IN THE COURT OF APPEALS OF IOWA

No. 8-1028 / 08-0183
Filed March 26, 2009

C. ALLAN POOTS,
Plaintiff-Appellant,

vs.

HIGH COUNTRY DEVELOPMENT CO., RAI, L.L.C., and NORTHERN INVESTMENTS, L.C.,
Defendants-Appellees,

vs.

ALEX BATINICH,
Intervenor.

Appeal from the Iowa District Court for Johnson County, Mitchell E. Turner, Judge.

Land developer appeals adverse judgment on breach of oral contract, contract damages, specific performance, and quiet title claims. **AFFIRMED.**

Sasha L. Monthei of Krug Law Firm, P.L.C., North Liberty, for appellant.

Bruce L. Walker of Phelan, Tucker, Muller, Walker, Tucker & German, L.L.P., Iowa City, for appellee-High Country Development Co.

Eric D. Tindal, Williamsburg, for appellee-RAI, L.L.C.

Thomas D. Hobart and Peter J. Gardner of Meardon, Sueppel & Downer P.L.C., Iowa City, for appellee-Northern Investments, L.C.

David E. Brown, Iowa City, and Gregory McEven, Inner Grove Heights, Minnesota, for intervenor Alex Batinich.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Allan Poots, an experienced land developer and realtor, appeals an adverse district court decision on his breach-of-oral-contract claim against High Country Development Company, the land owner.[1] Because substantial evidence supports the trial court's finding that no enforceable oral contract existed between Poots and High Country, we affirm.

I. Background Facts and Proceedings.

This saga began in 1992. Glenn Shoemaker and Allan Poots had a long-standing friendship. Shoemaker, the managing partner of High Country, was also the president of a land surveying/engineering firm, Shoemaker & Haaland. Poots wanted to develop an eighteen-hole golf course surrounded by homes in the city of Coralville. Phase I of his plan included nine holes and housing. Poots hired Shoemaker & Haaland to do the land surveying/engineering work for Phase I.

As Phase I was nearing completion, Poots needed land to develop into a second nine holes/housing. High Country owned the land south of Phase I. On March 12, 1992, Poots sent a letter and a written offer to buy real estate to High Country through Shoemaker. Poots drafted the offer and addendum without the assistance of an attorney. Poots proposed to pay $1.5 million to buy "100 acres, more or less" with possession on May 15, 1992, in accordance with the terms of the attached addendum.

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[1] In 2001, defendants RAI, L.L.C., and Northern Investments, L.C., purchased the High Country real estate at issue, subject to Poots's claims. RAI and Northern are assignees of High Country's rights and defenses against Poots.

The addendum contained numerous contingencies: (1) Poots had to be "able to develop, plat and subdivide" the land into a golf course surrounded by residential lots; (2) Poots could void the agreement if he failed to receive approval from any government agency; (3) Poots's performance was contingent upon his obtaining bank financing on terms exclusively satisfactory to Poots; and (4) Poots could request an extension from the May proposed closing up to September 1, 1992.

The addendum stated time is of the essence and provided Poots "shall" remove and relinquish all contingencies by "September 1, 1992, unless an extension of said deadline for removal of contingencies is agreed to, in writing, by [High Country] with the approval of their attorney."

Poots offered to pay the purchase price at closing as follows: a cash payment of $100,000; a $90,000 credit at closing for a six percent sales commission; and the remaining $1.31 million paid by High Country accepting a promissory note and mortgage and agreeing to subordinate its mortgage to Poots's primary lender. The High Country note would "be paid in cash or improved lots" at Poots's option. The lot value was $39,500 and High Country was guaranteed "a minimum of 12 lots." High Country was required to deliver mortgage releases upon Poots's request "on the basis of $15,000 per acre."

