IN THE COURT OF APPEALS OF IOWA

No. 0-622 / 99-1948
Filed February 7, 2001

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CLERK SUPREME COURT

RICHARD L. NOE,
Plaintiff-Appellant,

vs.

JAMES R. SMITH and MERCANTILE BANK OF EASTERN IOWA,
Defendants-Appellees.

Appeal from the Iowa District Court for Benton County, L. Vern Robinson, Judge.

The plaintiff appeals a district court ruling dismissing his action against the defendants for negligence and interference with contractual relations. **AFFIRMED.**

Morris L. Eckhart, Vinton, for appellant.

Gregory J. Epping and Troy L. Springston of Terpstra & Epping, Cedar Rapids, for appellees.

Heard by Streit, P.J., and Vogel and Hecht, JJ.

HECHT, J.

Richard Noe appeals from dismissal of his lawsuit against James R. Smith and Mercantile Bank of Eastern Iowa claiming damages for negligence and intentional interference with a contract. We affirm.

I. Factual Background and Proceedings. Kenneth Noe died testate in May of 1989. His will established a trust and named Vinton State Bank[1] trustee. The decedent's children, Keith, Alma, Connie, Avis, and Donovan, were beneficiaries of the trust that was to terminate five years after the decedent's death. The trust assets included farm real estate.

The decedent's nephew, Richard Noe, began leasing the farm on a crop-share basis in 1981. After Kenneth's death in 1989, Richard leased the farm from the trustee-Bank on a cash-rent basis. The term of the trust expired in May of 1994. In August of 1994, a vice president of the Bank wrote a letter to the beneficiaries proposing to terminate the lease and sell the farm. None of the beneficiaries voiced opposition to this proposal and some of them affirmatively undertook to promote the sale of the real estate. A real estate agent was retained to list the farm for sale.

A notice of termination of farm tenancy was served on Richard in 1995. The notice was given by the Bank as "Trustee of the Kenneth Noe Trust." After receiving the notice, Richard contacted two of the beneficiaries, Keith and Avis, to discuss his interest in continuing to lease the farm. Richard and Keith testified a cash-rent agreement for the 1996 crop year was reached during the ensuing

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[1] Mercantile Bank of Eastern Iowa is the successor to Vinton State Bank. The two institutions will be jointly referred to in this opinion as "the Bank."

conversations. Richard subsequently purchased farm chemicals and entered into contracts for the sale of the anticipated 1996 crop.

In early 1996, the Bank applied to the district court for permission to sell the farm. In a letter dated March 1, 1996, Richard notified the Bank of his claim that he had entered into a lease with the beneficiaries for the 1996 crop year and requested any sale of the real estate be made subject to that lease. On March 11, 1996, Richard filed an application requesting court approval of his claimed lease. In an order filed March 29, 1996, the district court denied the Bank's application to sell the farm and made a finding "that there was not a valid lease for the year 1996." Notwithstanding the court's denial of the application for authority to sell the real estate, the Bank executed a real estate contract to sell the farm to John Harder[2] in April of 1996.

Richard appealed from the court order denying approval of his claimed lease. This court ruled: (1) the Bank had no authority as trustee to terminate the farm lease after the trust expired in May of 1994; and (2) a valid lease for the 1996 crop year was formed between Richard, Keith and Avis. *See In re Trust of Kenneth Noe,* No. 96-0615 (Iowa Ct. App. Apr. 10, 1997). The Bank sought, and the supreme court granted, further review.

In a decision filed October 22, 1996, the supreme court vacated this court's decision and reversed and remanded the district court's judgment. *Noe v. Hawkeye Bank,* 570 N.W.2d 114, 115 (Iowa 1997). The supreme court determined after the trust's termination, the "power to lease or to sell granted to

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[2] Harder assigned his interest in the property to defendant James R. Smith in May of 1996.

the trustee under the will no longer existed." *Id.* at 116. The court further concluded the real estate was "placed in *custodia legis*" after the termination of the trust; and after termination of the trust, the probate court "continued to exercise control over the distribution of the trust assets and was not necessarily required to place its imprimatur on the proposed lease" claimed by Richard. *Id.* The supreme court's decision further clarified, subject to the probate court's continued control of the trust res prior to distribution, the trustee could, as an officer of the court, be empowered by court order "to take such action with respect to the property as might be necessary for proper administration after the expiration" of the trust. *Id.* The supreme court remanded the case to the district court for a determination of what "actions should be approved in wrapping up the trust's affairs. . . . " *Id.* at 117.

