

IN THE COURT OF APPEALS OF IOWA

No. 6-742 / 05-2113
Filed April 25, 2007

MIDWEST MOTORSPORTS PARTNERSHIP,
Plaintiff-Appellant,

vs.

**HARDCORE RACING ENGINES, INC.,
KENT A. DAVENPORT, JEFFREY A. ROSS,
RODNEY G. RICHARDS, SCOTT A. OLSON
AND PATRICK GRAHAM,**
Defendants-Appellees.

Appeal from the Iowa District Court for Story County, Carl D. Baker,
Judge.

Midwest Motorsports Partnership appeals the denial of its motion for
directed verdict on multiple claims against HardCore Racing Engines, Inc. and
several individual defendants. **AFFIRMED.**

James H. Gilliam, Ann Holden Kendell, and Laura N. Martino of Brown,
Winick, Graves, Gross, Baskerville and Schoenbaum, P.L.C., Des Moines, for
appellant.

James A. Brewer and Angelina M. Thomas of Newbrough, Johnston,
Brewer, Maddux & Howell, L.L.P., Ames, for appellees.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Midwest Motorsports Partnership built race car engines and sold component parts. Several former employees of Midwest formed a competitor corporation, Hardcore Racing Engines, Inc. Midwest responded by suing Hardcore and the former employees.

Midwest alleged that Hardcore and Kent Davenport, Jeffrey Ross, Rodney Richards, Scott Olson, and Patrick Graham (1) breached a duty of loyalty to Midwest, (2) intentionally interfered with existing contractual relationships, (3) intentionally interfered with prospective business advantage, (4) misappropriated trade secrets, and (5) engaged in civil conspiracy. The defendants counterclaimed for abuse of process and unpaid wages. The counterclaims are not at issue on appeal.

During trial, Midwest moved for a directed verdict on all its claims. The district court denied the motion. Later, at a conference on proposed jury instructions, the district court decided not to submit to the jury Midwest's claims for breach of a duty of loyalty, intentional interference with existing contractual relationships, and civil conspiracy. Midwest's remaining two claims of intentional interference with prospective business advantage and misappropriation of trade secrets were submitted to the jury, which returned a verdict in favor of the defendants. In a post-trial ruling, the court rejected Midwest's contention that its motion for directed verdict should have been granted. Midwest appealed.

I. Breach of Duty of Loyalty

Midwest contends "directed verdict was warranted against Davenport, Ross, Richards, Graham and Olson on breach of the duty of loyalty or, at a

minimum, the trial court erred by failing to submit plaintiff's claim of breach of the duty of loyalty to the jury." Our review of this issue is on error. *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005).

Midwest acknowledges that our highest court has not explicitly recognized a separate cause of action by an employer against an employee for breach of a duty of loyalty. See *Condon Auto Sales & Service, Inc. v. Crick*, 604 N.W.2d 587, 599-600 (Iowa 1999). Midwest argues, however, that the types of conduct that have supported claims for breach of this duty in other jurisdictions are present in this record. Our state has not recognized this cause of action and Midwest did not provide the district court with a reasoned basis for moving in a different direction. *Beyer v. Todd*, 601 N.W.2d 35, 38 (Iowa 1999) (stating requested instruction must "correctly state[] the law.")

Midwest next argues that at least two of its former employees, Kent Davenport and Patrick Graham, had managerial positions that subjected them to a "fiduciary" duty of loyalty. Our highest court has recognized a cause of action for breach of a fiduciary duty by a corporate officer and director. See *Midwest Janitorial Supply Corp. v. Greenwood*, 629 N.W.2d 371, 375 (Iowa 2001). However, this cause of action was neither pled nor tried here. Even if this claim had been tried, there is no evidence that these two defendants were partners in Midwest. At best, there is evidence that Davenport was the shop manager, although Davenport testified he primarily worked as a machinist. As for Graham, the record reflects that he had a title of "sales manager" but performed a variety of non-sales functions, including scheduling employees and undertaking special projects. At all relevant times, he was a salaried employee of Midwest. Based

on this record, we conclude that, even if the related claim of breach of a fiduciary duty had been pled and tried, there was not substantial evidence to submit the claim to the jury.

