IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

JUDY ENSLEY,)

Plaintiff-Appellee,) Filed June 25, 1985

vs.)

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JERRY STRAW,) 5-188
83-886

Defendant-Appellant.)

Appeal from the Iowa District Court for Linn County - Thomas M. Horan, Judge

Defendant appeals from adverse judgment in an action for, among other things, conversion and intentional infliction of emotional distress. AFFIRMED.

Mark H. Rettig of Hines, Pence, Day & Powers, Cedar Rapids, for plaintiff-appellee

D J Ibeling of Ibeling, Wenzel & Gravelle, Cedar Rapids, and J. R. Norris of J. R Norris & Associates, Cedar Rapids, for defendant-appellant.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

Defendant appeals from adverse judgment in an action for, among other things, conversion and intentional infliction of emotional distress. Defendant asserts that: (1) the trial court was not impartial as shown by its decision which adopted plaintiff's proposed findings of fact and conclusions of law; (2) there was insufficient evidence that defendant's conduct was the proximate cause of plaintiff's emotional distress; (3) the trial court erred in finding that defendant had committed conversion; and (4) the trial court erred in awarding punitive damages to plaintiff. We affirm.

Judy Ensley and Jerry Straw established an informal joint venture for the purpose of raising and breeding quarterhorses. The parties acquired quarterhorses registered in both their names and shared in the costs attributable to the animals.

In March of 1982, Straw entered Ensley's home without her knowledge and took the registration documents of one stallion and two mares. Straw assigned and transferred the registrations over to Howard Duckett, who then reassigned and transferred the documents over to Straw, in Straw's name only. Later, Straw gained possession of all three horses.

Several months later, Ensley began pressing Straw to return the two mares to her possession. On one occasion Straw threatened to destroy the mares if Ensley kept bothering him. When Ensley finally managed to get possession of the two mares, Straw called law enforcement authorities and alleged that Ensley had stolen the horses. Deputy Sheriff Parks called Ensley several times, threatening to arrest her if the mares were not returned to Straw. Not until then did Ensley realize that Straw had taken and changed the registration documents. Straw also threatened to have Ensley arrested and harrassed her in other manners.

Ensley filed this action which proceeded to be tried before the court. The court ruled in favor of Ensley, awarding her $3,750 compensatory damages for

conversion, $4,850 compensatory damages for intentional infliction of emotional distress, and $3,000 punitive damages. Defendant has appealed.

I.

Straw first claims that the trial court's decision evidences prejudice against him and in favor of Ensley. After presentation of the evidence, the court requested that both parties file proposed findings of fact and conclusions of law. The trial court's decision adopted a large part of Ensley's proposed findings and conclusions. Straw now argues that this demonstrates that the court did not engage in any substantial independent thought and thus the decision was not impartial. We are unpersuaded by this argument.

In State v. Farni, 325 N.W.2d 107, 110 (Iowa 1982), the supreme court stated:

> There is a substantial burden imposed on one who seeks to prove that the trial judge is not impartial. Furthermore, the decision of the trial judge will not be overturned unless there has been an abuse of discretion. In order to constitute the prejudice necessitating a different judge, "[t]he alleged bias and prejudice . . . must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." State v. Smith, 282 N.W.2d at 142 (citing United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S. Ct. 1698, 1710, 16 L. Ed. 2d 778, 793 (1966).

(emphasis added).

Defendant has failed to show that the trial court's opinion was rooted in an extrajudicial source. The mere fact that the decision adopted the opposing party's proposal does not serve to establish this. It is entirely conceivable that the judge's opinions were formed during the course of judicial proceedings on the basis of evidence presented and conduct observed. As long as the findings of fact are supported by the evidence and the court's decision is consistent with the laws of this state, an opinion which adopts the opposing party's proposal is no basis for reversal or remand.

Many of the defendant's remaining arguments are contingent upon a finding that the trial court's decision was not impartial. Straw repeatedly argues that

since the trial court's decision was prejudicial we should not consider the findings of fact binding, even if supported by substantial evidence. Because we have decided that the decision was not prejudicial, we will not address this claim. For similar reasons, we need not address the defendant's argument regarding punitive damages.

II.

Straw also argues that the finding of intentional infliction of emotional distress is not supported by evidence in the record.

The elements of this tort are as follows:

> (1) Outrageous conduct by the defendant;
>
> (2) The defendant's intention of causing, or reckless disregard of the probability of causing, emotional distress;
>
> (3) The plaintiff's suffering severe or extreme emotional distress; and
>
> (4) Actual and proximate causation of the emotional distress by the defendant's outrageous conduct.

Meyer v. Nottger, 241 N.W.2d 911, 918 (Iowa 1976). We believe these elements have been established by substantial evidence in the record.

"Outrageous" conduct has been broadly defined as "conduct exceeding all bounds usually tolerated by decent society" and which a reasonable person could not be expected to endure. Id. In the case before this court, evidence would support the conclusion that Straw wrongfully converted the horses and registration of the animals and failed to disclose this to Ensley. When Ensley attempted to retrieve the horses, Straw requested that Ensley be arrested for theft. We have little difficulty characterizing this as both outrageous and intentional conduct, thereby satisfying the first two elements of the tort. While Straw claims he went to the authorities merely as an extension of his fiduciary duty to the plaintiff, the trier of fact is at liberty to accept or reject this testimony on the basis of credibility.

The defendant does not dispute the fact that plaintiff suffered extreme or severe emotional distress. He does, however, argue that his actions were not the proximate cause of the emotional distress. Rather, Straw claims the communications and threats made by Deputy Sheriff Parks were the sole proximate cause of the injury. We disagree with this argument. It was entirely reasonable for the trial court to conclude that the resulting injury was the natural and probable consequence of Straw's actions. The fact that Deputy Sheriff Parks threatened the plaintiff with arrest does not necessarily serve to break the chain of causation. "In order for an intervening act or force to relieve an individual from liability, it must not have been a normal consequence of his acts or have been reasonably forseeable." Haumersen v. Ford Motor Co., 257 N.W.2d 7, 15 (Iowa 1977) (superseding and intervening cause discussed in negligence context). Since Straw was the one who contacted Parks about the matter, it can hardly be said that subsequent acts taken by Parks were unforseeable.

We conclude that substantial evidence supports a finding that there was intentional infliction of emotional distress and affirm the trial court's decision in this respect.

III.

Defendant also claims the trial court erred in finding he converted the property. Curiously, Straw does not claim that the court's conclusion is unsupported by the evidence. Rather, as we understand it, his argument is premised on the fact that the court did not set out the elements of the tort as recognized in this state. In reviewing the court's decision, we find no grounds for reversal. The decision does, in fact, set out the law relating to conversion and applies it to the facts of this case. While the court did not cite to Iowa case law in its analysis, it did cite to principles in legal treatises which have been approved by our courts. See Welke v. City of Davenport, 309 N.W.2d 450, 451-52 (Iowa 1981). Thus, we cannot say the trial court failed to cite to or apply the correct law.

The trial court's finding that the defendant converted the property is supported by the record. The defendant has not raised sufficient grounds for reversal. Accordingly, we affirm.

AFFIRMED.