IN THE COURT OF APPEALS OF IOWA

No. 1-986 / 10-1978
Filed February 29, 2012

RED OAK DIESEL CLINIC, INC.,
Plaintiff-Appellant,

vs.

RICHARD L. TEAGUE, MARSHA S. TEAGUE, and OKLAHOMA CONSULTING AND MANAGEMENT, INC.,
Defendants-Appellees.

Appeal from the Iowa District Court for Montgomery County, Kathleen A. Kilnoski, Judge.

A vehicle-repair shop appeals a district court judgment in its favor, contending the damage award should have been higher and the court should have ordered the defendants to pay its attorney fees. **AFFIRMED AS MODIFIED AND REMANDED.**

Jay W. Mez, Council Bluffs, for appellant.

Richard L. Teague and Marsha S. Teague, Stillwater, Oklahoma, appellees pro se.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

A vehicle-repair shop appeals a district court judgment in its favor, contending the damage award should have been higher and the court should have ordered the defendants to pay its attorney fees.

I. Background Facts and Proceedings

Oklahoma residents Richard and Marsha Teague owned a 1992 motor coach whose performance they wished to improve. Richard Teague searched the internet for a mechanic and settled on Stan Rolenc, owner of Red Oak Diesel Clinic, Inc., in Iowa. Richard and Rolenc initially discussed work on an injection pump system, at an estimated cost of $2500. In reliance on this estimate, the Teagues drove the vehicle to Iowa.

Rolenc soon advised the Teagues that the motor home did not have the type of injection system he expected and his original cost estimate was no longer viable. He also advised them that the work would not be completed in two days, as originally anticipated. The Teagues left their motor coach at Red Oak Diesel for work to be completed on it and returned to Oklahoma.

Approximately nine weeks later, the Teagues came back to Iowa to pick up their motor home. They received a bill for $16,304.78 and paid the bill with two checks, one for $3000 and the other for $13,304.78. As they headed west in their refurbished motor home, they began noticing problems, including drained batteries, the smell of burning wires, and brakes that were triggered with the engagement of one of the blinkers. The Teagues decided to stop payment on the larger of the two checks and to contest Red Oak Diesel's invoice. They contacted their bank on the first business day after picking up their vehicle and,

later that week, mailed a letter to Red Oak Diesel explaining their action and informing Rolenc of their intent to dispute the charges. The Teagues continued on their westerly trip, stopping along the way to repair defects.

The following year, Red Oak Diesel sued the Teagues and their consulting and managing company for damages. The Teagues filed an answer and counterclaims. The matter was tried to the court, which concluded the Teagues were liable to Red Oak Diesel for breach of an oral contract to perform certain work. The court dismissed Red Oak Diesel's additional claims for recovery on the dishonored check and fraud, and dismissed the Teagues' counterclaims for fraud, abuse of process, and breach of an implied covenant of good faith and fair dealing. With respect to damages, the court found some charges reasonable and others unreasonable and reduced Red Oak Diesel's award by amounts the Teagues expended in repairs during their trip. After crediting the $3000 check against the award, the court initially entered judgment against the Teagues for $3552.92 but later increased that sum to $5351.23. The court ordered all parties to pay their own attorney fees. Red Oak Diesel was the only party to appeal.

II. Red Oak Diesel's Breach-of-Contract Claim

Red Oak Diesel contends the damage award was too low.[1] The Teagues counter that the award was too high. They also seek additional relief, but, as they did not file a cross-appeal, we are not in a position to grant that request.

[1] The parties discuss several elements of a contract claim. *See Magnusson Agency v. Pub. Entity Nat'l Co.—Midwest*, 560 N.W.2d 20, 25 (Iowa 1997) (noting that a breach-of-contract claim requires proof of the following: (1) the parties were capable of contracting; (2) a contract existed between the plaintiff and defendants; (3) consideration; (4) the terms of the contract; (5) the plaintiff performed what the contract required the plaintiff to do; (6) the defendants breached the contract; and (7) the plaintiff has suffered damages as a result of the defendants' breach). The only element Red Oak Diesel appears to contest is the damages element.