The addendum also included a paragraph entitled "Seller's Cooperation." This section required High Country to provide, without additional cost to Poots: (1) a review and certification of plans for state/local approval; (2) the preliminary

and final plats; and (3) "the minimum additional acreage" required for the golf course, from the southeastern corner land owned by Arthur Renander.[2]

The final contingency in Poots's offer to purchase stated:

> **ATTORNEY'S APPROVAL**: This agreement shall be considered a memorandum of the agreement between [High Country and Poots]. Poots agrees to refine the language and content of the agreement after further and more complete consultation with his attorney [Philip Leff]. The final form and content of this agreement shall be subject to and contingent upon the review and approval as to form and content of [Leff].

Poots testified he wanted legal advice as to the contract's exact language before it was reduced to a binding agreement because this was a complicated and costly venture. While Poots's offer contained signature lines for High Country as seller and Poots as buyer, the document was never signed.

A little over one month later, on April 20, 1992, Shoemaker responded to Poots's lengthy written offer with a letter and a three-page "memoranda response to offer of purchase." The letter stated Shoemaker had been working to "get appropriate agreements together" for "our pending deal. I do assume that we do still have a pending deal." The letter described the enclosed memorandum as "a response to your offer with some contingencies" and stated High Country believed "we can put together a deal."

High Country's memorandum indicated a "problem with a 6% real estate commission of $90,000" credited to the $1.5 million purchase price. In lieu of the discount/commission, High County proposed excluding six acres (the land was "essentially being sold at a rate of $15,000/acre") and lowering the selling price to

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[2] The second nine holes of golf had already been planned by the course architect. As planned, it impinged on the Renander land.

$1,410,000. Further, High Country requested Poots extend future municipal improvements to the newly-excluded six acres.

Based on the newly-proposed purchase price/six-acre exclusion, High Country suggested a $100,000 down payment with $1.31 million in either cash or improved lots. High Country proposed a random drawing with a maximum of thirty-three and a minimum of twelve lots to High Country at $39,500 per lot.

High Country's memorandum also proposed changes to Poots's Sellers Cooperation paragraph. Rather than agreeing to pay for unlimited land surveying and engineering design, High Country proposed to pay up to $150,000, with Poots paying for any additional work. Also, High Country stated it could not comply with the "blanket statement" regarding review and certification of plans and found it ambiguous. Instead it proposed Shoemaker's business would provide services for a fee. Also, High Country indicated it had an agreement for a land exchange with Arthur Renander for the southeastern corner land Poots had requested.

Finally, High Country proposed a new condition to "run with the land" due to the "discount of $150,000" for engineering/design services. If the golf course eventually became a private facility, High Country wanted $150,000 in golf course memberships. Alternatively, if the golf course is eventually sold, High Country wanted $150,000 cash.

At trial, Poots testified that about the time he received the counteroffer he orally accepted High Country's terms.

On July 2, 1992, Shoemaker, on behalf of High Country, sent a letter to Poots's attorney Leff. The letter was to assure Leff that High Country agreed to Poots selling lots by making announcements/representations "regarding the land presently owned by High Country. We have a preliminary agreement memorandum . . . which outlines various factors for ultimate acquisition of this ground" by Poots.

Four months later, on October 6, 1992, Shoemaker sent Poots a letter stating Poots had "been very scarce lately" and discussing a new storm water regulation. Shoemaker expressed disappointment that compliance with the new regulation had not been avoided by Poots commencing construction before October 1, 1992. Next, Shoemaker stated:

> I am inquired of, almost weekly, by various and sundry persons, including partners and even my wife, as to the status of our deal. I was also hoping we had a definite direction by now because of a payment due . . . on October 1 and taxes on the land due on September 30.
>
> I do feel a bit in the dark and have had difficulty in responding to comments or questions from certain councilmen and/or staff persons. . . . I am a little embarrassed by my lack of knowledge and involvement thus far.
>
> There is the other form of embarrassment as a function of not knowing where you and we stand on the transaction. My partners are beginning to think that I'm "holding out on them."
>
> Allan, we must visit at your earliest convenience to tie a knot or proceed down separate paths.

In 1993, Poots submitted a development concept plan to the city. However, western neighbors objected and, on May 11, 1994, High Country filed a petition to quiet title in an attempt to resolve the dispute.

