

IN THE COURT OF APPEALS OF IOWA

No. 8-065 / 07-0381
Filed February 27, 2008

M.B. CONSTRUCTION, INC.,
Plaintiff-Appellee,

vs.

MID-STATES EXPRESS, INC.,
Defendant-Appellant.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

A trucking company appeals from the district court's judgment against it for damage to cargo it hauled. **AFFIRMED.**

Samuel C. Anderson of Swisher & Cohrt, P.L.C., Waterloo, for appellant.

David L. Riley of Yagla, McCoy & Riley, P.L.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Defendant-appellant, Mid-States Express, Inc. (Mid-States), appeals from the district court determination it was liable for damage to an electrical control panel it transported from the manufacturer to plaintiff-appellee, M.B. Construction, Inc. (M.B.). Mid-States contends the court erred in holding that “the carrier is liable for damage to cargo without need of claimant to prove negligence” and that the “carrier is in effect insurer against loss or damage to cargo absent showing by carrier that the shipper or consignee caused the damage.” We affirm.

I. Background.

M.B. ordered a \$30,000 electrical control panel for a construction project on a sewer lift station in Postville, Iowa. Mid-States, a regional common and contract carrier, picked up the panel from the manufacturer in a suburb of St. Paul, Minnesota, on Wednesday, January 29, 2003. The panel was about six feet tall and weighed around one-thousand pounds. In preparation for shipping the panel, the manufacturer bolted the panel to the top of a wooden pallet, secured the internal components and doors, shrink-wrapped the panel, and secured it to the pallet with straps. “Top heavy” warning stickers were placed on each side, notifying freight handlers of the need to secure the shipment against tipping over by using blocking or bracing straps or load bars. On Thursday, January 30, Mid-States delivered the panel to M.B. in Postville. M.B. signed the delivery invoice, which contains the printed text, “received in good condition except as noted,” and did not note any damage to the panel. On Friday, January 31, M.B. transported the panel to the job site. When the packaging was removed

from the panel, M.B. discovered significant concealed damage to the internal parts. M.B. reported the damage to Mid-States either on Friday, January 31, or Monday, February 3. Mid-States eventually denied the damage claim.

In June of 2004 M.B. sued Mid-States seeking to recover the damages to the electrical control panel. M.B. presented evidence from the manufacturer on how the panel was packaged for shipping, how it was loaded, that it was in good condition when shipped, and what kind of shock it would take to cause the damage found by M.B. M.B. also presented evidence about how the panel was delivered, how it was handled after receipt, and how the concealed damage was discovered. Mid-States presented evidence from one of its officers about what route the shipment would have taken, how freight normally is handled, and that M.B. did not note any damage on the delivery receipt. The delivery driver for Mid-States did not testify and was not employed by Mid-States at the time of trial.

The district court explicitly found the testimony presented by both parties to be highly credible. It implicitly found the damage to the panel was not caused by the manufacturer or M.B. in concluding,

As a general rule, a carrier is liable for damages to cargo, without the need for the claimant to prove the carrier was negligent, . . . In effect, the carrier is an insurer against loss or damage to the cargo, so long as it is established that neither the shipper nor the receiver caused the damage.

The court granted M.B. judgment against Mid-States for the damage to the electrical panel. Mid-States appeals.

II. Scope of Review.

Our review of law actions is for correction of errors at law. Iowa R. App. P. 6.4. The district court's findings of fact are binding on us if supported by

substantial evidence. Iowa R. App. P. 6.14(6)(a); *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). Substantial evidence is more than a scintilla, but does not rise to the level of a preponderance of the evidence. *In re McIntyre*, 550 N.W.2d 457, 460 (Iowa 1996). A finding is supported by substantial evidence if it may be reasonably inferred from the evidence. *Id.* The question we face is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. *Tim O'Neill Chevrolet v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). We construe the district court's findings broadly and liberally. *Hendricks v. Great Plains Supply Co.*, 609 N.W.2d 486, 490 (Iowa 2000). In case of doubt or ambiguity we construe them to uphold, rather than defeat, the judgment. *Id.* A corollary rule prohibits us from weighing the evidence or the credibility of the witnesses. *Grinnell Mut.*, 431 N.W.2d at 785.

III. Discussion.

Mid-States contends the district court erred in holding “that the carrier is liable for damage to cargo without need of claimant to prove negligence” and that the “carrier is in effect insurer against loss or damage to cargo absent showing by carrier that the shipper or consignee caused the damage.” For the reasons that follow, we conclude Mid-States's arguments are without merit.

The 1906 Carmack Amendment to the Interstate Commerce Act codified the common law rule that a carrier, although not an absolute insurer, is liable “for the actual loss or injury to the property” transported by it. 49 U.S.C. § 14706(a)(1) (2000 Supp. 4). However, there is no liability if the carrier can affirmatively demonstrate “that the damage was caused by ‘(a) the act of God; (b)

the public enemy; (c) the act of the shipper himself; (d) the public authority; (e) or the inherent vice or nature of the goods.” *Missouri Pac. R.R. v. Elmore & Stahl*, 377 U.S. 134, 137, 84 S. Ct. 1142, 1144, 12 L. Ed. 2d 194, 197 (1964) (citations omitted). In an action to recover from a carrier for damage to a shipment, a consignee:

establishes his prima facie case when he shows delivery (to the carrier) in good condition, arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability.

Id. at 138, 84 S. Ct. at 1145, 12 L. Ed. 2d at 198 (citations omitted). Accordingly, “the carrier bears a heavy burden of proof akin to *res ipsa loquitur* because it has peculiarly within its knowledge the facts which may relieve it of liability.” *Fulton v. Chicago, Rock Island & Pac. R.R.*, 481 F.2d 326, 333 (8th Cir. 1973), *cert. denied*, 414 U.S. 1040, 94 S. Ct. 540, 38 L. Ed. 2d 330 (1973).

In the instant case, the manufacturer provided credible evidence the electrical control panel was in good condition when it was loaded on Mid-States’s truck. M.B. provided substantial evidence of how it handled the panel from receipt to the job site, the concealed nature of the damage discovered, and the damaged condition of the panel when it was unpacked at the job site. Although M.B. did not note any damage on the delivery receipt, the evidence M.B. presented supports a finding that the concealed damage was not caused by M.B. In contrast, Mid-States did not present any evidence related to the actual handling of the panel while in its care. None of the employees who handled the shipment testified. We conclude substantial evidence supports the district court’s determination that M.B. established a prima facie case and that the damage to

the panel occurred while it was in the care of Mid-States. M.B. did not have to prove negligence on the part of Mid-States. Although Mid-States is not an insurer, it is liable for damage to the shipment that occurred while it was transporting it from the manufacturer to M.B.

Finding no error in the district court's decision, and that it is supported by substantial evidence in the record, we affirm.

AFFIRMED.