See Bartels v. Hennessey Bros., Inc., 164 N.W.2d 87, 92 (Iowa 1969) (stating generally, an appellee who has not appealed or cross-appealed "can have no greater relief or redress [on appeal] than was accorded by [the] trial court"); *Schlotfelt v. Vinton Farmers' Supply Co.*, 252 Iowa 1102, 1115, 109 N.W.2d 695, 702 (1961) ("The plaintiff has not appealed, and so cannot have a more favorable judgment here than he received below.").

We review Red Oak Diesel's challenge to the district court's damage award for errors of law. *NevadaCare, Inc. v. Dep't of Human Servs.*, 783 N.W.2d 459, 465 (Iowa 2010). The court's fact-findings are binding if supported by substantial evidence. *Id.*

The district court made the following findings on Red Oak Diesel's breach-of-contract claim:

> Initially, Rolenc believed that he could complete the modifications within two days. He believed that his initial oral bid of $2000 to $2500 included three areas: obtaining and installing an exhaust temperature gauge; fuel injector installation; and any necessary changes in timing.
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> Rolenc testified that once the coach arrived at his shop in Red Oak and he looked at the engine, he learned that the fuel injection system was different from what he had expected. Rolenc also testified that the engine was older than he realized, and was not an inner-cooled engine, as he expected, but an after-cooled engine.
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> Richard agreed that he requested some additional work be done on the coach. . . . Richard requested that a new alternator be installed at a cost of $750. . . . He did not believe that he should have been charged for six hours of labor ($420) to install the new alternator. Richard agreed to other additional work, including the installation of transmission cooling fans at a cost of $887.31 for materials and $700 in labor [ ], a new exhaust system (materials approximately $536; twelve hours labor $840), and a revised intake system including a K & N air filter (materials $808; fourteen hours labor $980). He agreed to the installation of a water methanol injection system (materials $770; fourteen hours labor $980),

> service on the generator (materials $48; three hours labor $210), and maintenance on the hydraulic system (materials $146; ten hours labor $700). Richard agreed that he wanted this work done. He generally disputed the labor charges and the amount of time that the work took to be completed.
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> Richard testified that he did not authorize an oil change for the coach. He also asked Stan to fix the right turn signal. Stan's work on the turn signal took twelve hours of labor, or $840.

With respect to labor charges, the district court found "the labor rate of $70 charged by Red Oak Diesel was within the rate charged by the Teagues' expert witness and another shop that did repairs for them." The court additionally made the following credibility findings:

> With the advantage of hindsight, Richard now might regret that he undertook to improve the performance of his motor coach to the extent recommended by Stan Rolenc. It is not plausible, however, that he could have expected the extensive modifications he authorized to cost only $2500. His reliance on Stan Rolenc's representations that the additional modifications were necessary might have been reasonable. His assumption that the extra modifications would not cost more money was not justified.

Based on these findings, the district court ordered the Teagues to pay for the modifications they authorized. In response to a motion to enlarge the findings, the district court determined that Red Oak Diesel was entitled to a total of $8775.31 but was not entitled to recover the cost of the original work that totaled $2654.52, plus $185.82 in sales tax, because "[t]hat work was not performed in a timely or workmanlike manner."

Our review of the district court's findings is aided by Red Oak Diesel's invoice, which is divided into fourteen parts.

Parts (1), (2), and (3) cover the labor and parts for the exhaust temperature gauge and its installation, the injectors and their installation, and

injection pump modification. These figures total $2654.52, the same amount reflected in the district court's order "for work not performed in a timely or workmanlike manner." The court's figure, therefore, is supported by substantial evidence, as is the court's finding that Rolenc did not complete this original work within two days, as represented. Because the original work was not performed according to the terms of the original agreement, we conclude the district court did not err in declining to award Rolenc damages for this work.