On April 28, 1994, Shoemaker wrote to the city detailing sanitary sewer, storm water, grading, and driveway agreements between an adjacent planned

urban development (P.U.D.) (Redtail/Renander) and the Poots Phase II P.U.D. The letter states: "Allan Poots, Contract Purchaser, and Glenn Shoemaker, Contract Seller representing [High Country,] met with representatives of Redtail P.U.D."

In early 1995, Poots submitted a revised preliminary P.U.D./Plat for Phase II to the city. Before starting the review process, the city required the owner to consent to the developer submitting the plan. Shoemaker's notarized letter to the city, dated January 4, 1995, states Poots's preliminary P.U.D./Plat for the project on the property owned by High Country "has been prepared and submitted with our knowledge and consent." The city was directed to contact Shoemaker regarding any questions regarding "our arrangements with C. Allan Poots, the Contract Purchaser/Developer of the project."

Also in January 1995, Renander objected to the city's approval of the Poots/High Country P.U.D. Renander claimed when he agreed to the earlier exchange of the southeastern corner land with High Country, Shoemaker promised to have open golf course frontage abutting the Redtail property. He objected because the Phase II plan placed condominiums on the frontage instead of golf course frontage.

In 1995, Poots sought project financing by increasing his existing line of credit. The bank requested a written document to memorialize the terms of the Poots/High Country agreement. Poots testified he met with Shoemaker to "figure out" a document "that would satisfy the bank." The only written document signed by both parties is a May 1, 1995 Memorandum of Purchase Agreement created

for the bank, which states: "Pursuant to an offer to purchase certain lands . . . and certain modifications and changes thereto by both parties, those parties have proceeded to effect a final transaction." Noting that no funds had changed hands to date, the bank was told "both parties have expended significant funds for design and other fees toward the fruition of a transaction." Further, "the offer from Allan Poots represents approximately 100 acres at approximately $15,000 per acre for a total of approximately $1,500,000 of which $100,000 cash down payment would be made." High Country "was to provide approximately $150,000 worth of engineering design . . . Basically High Country would be trading a large tract of undeveloped land for smaller tracts/lots of developed land." Rather than a maximum of thirty-three lots as proposed in the High Country counteroffer, the bank memorandum identified forty lots for High Country.

Poots testified the bank memorandum was "an overview of a very involved transaction" and was not intended to contain all the terms of his agreement with High Country. Further, Poots did not rely on the bank memorandum as his agreement to purchase; rather, he relied upon his relationship with Shoemaker.

On May 17, 1995, Arthur Renander and his spouse sued Shoemaker and High Country and indexed the lawsuit in the lis pendens index, creating an encumbrance on High Country's property title. Poots intervened in the litigation and both Poots and High Country counterclaimed alleging Arthur Renander intentionally interfered with their contractual rights.

In June 1995, the city approved Phase II and Poots obtained contractor bids for work on the golf course/housing project.

Settlement discussions between Poots, Shoemaker, and Arthur Renander did not resolve the issues and the Renanders's case was tried on January 27, 1997. At the close of evidence, the court directed a verdict on all but one of the Renanders's claims and only allowed the jury to decide whether Shoemaker/High Country made fraudulent misrepresentations to Arthur Renander. The court also directed a verdict against Poots/High Country and in favor of the Renanders on the Poots/High Country counterclaims of intentional interference, stating: "There is no substantial evidence that [the Renanders] filed this lawsuit for any other reason than to receive equitable relief."

