favorable to the plaintiff shows that at this time defendant was holding his car and he was holding the "loaner" while negotiations were proceeding between his counsel and defendant's counsel over a defective product claim. Use of the loaned automobile was essential to plaintiff's transportation needs at this time. No notice was given to him that the car would be taken from him until after this had been accomplished by self-help. In order to remove the car from plaintiff's garage, it was necessary to cause an electronically-controlled door to open. The means by which this was accomplished do not appear in the record. The taking occurred at

approximately 3:30 a.m. while plaintiff was at home and sleeping. Also taken by the defendant at this time was personal property of the plaintiff located in the vehicle. It was plaintiff's testimony at trial that this act by defendant caused him severe emotional distress manifested by a continuing fear of his house being broken into. Such fear continued to exist from the date of defendant's surreptitious entry on December 15, 1976, until the time of trial on January 23, 1979. In reviewing the foregoing evidence, we cannot say as a matter of law that if this testimony is believed it is insufficient to sustain the third element in Amsden. The trial court erred in so ruling.

II. Our holding in division I requires a remand for entry of judgment on the jury's verdict for both the \$15,000 actual damages and \$5,000 punitive damages. No claim has been made that the actual damages were excessive--only that no recovery should have been permitted. Also it appears the only basis for the trial court's action in setting aside the verdict for exemplary damages was the action taken on the actual damages. Plaintiff should have judgment for both awards with interest from the date of the jury's verdict. This judgment shall be in addition to the judgment entered on the rescission claim. The verdict in the law actions on defendant's counterclaim shall not be reinstated because it was used as a setoff in computing the damages on plaintiff's rescission claim. The case is reversed and remanded for entry of appropriate judgment.

REVERSED AND REMANDED.