

FILED

AUG 26 1980

CLERK SUPREME COURT

437

IN THE COURT OF APPEALS OF IOWA

MIDWEST LIQUOR CONTROL
SYSTEMS, INC.,

Plaintiff,

vs.

SIBLEY STATE BANK,

Defendant.

Filed August 26, 1980

SIBLEY STATE BANK,

Third-Party Plaintiff,

vs.

FRANK P. WHICHER, TRUSTEE,

Third-Party Defendant.

FRANK P. WHICHER, TRUSTEE,

Cross-Claimant,

vs.

MIDWEST LIQUOR CONTROL
SYSTEMS, INC.,Defendant to
Cross-Claim.0-218
2-64330

FRANK P. WHICHER, TRUSTEE,

Third-Party Plaintiff
and Appellant,

vs.

ALFRED J. MATALONI,

Third-Party Defendant
and Appellee.

Appeal from Osceola District Court - Richard W. Cooper, Judge.

Third-party plaintiff appeals judgment for third-party defendant on cross-petition based on a personal, promissory note, contending trial court erroneously shifted burden of proof. AFFIRMED.

Thomas O. Albers of Fisher, DeWaay & Albers, Rock Rapids, for third-party plaintiff-appellant.

Rick L. Olson of Baird, Bowers & Oliver, Des Moines, for third-party defendant-appellee.

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

Third-party plaintiff, bankruptcy trustee Frank P. Whicher, appeals judgment for third-party defendant, Alfred J. Mataloni, on trustee's cross-petition based on promissory note allegedly signed by Mataloni. On appeal, trustee contends Mataloni's admission of his signature on the note shifted the burden of proof to Mataloni and trial court erroneously failed to recognize this shifting of the burden. We affirm the trial court.

I.

While the circumstances from which this case arises are complex, the facts relevant to this appeal are relatively straightforward. Midwest Liquor Control Systems, Inc., filed suit against Sibley State Bank on the ground Midwest's money deposited with the bank had been withdrawn without authorization and contrary to provisions contained in a passbook issued to Midwest. The account in question, referred to at trial as the "Reserve Account," resulted from the bank, and later T. Robert Nelson, buying contracts from Midwest and depositing a portion of the contract purchase price in the "Reserve Account." The bank cross-petitioned against Nelson for indemnification. During the pendency of the action, Nelson took bankruptcy and the bankruptcy trustee, Frank P. Whicher, was substituted in the trial court proceedings. Subsequently, the trustee filed a cross-claim against Midwest on notes Midwest gave to Nelson and a cross-petition against Alfred J. Mataloni on a personal note Mataloni allegedly gave to Nelson.

In the action against Mataloni, the trustee claims Mataloni executed a promissory note to Nelson and the note contained an acceleration clause, which had been exercised, making the entire amount due. In his answer, Mataloni denied executing the note and raised several affirmative defenses. At trial, Mataloni admitted the signature on the note was his, but did not recall signing the note.

After trial to the court, the court entered judgment in favor of Midwest, but offset the amount of the judgment against the judgment entered in favor of the trustee on his cross-claim against Midwest. In doing so, the court also entered judgment in favor of the bank against the trustee. Relevant to this appeal, the court found against the trustee on his cross-petition against Mataloni.

II.

The issue on appeal is whether the trial court erred in finding the "trustee has

failed to prove its claim against Mataloni by a preponderance of the evidence." The trustee contends once the note was offered and received into evidence and Mataloni admitted the signature on the note as his own, he was entitled to recover on the note unless Mataloni established a defense. § 554.3307, The Code 1977; see Ainsworth Savings Bank v. Colthurst, 197 Iowa 363, 366-67, 195 N.W.581, 582 (1923). The trial court, according to the trustee, erroneously failed to recognize this shift in the burden of proof as evidenced by its statement quoted above.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. In our review, the trial court's fact-findings have the effect of a special verdict and are equivalent to a jury verdict. Mullenger v. Clause, 178 N.W.2d 420, 426 (Iowa 1970). In a law action like this one, such findings are binding on this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Our inquiry, however, is not precluded from examining whether, conceding the truth of a fact-finding, the trial court applied erroneous rules of law that materially affected its decision. Hamilton v. Town of Palo, 244 N.W.2d 329, 331 (Iowa 1976); Mullenger, 178 N.W.2d at 426. In review of a case tried to the court at law, the trial court's findings are to be construed broadly and liberally, rather than narrowly and technically, and if ambiguous, they will be construed to uphold, rather than defeat, the judgment. City of Des Moines v. Huff, 232 N.W.2d 574, 576 (Iowa 1975). When the court makes only a general finding, every finding of fact necessary to support the decision appealed will be presumed to have been made. Id. (quoting 5 Am. Jur. 2d Appeal and Error § 840, at 284 (1962)).

Initially, we are faced with the trial court's failure to follow precisely Iowa R. Civ. P. 179(a), which provides in part: "The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law; . . ." In its written decision, captioned "Findings, Conclusions and Judgment," the court failed to separate and label the various conclusions of law and findings of fact. However, since neither party requested the findings and conclusions be enlarged or amended pursuant to Iowa R. Civ. P. 179(b), we refuse to assume the trial court acted improperly on matters that could have been raised by such a motion. Stanley v. State, 197 N.W.2d 599, 605-06 (Iowa 1972); Tiemeyer v. McIntosh, 176 N.W.2d 819, 822 (Iowa 1970); see 2 A. Vestal & P. Willson, Iowa Practice § 41.04, at 276 (1974). If the court's findings are supported by substantial evidence, we

will accept them even if they do not comply exactly with Iowa R. Civ. P. 179. See Ryan v. Kanne, 170 N.W.2d 395, 405 (Iowa 1969).

The court's conclusion relevant to this appeal was that:

Judgment for the Trustee and against Alfred J. Mataloni on the \$97,560.00 promissory note is denied for the reason that the Trustee has failed to prove its claim against Mataloni by a preponderance of the evidence. The note by itself, is insufficient to support the claim when viewed with the conflicting and discredited testimony presented in support thereof.

While the trustee contends the trial court failed to apply the correct burden of proof in arriving at this conclusion, an equally persuasive argument is that the court found in favor of Mataloni on the basis of at least one of his affirmative defenses. These affirmative defenses included: Forgery; fraud and misrepresentation; the note being signed in blank with the terms subsequently filled in without the knowledge or consent of Mataloni; and lack of valuable consideration.

In light of the discussed principles concerning the enlargement of findings or conclusions, we hold the trial court acted in accordance with section 554.3307, The Code, and found the trustee was precluded by a defense established by Mataloni. There is substantial evidence in the record to support such fact-findings, explicitly and implicitly made by the trial court. Huff, 232 N.W.2d at 576. See Manson State Bank v. Tripp, 248 N.W.2d 105, 108 (Iowa 1976). We note particularly the court's low assessment of the credibility of the witnesses' testimony, which is supported by the record.

III.

We hold the trial court's fact-findings are supported by substantial evidence and it correctly determined the trustee was not entitled to recover on the note from Mataloni; we affirm the trial court's judgment.

AFFIRMED.