In November of 1997, Richard sued Smith and the Bank alleging breach of contract, negligence, and intentional interference with an existing contract. On May 14, 1998, a hearing was held on the Bank's application for authority to sell the real estate. The district court approved the sale of the real estate.

The Bank and Smith filed a motion for summary judgment in Richard's action for damages. In a ruling filed March 4, 1999, the district court granted summary judgment to defendants on Richard's breach of contract claim, but concluded genuine issues of fact remained for trial on the negligence and intentional interference with contract claims. Trial on the remaining issues was held on November 2 and 3, 1999.

In a ruling filed November 16, 1999, the district court found: (1) Avis did not agree to the formation of a lease between Richard and the beneficiaries after the termination of the trust; (2) Richard's claim to the formation of a lease agreement between himself and Keith was "iffy at best;" (3) the Bank did not intentionally or improperly interfere with a contract between Richard and the beneficiaries; (4) the Bank acted in a reasonable manner on behalf of the beneficiaries when it served the notice of termination of farm tenancy on Richard; and (5) the Bank did not breach any duty owed to Richard and was therefore not negligent. Richard appeals.

II. Richard's contentions on appeal. Richard contends the district court made errors of law when it: (1) concluded his lease was terminated pursuant to Iowa Code section 562.6 as a result of the Bank's service of the notice of termination of farm tenancy after the expiration of the term of the lease; (2) failed to correctly apply the law recognizing a landlord's duties to provide adequate communication to his tenant and protect his tenant from reasonably foreseeable harm; and (3) failed to conclude Keith and Avis had implied authority to act on behalf of their fellow-beneficiaries. Richard also claims numerous findings of fact made by the district court are not supported by substantial evidence.

III. Standard of Review: We review law actions tried to the district court for correction of errors at law; and the court's findings of fact have the effect of a special verdict. Iowa R. App. P. 4; *Data Documents, Inc. v. Pottawattamie County*, 604 N.W.2d 611, 614-15 (Iowa 2000). Thus, all findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14 (f)(1);

Data Documents, 604 N.W.2d at 614-15. "Evidence is substantial if a reasonable mind could accept it as adequate to reach the same findings." *Bluffs Dev. Co. v. Board of Adjustment*, 499 N.W.2d 12, 14 (Iowa 1993). In applying this standard, we view the evidence in a light most favorable to upholding the district court's judgment. *Data Documents*, 604 N.W.2d at 615. We construe the findings of the trial court liberally to uphold, rather than defeat, the result reached. *Claus v. Whyle*, 526 N.W.2d 519, 523 (Iowa 1994). We are not bound, however, by the trial court's application of legal principles or its conclusions of law. *Iowa Fuel & Minerals v. Board of Regents*, 471 N.W.2d 859, 862 (Iowa 1991). "When the trial court has applied erroneous rules of law which materially affected its decision, we will reverse." *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 (Iowa 1995).

IV. Termination of the Lease. Richard contends the notice of termination of farm tenancy served upon him by the Bank in 1995 was without effect because the trust terminated before the notice was given. He correctly notes the supreme court determined the powers residing in the trustee by virtue of the will expired when the trust terminated five years after the decedent's death. Richard's claim based upon the Bank's lack of authority to terminate the lease fails, however, because the district court found the Bank acted reasonably on behalf of the beneficiaries in its efforts to terminate the lease and sell the real estate even after its power to do so by virtue of the will had terminated. We believe this finding is supported by substantial evidence notwithstanding the fact the notice of termination of farm tenancy purported to be given by the Bank in its

capacity as trustee. After the term of the trust expired in May of 1994, the Bank recommended in writing to the beneficiaries that Richard's lease be terminated and the land sold because "[I]t would appear to be impractical to divide and retain the farm." Although one beneficiary testified he did not approve of the proposed termination of Richard's lease, there is no evidence in this case he communicated his position to the Bank. In furtherance of the plan proposed by the Bank, a realtor was retained and purchase offers were solicited from Richard and other potential buyers. The evidence clearly suggests the beneficiaries approved of the plan proposed by the Bank. Under the circumstances of this record, we are unable to say the district court's finding the Bank was "continuing to act on behalf of the beneficiaries" when the notice of termination of farm tenancy was served upon Richard in 1995 is unsupported by substantial evidence in the record.