Part (4) of the invoice relates to the transmission cooling system and its fabrication and lists the cost as $931.75 for parts and $700 for labor. The district court awarded Red Oak Diesel damages of $887.31 for parts and $700 for labor. Richard conceded he agreed to the installation of transmission fans but said he did not discuss the price. He noted that on his way home from his westerly trip, "The wire from the transmission fans, one single wire, was burned in two" because "Stan had overloaded that wire." In light of this testimony, we conclude the district court's decision to reduce the award by $44.44 from the amount Rolenc listed in the invoice was supported by substantial evidence.

Part (5) of the invoice related to the hydraulic system. The invoice totaled $178.80 for parts and $700 for labor. The district court awarded $146 for parts and $700 for labor. Again, Richard admitted he agreed to the repair and even went so far as to state that the work was done "in a very professional manner." He testified he did not get a cost for the repair. The district court's figure for parts is $32.80 less than the figure set forth in the invoice. The discrepancy may be due to an inadvertent inclusion of the single-gallon price for hydraulic fluid rather than the total price for four gallons ($10.79 versus $43.16). Because Richard

testified that he authorized and approved of the service and there is no indication in the record that he disagreed with the assessed cost, we increase this award from $146 to $178.80, a difference of $32.80.

Part (6) relates to engine and transmission service. The district court did not award damages for this service. The court's refusal to award damages is supported by Richard's testimony that he did not request transmission service. Accordingly, the court did not err in declining to award the requested damages of $480.19 for parts and $350 for labor and diagnostic time.

Part (7) covered generator service and allocated $79.59 for parts and $210 for labor. The district court awarded $48 for parts and $210 for labor. Richard acknowledged that he requested the service, but stated that he thought it would be "a very minor cost." The district court may have agreed with Richard, as the court appears to have approved the cost of the oil, oil filter, and one fuel filter, which totaled $47.95, but appears to have declined an award of damages for a second fuel filter and an air filter. Substantial evidence supports the court's award.

Part (8) covered the alternator and allocated $1041.90 for parts and $420 for labor. The district court awarded $750 for parts and $420 for labor. Richard acknowledged that he agreed to this service and stated that Rolenc told him the cost would be "about [$]750 for a new alternator." This testimony supports the district court's award of $750 for parts rather than $1041.90 as set forth in the invoice.

Part (9) pertains to exhaust system fabrication and installation. The invoice charged $816.42 for parts and $840 for labor. The district court awarded

$536 for parts and $840 for labor. Richard testified he did not "approve" the exhaust system, but he "agreed to it." He further stated he thought the cost would be "a couple hundred dollars and whatever that muffler cost." According to the invoice, the muffler alone cost $143.44. With the addition of $200 to this figure, Richard's estimate was $343.44, but this did not include tubing, which Richard conceded would be needed, or other items such as a muffler blanket and clamps. The district court reasonably could have selected a cost figure that was midway between the cost Richard testified to and the cost listed in the invoice. Accordingly, we find the court's figure supported by substantial evidence.

Part (10) detailed work done on the intake system. It listed the cost of parts as $806.45 and the labor as $980. The district court awarded $808 for parts and $980 for labor. Richard did not testify to the cost of this work. The slight discrepancy of $1.55 may be explained by rounding off numbers. We decline to modify the damage award to account for this discrepancy.

Part (11) pertains to the water methanol injection system, which Richard conceded he authorized. Richard even testified that he "may have suggested it," based on his concern about the exhaust gas temperatures. The invoice listed the cost of parts as $943.05 and labor as $980. The district court awarded $770 for parts and $980 for labor. The court's parts award was $173 less than the invoice figure. Notably, an eight-gallon reservoir was listed on the invoice as costing $173.01. There was also testimony from the Teagues' expert that he did not install this type of system in vehicles because he did not believe it was cost-effective. Based on this testimony, the district court could have reasonably discounted Red Oak Diesel's invoice by the cost of the reservoir.

