

IN THE COURT OF APPEALS OF IOWA

No. 1-1000 / 11-0829
Filed February 1, 2012

FARM CREDIT SERVICES OF AMERICA,
Plaintiff-Appellee,

vs.

MELROY DEAN BUHR,
Defendant-Appellant.

Appeal from the Iowa District Court for Howard County, James Bauercamper, Judge.

Melroy Buhr appeals a jury verdict in favor of his lender. **AFFIRMED AND REMANDED.**

Melroy Buhr, Elma, pro se.

Dale L. Putnam, Decorah, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

PER CURIAM

Melroy Buhr appeals the jury's verdict awarding damages to Farm Credit Services of America (FCS) and finding he failed to prove his claim for damages. We affirm.

I. Background Facts and Proceedings.

On April 15, 2010, FCS filed a petition for replevin against Buhr alleging default on three promissory notes. Buhr answered and denied signing the notes. Buhr also alleged FCS "is not registered to do business in the State of Iowa and therefore cannot make any contracts in the state of Iowa."

After hearing, on July 13, 2010, the court found Buhr "made, executed and delivered three promissory notes" to FCS, the notes are in default, and Buhr signed security agreements for the notes. The court entered an order for a pre-judgment writ of replevin on Buhr's farm "equipment and machinery not attached to the real estate as fixtures." The writ was conditioned on FCS posting a \$50,000 bond.

On July 22, FCS posted a \$50,000 bond, the clerk of court filed the writ of replevin, and Buhr filed a "petition" to set aside the July 13 court order. Buhr repeated his claim FCS is not registered in the state of Iowa, denied signing the notes, and argued there could be no judgment because FCS did not offer the original promissory notes. On July 26, Buhr filed a challenge to the FCS bond. On July 27, FCS filed the original notes with the clerk of court under Iowa Rule of Civil Procedure 1.961.

On August 3, 2010, the court, noting Buhr is not represented by counsel, ruled Buhr's July 22 "petition" is "not authorized by any court rule or statute." The

court elected to consider Buhr's "petition" as a motion to enlarge or amend stating it was "substantially equivalent to a motion under Rule 1.904(2)." The court denied Buhr's motion "because it does not raise any new legal issues not already raised at the hearing and considered by the court." Also on August 3, the court denied Buhr's bond challenge, ruling "the bond complies with all applicable Iowa statutes on bonds and . . . conforms to the requirements of this judge's order setting a bond."

On August 18, 2010, the sheriff executed the writ of replevin and removed farm equipment from Buhr's farm. Subsequently, Buhr filed several motions challenging the writ of replevin and seeking the return of items seized. After a September 8 hearing on Buhr's motions, the court stated FCS "agreed certain items of machinery held by the sheriff under the writ of replevin could be immediately released" to Buhr, and ordered three items released. The court stated an additional ruling would follow after it reviewed the evidence.

On October 1, 2010, the court ruled Buhr borrowed money from FCS and Buhr's debt is approximately \$25,000. "However, the amount of the debt is increasing due to the accruing interest, attorney fees recoverable by the terms of the note, and protective advancements" The court found the "net current fair market value" of the property seized "after taking into account the value of items returned" is \$65,325. The court ordered FCS to select items to retain at "approximately \$40,000 worth of machinery" and ordered FCS to return the remainder of the items to Buhr's farm at FCS's expense. The court increased FCS's replevin bond to \$80,000. FCS filed the bond.

On October 15, 2010, after hearing, the court ruled on FCS's motion for summary judgment:

There is no genuine issue of material fact as to the execution of the three promissory notes by [Buhr], [FCS's] ownership of the notes, [Buhr's] default on the payments due, [FCS's] acceleration of the balance due, and the amount due. Nor is there any genuine issue of law or fact as to the security interest in farm machinery granted by [Buhr] to [FCS] and the perfection of those liens. [Buhr's] complaints that he is not the owner of certain items of machinery replevied in this case have not been supported by any competent evidence

. . . .
Suits for replevin under Chapter 643 are possessory in nature. This remedy allows for the plaintiff [FCS] to obtain immediate possession of property which has been improperly detained by the opponent [Buhr]. . . .

Therefore, [FCS's] request . . . for a money judgment on the promissory notes must be denied without prejudice. . . .

However, [FCS] is entitled to a partial summary judgment determination in its favor on its right to possession of the replevied collateral.

Defendant Buhr has asserted claims for damages related to service of the writ of replevin. Those claims remain to be litigated at trial, and [FCS's] bond remains as security for that litigation.

FCS scheduled the sale of Buhr's property for November 22, 2010. On November 15, the court held a hearing on Buhr's motion for emergency order. On November 16, the court ordered the sale cancelled and the farm machinery returned to Buhr at Buhr's expense *if*, by noon on November 19, Buhr paid the notes with interest, \$4223.55 in advancements, and \$9112.75 in attorney fees. Buhr complied with the court's order (\$36,781.03 cashier's check), and the sale was cancelled.

In April 2011, jury trial commenced. Buhr sought \$98,228 in damages. At the close of evidence, the jury was instructed:

[FSC] claims that it is entitled to recover its expenses of obtaining possession of the equipment and defending itself from

Buhr's claims under the terms of its notes and security agreements. Buhr disputes this claim.