The jury returned a verdict in favor of the Renanders. However, on March 3, 1997, the court entered judgment notwithstanding the verdict, stating:

> [Poots and Shoemaker] are neighbors and friends. From the time this lawsuit was filed to the present, they have not entered into a formal contract for the sale of Shoemaker's 100 acres to Poots. Negotiations were ongoing and both men assumed the land would ultimately be transferred to Poots. . . . They talked frequently about the eventual development believing they would reach an agreement to transfer Shoemaker's 100 acres to Poots so that he could develop the proposed golf course community.[3]

Also on March 3, 1997, Poots submitted a new, handwritten offer to High Country proposing he make no cash down payment, High Country keep eighteen of the 110 total lots (which Poots now valued at $50,000), and High County receive one lot valued at $750,000. Further, all three of High Country's partners would purchase one $50,000 lot for cash. The parties did not reach agreement

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[3] We agree with Poots that the Renanders district court's oral ruling of no express contract referenced the Renanders's alleged contract with Shoemaker. However, the Renanders court's written judgment notwithstanding the verdict, as quoted above, supports the conclusion Poots and Shoemaker did not have a contract.

and, in June 1997, Poots's attorney described the Poots/High Country status as "a very, very embryonic contract that was drafted by the parties themselves."

Shoemaker died in April 1998 and Robert Jeffress, another High Country partner, met with Poots after the funeral. Both agree Poots wanted a concession in the sales price. In May 1998, Poots circulated a letter offering to sell the first nine holes of the golf course. Poots testified he received three offers but no sale was concluded. In a November 1998 letter to High Country, Poots's attorney stated Poots "stands ready to perform his purchase agreement obligations under the terms of his purchase agreement." High Country's attorney responded in a March 1999 letter, stating it "needs to know under what terms and conditions Alan is proposing to take title."

In April 1999, the area newspaper publicized the fact Poots had gifted the Phase I golf course to the city.[4] Poots's attorney testified he did not know about the gift prior to it being made.

On April 14, 1999, Poots faxed Jeffress/High Country a handwritten document stating he had incurred millions in damages, a lawsuit was imminent and setting out new terms for his "Pending immediate Purchase Agreement Proposal." On April 16, 1999, Poots's attorney wrote High Country stating Poots intends to purchase the land "on the terms of his existing purchase agreement." High Country's attorney replied on April 29, 1999, that the files contained ten

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[4] Under the terms of the gift, the city assumed a Poots loan for over $200,000. The gift granted the city an option to purchase the land under the temporary clubhouse for $500,000. The city utilized the option, built a new clubhouse, and also paid Poots $250,000 for additional lots in order to provide parking. By 2004, the city had also added an additional nine holes of golf.

different proposals and offered to work out the details and put the matter together properly "once I know what specific offer or proposal or memorandum or purchase agreement" Poots is referencing.

On May 4, 1999, High Country's attorney again requested Poots identify "what is referred to as 'existing purchase agreement,'" rejected the terms in the April 14 fax, and stated "there is no agreement until we have something in writing and cash to bind it." When Poots's attorney received this letter, he did not understand the reference to the April 14 fax. In fact, Poots's attorney first saw the fax during litigation depositions.

On May 3, 1999, Poots filed suit seeking injunctive relief and specific performance by High Country of an alleged 1993 agreement for sale as evidenced by the 1995 signed memorandum prepared to obtain bank financing. On May 13, 1999, High Country's attorney wrote suggesting the parties work together to dismiss the case "[n]ow that we know what agreement Mr. Poots is relying on."

The lis pendens issue was resolved on June 1, 1999, when the Iowa Supreme Court denied further review of the Iowa Court of Appeals's affirmance in the Renanders litigation. In July 1999, Poots's attorney wrote to High Country requesting a meeting to "complete these negotiations" and "workout the details to coordinate the terms of the existing contract" since the Renanders lis pendens no longer exists. Further, High Country was told Poots now intended to develop the land as a residential subdivision with open spaces and no golf course.

Poots, Jeffress, and their attorneys met on August 3, 1999. After the meeting, the parties could not agree about what occurred during the meeting and disagreed on key terms of the sale that had allegedly been resolved in the meeting. Negotiations and correspondence continued between the parties. No agreement was reached and in December 1999, Poots wrote High Country stating the negotiations were over and the lawsuit would proceed.

In 2002, summary judgment was granted to the defendants. The trial court concluded there was evidence of an agreement to agree, but no evidence of an actual contract. Poots appealed and we reversed and remanded for trial. *See Poots v. High Country Dev. Co.*, No. 02-0555 (Iowa Ct. App. April 30, 2003).