Part (12) details work done to the chassis. The materials cost $3.98 and the labor was $210 for this service. The district court did not award an amount for this work. The court's refusal to award damages is supported by the absence of testimony from either Rolenc or Richard to indicate that work was done on the chassis.

Part (13) of the invoice addresses miscellaneous items, including fuel and the fuel-injection pump shut-off solenoid. The solenoid was priced at $385.14, the other miscellaneous items totaled $213.65, and labor for all "miscellaneous" items was $210. The district court declined to award damages for this work. The court's decision is supported by Richard's testimony that Rolenc wanted to replace the starter solenoid but he told Rolenc, "Stan, there's nothing wrong with the starter solenoid." Richard also said that the "fuel control shut-off valve was an issue but it was only raised a few hours before they were supposed to leave on their trip to the west." Richard pointed out that the shut-off valve simply "couldn't do its job, because Rolenc had not properly wired certain fans." Based on this testimony, we conclude the district court's refusal to award damages for Part (13) costs was supported by substantial evidence.

Part (14) detailed work done to the chassis electrical. The total for parts was $111.20, and the labor was $840. The district court declined to award damages for this item and made the following findings concerning problems with the electrical system:

> Richard described that Stan began this work by removing the dash and cutting and splicing wires behind the dash. After leaving the shop in September, the Teagues noticed a burning odor. They discovered that the trailer brakes had been incorrectly wired to the left turn signal, causing the trailer brakes to apply each time the left

> turn signal was used. A fuel shut-off valve developed problems shortly before the Teagues were to leave Red Oak Diesel in September 2007, resulting in the engine not shutting off with the ignition key. Stan fabricated a "kill switch" to interrupt power to the fuel shut-off valve. The kill switch was located in the rear bedroom of the coach, resulting in a person having to walk thirty feet to the rear of the coach to pull apart the switch in order to turn off the engine.
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> The Teagues also found that Stan had rewired the rear-view camera into the reverse gear switch. The camera no longer functioned unless the coach was backing up in reverse gear, so the Teagues could not monitor their trailer towed behind the coach while driving. The trailer lights also did not work when the coach left the shop.

These findings are supported by Richard's testimony which, in turn, supports the district court's refusal to award any damages for Part (14) costs.

We conclude all the district court's findings except the finding concerning the cost of parts for the hydraulic system are supported by substantial evidence. We increase the award by $32.80, the difference between the invoice price for hydraulic system parts and the price found by the court.

III. Red Oak Diesel's Claim for Attorney Fees

Red Oak Diesel contends the court should have ordered the Teagues to pay its attorney fees. It specifically contends the "preplanned conduct of stopping payment on the check gives the court discretion to make a finding" that its attorney fees should be paid by the Teagues. Red Oak Diesel first cites Iowa Code section 550.6 (2007) in support of this argument. That chapter addresses trade secrets, a topic that was not raised in this action. Red Oak Diesel also cites *Fennelly v. A-1 Machine & Tool Co.*, 728 N.W.2d 163, 181 (Iowa 2006) for the proposition that, in some circumstances, common law attorney fees may be awarded. Those circumstances are a "rare exception" to the general rule that an

attorney fee award requires statutory or contractual authorization. *Id.* Specifically, the standard "'envisions conduct that is intentional and likely to be aggravated by cruel and tyrannical motives.'" *Id.* (quoting *Wolf v. Wolf*, 690 N.W.2d 887, 896 (Iowa 2005)).

There is no evidence that the Teagues were driven by "cruel or tyrannical motives" to stop payment on the check. At worst, the evidence reflects that the Teagues wanted quality work at a low cost and they stopped payment when these expectations were not met. For these reasons, we conclude the district court properly denied Red Oak Diesel's request for attorney fees.[2]

IV. Claim Based on Dishonored Check

Red Oak Diesel next takes issue with the district court's refusal to grant relief on Teague's dishonored check claim. Red Oak Diesel asserts that a cause of action for recovery of damages on a dishonored check is distinct from a claim on the underlying contract.