Buhr claims that [FSC] wrongfully obtained possession of more of his property than was necessary to comply with the court order for the writ of replevin and requests an award of damages for loss of use of the equipment payable out of the replevin bond posted by the plaintiff [FSC]. Buhr further claims that [FSC] and its agents damaged his equipment and requests damages for the cost of repair or decrease in its value, also payable out of the replevin bond posted by [FSC].

[FSC] denies all of Buhr's claims and denies that it owes him any money damages.

The jury awarded FCS damages for \$9112.79 in expenses and \$16,303.20 in attorney fees. The jury further found Buhr did not prove his claim for damages. On April 27, the court denied Buhr's motion for new trial, noting Buhr did not object to the court's instructions to the jury on the law. This appeal followed.

It is an understatement to say the proceedings below were contentious and our background discussion details some, but not all, of those proceedings. We acknowledge the trial court's careful consideration of the multitude of issues presented.

II. Standard of Review.

"A ruling on a motion for new trial following a jury verdict is a matter for the trial court's discretion." *Condon Auto Sales & Serv., Inc., v. Crick*, 604 N.W.2d 587, 595 (Iowa 1999). "Such discretion is recognition of the trial court's better position to appraise the situation in the context of the full trial." *Yeager v. Durflinger*, 280 N.W.2d 1, 7 (Iowa 1979). "The standard of review in [a] replevin action is for correction of errors of law." *Prenger v. Baker*, 542 N.W.2d 805, 807 (Iowa 1995).

III. Original Promissory Notes.

Noting FCS did not produce the original promissory notes at the jury trial, Buhr argues the court erred by its failure to force FCS to produce the original notes.

FCS provided the original notes to the Howard County Clerk of Court after the July 22, 2010 prejudgment writ of replevin order. Additionally, we find no merit to Buhr's claim. Copies of the three notes were admitted into evidence at trial without objection by Buhr.

The initiative is placed on the party [Buhr], not on the judge [Buhr's] failure to object to an offer of evidence at the time the offer is made, assigning the grounds, is a waiver upon appeal of any ground of complaint against its admission.

Milks v. Iowa Oto-Head & Neck Specialists, P.C., 519 N.W.2d 801, 806 (Iowa 1994) (citation omitted). Buhr "cannot sit idly by and not attempt to direct the attention of the trial court to a possible limitation or restriction on the use of evidence" *Schmitt v. Jenkins Truck Lines, Inc.*, 170 N.W.2d 632, 660 (Iowa 1969) (citation omitted). Assuming this issue is properly before us, Buhr's failure to timely object to the exhibits constitutes a waiver of this issue on appeal.

IV. Foreign Corporation.

Buhr argues FCS failed to properly file with the Iowa Secretary of State the documents required for a foreign corporation to transact business. Buhr contends this failure makes any contracts Buhr entered into void or voidable.

Assuming, without deciding, this issue is properly before us, Buhr has failed to cite a single authority in support of his claim. The Iowa Rules of Appellate Procedure govern the form and manner for briefs. Substantial

departures from appellate procedures cannot be permitted on the basis that a non-lawyer is handling his own appeal. *Simmons v. Brenton Nat'l Bank*, 390 N.W.2d 143, 145 (Iowa Ct. App. 1986). “If lay persons choose to proceed pro se, they do so at their own risk.” *Polk County v. Davis*, 525 N.W.2d 434, 435 (Iowa Ct. App. 1994). Buhr’s failure to cite authority constitutes a waiver of this appellate issue. Iowa R. App. P. 6.903(2)(g)(3).

V. Delivery Bond.

Buhr quotes the last paragraph of the writ of replevin: “Unless the defendant, Melroy Dean Buhr, stays these proceedings by executing a delivery bond, as required by law under Section 643.12, Code of Iowa.” Buhr argues “being a non-lawyer, [he] would not have the knowledge” of this code section and “therefore was denied time to answer with a delivery bond.”

Assuming, without deciding, this issue is properly before us, we find no merit to this argument. The law does not judge by two standards, one for lawyers and another for non-lawyers. *See Metro. Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991). The fact Buhr is a non-lawyer is not a basis for relief.

VI. Property Appraisal.

Citing to September 8, 2010 hearing testimony, Buhr argues if FCS had followed Iowa Code section 643.1 regarding property appraisals, “much of the damage done to [Buhr] would have simply not happened.” Buhr acknowledges he “possibly did not perfectly preserve” this issue. Assuming, without deciding, this issue is properly before us, we note the jury verdict states:

Question No. 3: Did the defendant, Melroy Dean Buhr, prove his claim for damages from the replevin bond posted by the plaintiff, Farm Credit Services of America?

ANSWER: NO

Because the jury determined Buhr was not damaged, we find no merit to this claim.

VII. Attorney Fees.

FCS seeks appellate attorney fees. The promissory notes and security agreements provide for attorney fees in the event of default. The jury awarded substantial attorney fees to FCS at trial. FCS was required to defend this appeal, and we have determined it is without merit. We remand this case to the district court. On remand the district court shall hold an evidentiary hearing on appellate attorney fees and fix those fees. See *Fed. Land Bank v. Woods*, 480 N.W.2d 61, 70 (Iowa 1992). Costs of this appeal are taxed to Buhr.

AFFIRMED AND REMANDED.