Poots next filed an amendment to his petition adding claims to quiet title and for monetary damages for breach of contract. After a lengthy trial in April 2007, the district court ruled:

> In reviewing the massive amounts of documentation and testimony produced, this court is left with the overwhelming impression that, in spite of the good intentions of the parties and their hope that an agreement could eventually be reached, no meeting of the minds ever occurred. The evidence clearly established that even the negotiations themselves were nebulous and no complete or definite set of terms were ever even proposed, much less agreed upon. Neither the parties nor this court have been able to ascertain the duties or obligations of the parties or determine the conditions relative to performance. Expenditures made by Poots were not made because of reliance upon an express or oral contract with [High Country] to purchase the land. Rather, the expenditures were based upon an unfounded optimism or hope that an agreement would eventually be reached. . . . The Court finds that Poots has failed to shoulder his burden of proof that a legal or enforceable contract ever existed between himself and [High Country] for the purchase of the land at issue in this action.

Poots appeals arguing the court erred in finding he failed to prove an enforceable contract and seeks specific performance, quiet title, and damages. Poots also claims error in the admission of hearsay statements made by Jeffress.

II. Scope of Review.

Poots and High Country disagree as to whether this case was tried at equity or at law. Poots seeks de novo review while High Country asserts our review is for correction of errors of law. Poots filed an amended petition seeking monetary damages for breach of contract. During the trial, the district court ruled on evidentiary objections. For example, on several occasions the court ruled testimony that was not responsive would be stricken.

We review a case in the same manner it was tried in the district court. *Stanley v. Fitzgerald*, 580 N.W.2d 742, 744 (Iowa 1998). "Claims based on a contract that are tried at law are reviewed for correction of errors at law." *Meincke v. Northwest Bank & Trust Co*., 756 N.W.2d 223, 227 (Iowa 2008). "Where there is uncertainty about the nature of a case, a litmus test we use in making this determination is whether the trial court ruled on evidentiary objections." *Ernst v. Johnson County*, 522 N.W.2d 599, 602 (Iowa 1994).

We conclude this case was tried at law and our review is for corrections of errors at law. *See* 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*). "When a reasonable mind would accept the evidence as adequate to reach a conclusion, the evidence is substantial." *Raper v. State*, 688 N.W.2d 29, 36

(Iowa 2004). However, we are not bound by a district court's conclusions of law or application of legal conclusions. *Id.*

III. Existence of an Oral Contract.

Poots argues "the substantial weight of the evidence established that prudent or not, the parties intended to be bound by their oral contract."

When a party argues the trial court's ruling is not supported by substantial evidence, we view the evidence in the light most favorable to the judgment. *Fischer v. City of Sioux City*, 695 N.W.2d 31, 33 (Iowa 2005). "Evidence is not insubstantial merely because we may draw different conclusions from it; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." *Raper* 688 N.W.2d at 36.

In determining whether parties have entered into a contract, we consider:

> [T]he extent to which express agreement has been reached on all the terms to be included, whether the contract is of a type usually put in writing, whether it needs a formal writing for its full expression, whether it has few or many details, whether the amount involved is large or small, whether it is a common or unusual contract, whether a standard form of contract is widely used in similar transactions, and whether either party takes any action in preparation for performance during negotiations.

Horsefield Constr. Co., v. Dubuque County, 653 N.W.2d 563, 571 (Iowa 2002).

A contract is generally not found to exist when the parties agree to a contract on a basis to be settled in the future. *Whalen v. Connelly*, 545 N.W.2d 284, 293 (Iowa 1996). "[A]n agreement to agree to enter into a contract is of no effect unless all of the terms and conditions of the contract are agreed on and nothing is left to future negotiations." *Crowe-Thomas Consulting Group, Inc. v. Fresh Pak Candy Co.*, 494 N.W.2d 442, 444-45 (Iowa Ct. App. 1992). For a

contract to be valid, the parties must express mutual assent to the contract terms. *Schaer v. Webster County*, 644 N.W.2d 327, 338 (Iowa 2002). Mutual assent requires objective evidence and is not based on the hidden intent of the parties. *Id*.