Richard also contends the district court erred in failing to find: (1) beneficiaries Keith Noe and Avis Uthoff had implied authority to lease the real estate; and (2) a lease was formed as a result of his conversations with the two beneficiaries after the notice of termination of farm tenancy was served upon him. Although it is true this court previously ruled a valid lease was formed between Richard and two of the five beneficiaries after the term of the trust expired, our decision was subsequently vacated by the supreme court on further review. In its decision, the supreme court observed:

> We do not suggest, however, that the probate court is compelled to approve the action of some but not all the beneficiaries with respect to the actions taken. The trust res remains subject to court control until the assets are distributed and the trustee's action in the

> administration of the trust has received approval of the court. The court is not without power during this period to preclude the placing of leases on the property that might prove to be an impediment to orderly distribution of trust assets. . . .
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> The disposition of the court of appeals was to sustain the lease as between the parties who consented to it and to uphold their actions as against the trustee. We believe that an adjudication of the contractual rights of those parties *inter sese* is not what is called for in this case. The issue is what actions the probate court should approve in wrapping up the trust's affairs as to all beneficiaries.

Noe, 570 N.W.2d at 116-17.

In furtherance of its power to wrap up the trust's affairs following remand, the probate court entered an order in May of 1998 approving the Bank's acts in terminating the farm tenancy and selling the farm. The lease claimed by Richard was never approved or authorized by the court. We are unable to say on this record the district court erred either legally or factually in the case now before the court when it found Avis did not enter into a lease with Richard. We note Avis testified she did not remember a conversation in which she made such an agreement. Although Keith Noe testified both he and Avis did enter into such an agreement with Richard, the district court was not bound to accept the testimony as fact. The fact-finder is free to reject certain evidence and credit other evidence. *State v. McPhillips*, 580 N.W.2d 748, 753 (Iowa 1998). Determinations of credibility are in most instances left for the trier of fact, who is in a better position to evaluate it. *State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000).

The district court found "[a]ny lease agreement between [Richard] and Keith [Noe] is "iffy" at best." This language is a bit imprecise, but suggests the

district court found Richard did not carry his burden to prove the formation of a lease between himself and Keith Noe. If a finding is ambiguous, it will be construed to uphold, not defeat, the judgment. *Byers v. Contemporary Indus. Midwest, Inc.*, 419 N.W.2d 396, 397 (Iowa 1988). Under the circumstances, we are not prepared to hold as a matter of law that a lease was formed between Richard and Keith. Our inclination not to do so is strengthened by the fact neither the probate court nor the district court in the instant case found such a contract existed. We affirm the district court's ruling on this issue.

Richard also contends the district court erred in finding no negligence on the part of the Bank. The district court found the Bank "acted reasonably toward [Richard] Noe by giving written termination of the farm lease and clearly communicating the Trustee's intention to sell the property and discontinue the Plaintiff's leasehold." The question before this court is not whether we would make the same finding of fact on this record. Rather, we must determine whether substantial evidence supports the finding made by the district court. Finding substantial evidence to support the district court's determination, we affirm on this issue.

Richard asserts the district court also erred in failing to find, as purchaser of the real estate, Smith breached certain duties and intentionally interfered with the claimed lease. The district court made no findings of fact or conclusions of law with respect to: (1) whether Smith owed Richard a duty; (2) whether any such duty was breached by Smith; or (3) whether Smith interfered with any contract in which Richard had an interest. Richard failed to obtain a ruling from the district

court on the claims he now asserts on appeal. "Issues must ordinarily be presented to and passed upon by the trial court before they may be raised and decided on appeal." *State Farm Mut. Auto. Ins. Co. v. Pflibsen,* 350 N.W.2d 202, 206-07 (Iowa 1984). Accordingly, we conclude Richard failed to preserve error on his claims against Smith.

We have reviewed all other assignments of error raised by Richard and find them to be without merit. Accordingly, we affirm the ruling of the district court in its entirety.

AFFIRMED.