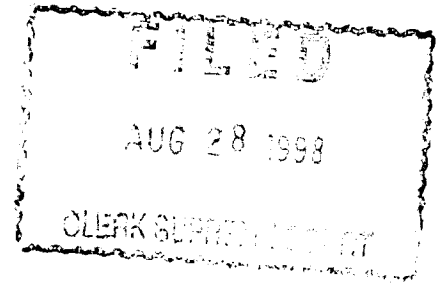


IN THE COURT OF APPEALS OF IOWA

No. 8-214 / 97-1218
Filed August 28, 1998



HOWARD PARROTT,
Appellee,

vs.

CHARLES F. TEMPLEMAN,
Appellant.

Appeal from the Iowa District Court for Cass County, Keith E. Burgett, Judge.

Defendant appeals from a district court judgment entered in favor of plaintiff based on a promissory note. **AFFIRMED.**

John M. Trewet of Rutherford, Trewet & Petersen, Atlantic, for appellant.

James P. Barry of Otto, Lorence & Barry, Atlantic, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

STREIT, J.

Charles Templeman appeals the trial court's assessment of the amount of money due under a promissory note to Howard Parrott. Because substantial evidence supports the trial court's findings, we affirm.

I. Background Facts & Proceedings.

Parrott is a retired businessman who collects automobiles. Templeman runs a business selling used cars and furniture. The two have conducted business transactions with each other for approximately twenty-five years, at different points in time, each loaning the other sums of money.

In 1990, Parrott loaned Templeman approximately \$15,000 to purchase used pickup trucks. To memorialize the agreement, Templeman signed a one-year promissory note payable to Parrott for \$14,961.43, with interest to accrue at 13.5% per annum. Templeman made payments on the note, but did not pay the entire balance when it came due. The parties dispute how many payments Templeman made on the note. In 1994, Parrott demanded payment on the note in full. Templeman refused to pay.

Parrott sued Templeman in 1996 for the unpaid balance on the promissory note. Templeman filed a counterclaim for reimbursement for goods and services he claims were taken by Parrott. At trial, the court refused to admit evidence of Parrott's tax returns. The district court dismissed Templeman's counterclaim and found in

favor of Parrott for \$14,935.82 principal, plus \$10,642.44 interest, and \$1756.50 in attorney fees. Templeman appeals.

II. Standard of Review.

Appellate courts review actions at law for correction of errors at law. Iowa R. App. P. 4; *Flom v. Stahly*, 569 N.W.2d 135, 139 (Iowa 1997). An appellate court is bound by the district court's findings of fact if they are supported by substantial evidence. *Id.*; Iowa R. App. P. 14(f)(1). The district court's judgment has the effect of a jury verdict and will be upheld if the district court's findings of fact are supported by substantial evidence. *Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997). Review of the court's evidentiary rulings is for abuse of discretion. *Williams v. Hedican*, 561 N.W.2d 817, 822 (Iowa 1997).

III. Admissibility of Tax Returns.

Templeman contends the trial court erred in refusing to admit Parrott's tax returns to show he was untruthful. He also argues the trial court erred in refusing to admit Parrott's amended tax returns. Review of the records shows the trial court admitted Parrott's 1990-1995 tax returns as defendant's exhibit 8. For this reason, that portion of Templeman's argument is not addressed.

As a general rule, specific instances of conduct, such as lying on individual tax returns, cannot be proved by extrinsic evidence. Iowa R. Evid. 608(b) (1998). The trial court, may, in its discretion, allow an instance of specific conduct to be inquired into on cross-examination if probative of untruthfulness. *Id.* Templeman argues

Parrott's failure to declare any interest payments to him from Templeman on his original tax returns show Parrott is untruthful. The trial court, in its discretion, determined the returns were not probative of Parrott's truthfulness.

Parrott explained his failure to pay taxes on the payments Templeman made was because he had a misunderstanding of the tax law. He later corrected his error and paid his tax. A witness has the right to explain entries appearing on papers executed by him, like tax returns. See *Schroedl v. McTague*, 145 N.W.2d 48, 55 (Iowa 1966). Under these circumstances, the trial court did not abuse its discretion in refusing to admit the tax returns. Even if the court did abuse its discretion in refusing to admit the tax returns, we reverse the trial court on an evidentiary ruling only when prejudice resulted. *Avery v. Harms Implement Co.*, 270 N.W.2d 646, 649 (Iowa 1978). Parrott's tax returns were before the court. The trial court found Parrott's tax returns did not damage his credibility, in light of his explanation of those returns, and the returns were not relevant to establishing the amount of payments Templeman made on the note. Even if admitted, the returns would not have affected the outcome of the case. Because Templeman has established neither an abuse of discretion nor resulting prejudice, we affirm the trial court's evidentiary ruling.

IV. Payments on Promissory Note.

The heart of Templeman's appeal is the claim the trial court failed to credit payments to him that he had made on the note. Templeman argues he owes a balance of \$2726.07 on the note. He presented numerous receipts, claiming they represented

payments on the note. Parrott argued the receipts were from other business transactions.

The trial court determined the receipts Templeman offered as proof of payment on the note were actually receipts for other business transactions. This finding is supported by substantial evidence on the record. The receipts Templeman alleged proved he made payments were equivocal. The court credited Templeman with all receipts which clearly indicated they were payments on the note. The receipts that did not so indicate were found to be receipts from other transactions. This is a reasonable finding in light of the fact the two had conducted business transactions for nearly twenty-five years.

Key to the trial court's decision was a finding on credibility between the two parties. The trial court found Parrott more credible than Templeman. Appellate courts consistently recognize that factual disputes which depend heavily on the credibility of witnesses are best resolved by the trial court which has a better opportunity to evaluate credibility than the appellate court. *IBP, Inc. v. City of Council Bluffs*, 511 N.W.2d 413, 415 (Iowa App. 1993). We will not redetermine the credibility of the witnesses on appeal when the trial court's findings are supported by substantial evidence on the record.

The trial court's assessment of the amount owed by Templeman to Parrott on the promissory note is affirmed.

V. Attorney Fees.

Templeman argues the trial court erred in awarding Patton attorney fees. Patton seeks an award for the attorney fees he incurred on appeal.

Attorney fees are recoverable as damages when they are provided for in the terms of a written contract. *Corporate East Associates v. Meester*, 442 N.W.2d 105, 109 (Iowa 1989); *see also Chapman's Golf Center v. Chapman*, 524 N.W.2d 422, 427 (Iowa 1994).

The promissory note in question provided: "The Debtor. . . agree[s] to all provisions of this note, and that if not paid when due [the debtor] will pay all amounts due hereunder together with costs and attorneys fees" The trial court correctly awarded Parrott attorney fees under the terms of the contract. Parrott incurred additional fees defending the trial court's judgment in his favor. He is entitled to attorney fees on appeal also. Templeman is ordered to pay Parrott \$670 in appellate attorney fees.

AFFIRMED.