The district court did not err in denying Midwest's motion for directed verdict on the breach of duty of loyalty claim and in refusing to submit the breach of duty of loyalty claim and the related breach of fiduciary duty claim to the jury.

II. Misappropriation of Trade Secrets

This claim is based on the defendants' receipt of a Midwest customer list, job tickets, and certain other Midwest property. The claim was submitted to the jury, which determined Midwest was not entitled to damages. Midwest contends it "was entitled to directed verdict on its claim of misappropriation of trade secrets." The company maintains "there was not sufficient evidence to generate a jury question on this issue – defendants admitted the conduct and the case law is clear that the information was trade secret information."

Whether the challenged items were trade secrets was a question of fact for the jury. See *Economy Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 649 (Iowa 1995). Indeed, the jury was instructed that this was the first question it would have to answer in resolving Midwest's misappropriation of trade secrets claim. The jury instruction was as follows:

1. Any of the following are trade secrets: a customer list and purchasing history used by Defendants to obtain financing for the competitive business; the work orders (job tickets) containing customer information, parts used and labor performed; or the research and development created by Plaintiff.
2. The Defendants misappropriated any of the trade secrets.

3. The misappropriation [of] any of the trade secrets was a proximate cause of damage to the Plaintiff.
4. The nature and extent of damage.

The district court also defined a trade secret for the jury, as follows:

A trade secret means any formula, pattern, compilation of information, program, device, method, technique, or process which

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by persons other than Plaintiff; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Reasonable minds could disagree on whether the customer list and other items were “readily ascertainable by proper means by persons other than Plaintiff.” For example, several of the defendants testified that they memorized their customers and did not need the list to identify them. It is clear, therefore, that the trade secrets element was disputed and the misappropriation claim could not be decided as a matter of law. As the defendants presented substantial evidence on this issue, we conclude the district court did not err in submitting the misappropriation of trade secrets claim to the jury and in declining to decide the issue in favor of Midwest as a matter of law. *See McClure v. Walgreen Co.*, 613 N.W.2d 225, 230 (Iowa 2000).

III. Intentional Interference with Existing Contractual Relationships

Midwest next contends it “was entitled to directed verdict on its claim of intentional interference with existing contractual relationships.” This claim is premised on Midwest’s allegation that the individual defendants delayed work to

be performed prior to their departure from Midwest and directed the work to Hardcore.

The elements of intentional interference with an existing contract are:

(1) plaintiff had a contract with a third-party; (2) defendant knew of the contract; (3) defendant intentionally and improperly interfered with the contract; (4) the interference caused the third-party not to perform, or made performance more burdensome or expensive; and (5) damage to the plaintiff resulted.

Green v. Racing Ass'n of Cent. Iowa, 713 N.W.2d 234, 243 (Iowa 2006) (citations omitted).

We are not convinced Midwest established as a matter of law that it had contracts with third-parties. One individual, Carl Moyer, testified that, in the fall of 2003, he took two engines to Midwest for Davenport to “freshen.” He testified there was no rush, as he only needed them by racing season, which was to begin in the spring of 2004. Several months after he took the motors to Midwest, he learned that Davenport was no longer working for the company. He contacted Davenport and asked if he would work on the motors. Davenport agreed. Moyer stated neither Davenport nor the other individual defendants told him they were leaving Midwest and none solicited his business before they left. He additionally testified that his loyalty was to Davenport, as the engine builder, rather than to Midwest. We conclude the district court did not err in declining to decide as a matter of law that a contract existed. See *Molo Oil Co. v. River City Ford Truck Sales*, 578 N.W.2d 222, 224 (Iowa 1998) (“In a breach of contract claim, the complaining party must prove: (1) the existence of a contract; (2) the terms and conditions of the contract; (3) that it has performed all the terms and conditions required under the contract; (4) the defendant’s breach of the contract in some

particular way; and (5) that plaintiff has suffered damages as a result of the breach.”).