While Red Oak Diesel's argument finds some support in a twentieth-century opinion, *see Patterson v. Oakes*, 191 Iowa 78, 181 N.W. 787 (1921),[3] the

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[2] A Code provision not cited by Red Oak Diesel, Iowa Code section 625.22, provides in pertinent part:

> In an action against the maker to recover payment on a dishonored check or draft, as defined in section 554.3104, the plaintiff, if successful, may recover, in addition to all other costs or surcharges provided by law, all court costs incurred, including a reasonable attorney's fee, or an individual's cost of processing a small claims recovery such as lost time and transportation costs from the maker of the check or draft.

Courts are afforded discretion to award fees under this provision. *See Golden Circle Air, Inc. v. Sperry*, 543 N.W.2d 629, 633 (Iowa Ct. App. 1995). The district court specifically found that the Teagues did not intentionally write the check knowing they would later dishonor it. This finding would support the court's decision not to award attorney fees under this provision.

[3] In *Patterson*, the court concluded that since a check is payable on demand, when "the drawer of a check stops payment thereon, he is liable to the holder of the check for the

court has since stated the presumption of consideration created by the writing of a check may be rebutted. *Carter Steel Supply & Fabrication, Inc. v. Iowa Mut. Ins. Co.*, 174 N.W.2d 647, 648 (Iowa 1970). The Teagues essentially sought to rebut the presumption by arguing that they dishonored the check because they did not receive the bargained-for services.[4] The district court analyzed and partially accepted this argument, but did so under a breach-of-contract theory rather than a dishonored-check theory. *See id.* at 649 ("Whether the suit was for breach of the settlement contract or breach of a promise to pay as evidenced by the check the result is the same. In the absence of pleading and proof of mutual mistake, fraud or lack of consideration, plaintiff was entitled to recover."). The court's findings suggest that Red Oak Diesel would not have received a better outcome had the court instead relied on a dishonored-check theory.

V. Fraud

Red Oak Diesel finally contends the Teagues committed fraud. The company contends the Teagues

> intentionally and maliciously wrote a check that they knew they were going to cancel in order to regain possession of the Motor Coach. The writing and canceling of the check was a deceitful act to ensure that RODC wouldn't be able to put a lien against the Motor Coach.

The district court rejected this claim, finding no evidence "that the Teagues wrote the check knowing that they would immediately stop payment on it." The court

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consequences of his conduct." *Patterson*, 191 Iowa at 80, 181 N.W. at 788. The court noted that it was not faced with deciding whether "there was or was not a valid contract which can be enforced, because that question is not pleaded and is not before the court, except in an incidental way." *Id.* at 79, 181 N.W. at 787.

[4] In *Carter Steel*, the court considered the defendant's defenses to the dishonored check even though they were not specifically pleaded. *Carter Steel*, 174 N.W.2d at 648 ("[F]ailure to plead the defense would not be fatal to the defense if both sides tried the case on a theory not pled.").

noted that "[t]he stop-payment order occurred two days after the coach left the shop" and the Teagues "wrote to Red Oak Diesel [ ] to inform the shop that they were dissatisfied with the work and disputed the charges." Substantial evidence supports these findings. *See Hoelscher v. Sandage*, 462 N.W.2d 289, 291 (Iowa Ct. App. 1990) (setting forth substantial evidence standard as it relates to the trial court's findings of fact on an action alleging fraud). Additionally, there is no evidence that the Teagues knew Red Oak Diesel could place a lien on the coach. For these reasons, we conclude the district court did not err in dismissing Red Oak Diesel's fraud claim.

VI. Disposition

We affirm the district court's judgment in all respects except that we increase the award to Red Oak Diesel by $32.80 and remand for entry of judgment in this revised amount.

AFFIRMED AS MODIFIED AND REMANDED.