FILED
DEC 17 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DOUBLE S TRUCK LINES, INC.,	)	
Plaintiff-Appellee,	)	Filed December 17, 1987
vs	)	
THE CITY OF COUNCIL BLUFFS,	)	7-451 87-441
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Pottawattamie County (56342), Keith E Burgett, Judge.

Defendant appeals from a district court judgment awarding plaintiff over $30,000 **AFFIRMED.**

Robert L. O'Brien, Assistant City Attorney, Council Bluffs, for defendant-appellant.

Richard D. Crotty, Council Bluffs, for plaintiff-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

HAYDEN, J.

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Defendant, the City of Council Bluffs (City), appeals the trial court judgment awarding plaintiff, Double S Truck Lines, Inc. (Double S), $30,792.82 for spoilage of 45,000 pounds of fresh pork. A truck owned by Double S, and containing the fresh pork, was stolen after the arrest of the driver of the truck, Randall Flanagan, then employed by Double S. In its petition, Double S alleged the arresting officers, employed by the City, failed to properly secure its truck before taking Flanagan into custody. Double S alleged, therefore, this failure proximately caused the truck to be stolen and the meat to spoil.

On appeal, City asserts the trial court erred by failing to sustain its motion for a directed verdict, and then erred by concluding City owed and breached a bailment-type of duty to Double S. City also asserts the trial court erred by attributing fault of the police officer to it.

This case was tried at law to the court. Our scope of review, therefore, is for correction of errors at law; the trial court's findings of fact have the effect of a special verdict. Iowa R. App. P. 4. Thus, the findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

The trial court determined City owed Double S to a common law duty as a bailee and a bailment-type of duty under the regulations of the City's police department. The court found City breached these duties by failure of its police officers to lock the truck of Double S before taking Flanagan into custody. The truck, and its refrigeration unit, were kept running at Flanagan's request.

The City regulation at issue is contained in the police department's General Order No. 83-1, IV. Procedures, D. Prisoner's property. It states, in pertinent part:

> Whenever an owner/operator is arrested ... and is brought into the Law Enforcement Complex for bonding purposes, and the vehicle is not impounded for evidentiary or seizure purposes, the owner/operator shall have the following options for care of the motor vehicle: a) parked and properly secured at a location nearest the scene of arrest. (*Emphasis supplied.*)

We conclude this regulation placed a duty on the police officers to lock or otherwise properly secure the truck. We also conclude the testimony of Flanagan that the officer did not lock the truck, in light of the manner in which the officer closed its door, is substantial evidence showing this duty was breached. Accordingly, we uphold the judgment of the trial court.

We do not address the issue of whether Flanagan's arrest resulted in a constructive bailment of the truck under common law, since we find the trial court's decision was proper on the grounds outlined above. We also do not address City's assertion the fault of the police officer should not be attributed to it. City contends Double S did not show the officer acted within his scope of employment. At no point during the trial, however, did City suggest the officer did not so act. We therefore deem this issue waived. We are persuaded, in any event, the evidence regarding the lawful arrest would have been sufficient to prove the officer had acted within the scope of his employment when he negligently failed to properly secure the truck pursuant to taking Flanagan into custody.

AFFIRMED.