With respect to Moyer’s situation, we also conclude the evidence was insufficient to establish as a matter of law that Davenport caused Moyer not to perform a contract with Midwest, if one existed. *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 400 (Iowa 2001). Although there was evidence that one of Moyer’s employees knew Davenport was unhappy and was considering leaving Midwest and there was evidence that no work was performed on the engines for several months after they were brought to Midwest, there was not evidence that Davenport told Moyer to retrieve the engines from Midwest and bring them to Hardcore.

Turning to the interference element, the actor’s motive is a key factor. *Fin. Mktg. Serv., Inc. v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 450, 458 (Iowa 1999). The record cited by Midwest in support of its argument for reversal reveals that two Midwest customers contacted Davenport and asked him about rumors that he was leaving Midwest. In both cases, Davenport responded that they were working on putting something else together. There is no indication that Davenport was motivated to interfere or did interfere with contractual relationships these customers might have had with Midwest. Similarly, Richards testified that one customer contacted him while he was still at Midwest and asked about rumors that he was leaving. Richard responded, “I don’t know what’s going to be going on.” The customer asked if there was something going on, could he get the same deal he was getting right now. Richard responded, “I can’t see why not.” Had there been substantial evidence of a contract between

Midwest and this customer, this evidence might have generated a jury question on the interference element. We are not convinced, however, that this evidence revealed a motive to interfere that rose to the level of improper interference as a matter of law. Finally, turning to Graham's testimony, he did not recall telling a Midwest customer about problems at Midwest, other than in generalities. While he acknowledged telling the person for whom he raced cars that he was thinking about leaving Midwest and he was thinking about starting his own business, this testimony falls short of establishing as a matter of law that Graham had a motive to interfere with Midwest contracts these customers may have had.

At a minimum, Midwest did not establish the first, third, and fourth elements of this claim as a matter of law. Therefore, the district court did not err in refusing the company's request for a directed verdict.

IV. Intentional Interference with Prospective Business Advantage

Midwest contends it was entitled to a directed verdict on its claim of intentional interference with prospective business advantage. The district court submitted this claim to the jury, which returned a verdict in favor of the defendants.

Midwest had to prove several elements including that the defendants intentionally and improperly interfered with prospective business relationships. *Willey v. Riley*, 541 N.W.2d 521, 527 (Iowa 1995). On this element, the jury was instructed that the interference could take any of the following forms:

not completing work for the customers so that the work could be completed at the competitive business and encouraging Plaintiff's customers to use the competitive business to complete the project and use the competitive business for future projects; or by taking Plaintiff's invoices, research and development or work orders (job

tickets) with customer information, including the parts and labor performed for the customers, which impaired Plaintiff's ability to service customers.

This was not an element that could have been decided as a matter of law. As noted in our discussion of the claim on improper interference with existing contractual relationships, reasonable minds could have differed on whether the defendants improperly interfered in these respects. Therefore, this claim was properly submitted to the jury.

V. Civil Conspiracy

Midwest next contends it was entitled to a directed verdict on its claim of civil conspiracy. "For conspiracy, an agreement must exist between the two persons to commit a wrong against another." *Ezzone v. Riccardi*, 525 N.W.2d 388, 398 (Iowa 1994). The wrong need not be intentional but must be actionable. *Wright v. Brooke Group Ltd.*, 652 N.W.2d 159, 174 (Iowa 2002). "If the acts alleged to constitute the underlying wrong provide no cause of action, then neither is there a cause of action for the conspiracy itself." *Id.* at 172 (quoting 16 Am. Jur. 2d *Conspiracy* § 50, at 275-76 (1998)). As Midwest was not entitled to a directed verdict on its other claims, it also was not entitled to a directed verdict on the conspiracy claim. *Robert's River Rides, Inc. v. Steamboat Dev. Corp.*, 520 N.W.2d 294, 302 (Iowa 1994) (overruled on other grounds by *Barreca v. Nickolas*, 683 N.W.2d 111 (Iowa 2004)).

AFFIRMED.