Poots testified he verbally accepted High Country's April 1992 counter-offer "about the time" he received it and stated the parties did not execute a written contract because "it was just not necessary" and Poots and Shoemaker "never had done it that way." The district court found:

> Poots's testimony in this regard is singularly not credible. [Leff, Poots's attorney,] is an experienced real estate attorney . . . and has represented Poots in real estate and other matters for 35-40 years, including representing him in connection with all of the [Phase I] subdivisions. Leff testified that his recollection was that all land purchases in which he represented Poots included a signed written purchase agreement, either prepared by him or reviewed by him, except for the alleged oral agreement in this case. Indeed, even Poots's own offer (which was in writing) specifically contemplated a final written agreement.

Additionally, Poots testified he submitted a written offer to buy High Country's land "because of the enormous size" of the transaction, because "it involved a lot of money," and because it was a fairly complex offer with contingencies and conditions for the sale.

The court discussed Shoemaker's July 1992 letter to Poots's attorney referencing a "preliminary agreement memorandum" and noted Shoemaker's "use of the word 'preliminary' specifically implies that a later, final agreement was contemplated." This conclusion is also supported by Shoemaker's next letter in October 1992, where he asks Poots to "tie a knot or proceed down separate paths." The court found:

> This letter clearly indicates that no enforceable meeting of the minds had occurred prior to October of 1992. It is noteworthy that even if Poots's March 1992 "offer" as modified by High Country's counteroffer in April 1992 was deemed to be a final agreement, that offer specifically contemplated that the transaction would be completed and all contingencies removed by September 1, 1992, unless an extension of the September 1, 1992 deadline was agreed to in writing. By the time [the October 1992 letter] was written, Poots's offer, even as allegedly modified by the counteroffer, had expired by its own terms.

Poots testified he was not relying on the May 1995 bank memorandum as the enforceable contract: "That is only a reference to a very large detailed, overall agreement that we were working on that was between the two of us." The district court found the memorandum "provides only an overview of the project. It is not an enforceable contract."

It is undisputed the parties were negotiating contract terms in 1997 when Poots was seeking an adjustment on price due to project delays. Poots testified he and Shoemaker repeatedly talked about adjusting lots and terms during the pendency of the Renanders case. In June of 1997, Poots's attorney wrote the agreement is "a very, very embryonic contract that was drafted by the parties themselves." The court found this language shows "Poots and High Country did not have a meeting of the minds in the spring of 1997 or any time prior thereto."

Poots testified the parties did not reach a final agreement on the amount of adjustment, but he believed they were close to reaching a final agreement and, contrary to the "time is of the essence" clause in his original offer, the parties had a very fluid timeframe for closing the deal. The district court found "Poots's testimony in this regard was not credible," and stated:

> This court believes that were it not for the untimely death of Shoemaker the parties would have eventually gotten past the "agreement to agree" stage and would have come to a meeting of the minds on the terms of sale of this property. Unfortunately, this did not happen.

While the court specifically found Poots not credible, the court also specifically found testimony of High Country's attorney credible:

> Attorney Walker [High Country] wrote a letter, dated March 4, 1999, to attorney Leff [Poots], in which attorney Walker stated that while it was High Country's understanding that Poots intended to purchase the High Country land, that High Country needed to know under what terms and conditions Poots was proposing to take title to the High Country real estate. Significantly, attorney Walker testified that he was attempting to determine what terms and conditions of agreement attorney Leff had been referring to in his letter dated November 24, 1998. Attorney Walker further testified that at no time after he wrote [the letter] did anyone ever inform him as to what the terms were of the alleged purchase agreement. The court specifically finds this testimony to be credible.

When we view the evidence in the light most favorable to the verdict and give appropriate weight to the district court's credibility determinations, we conclude substantial evidence supports the district court's finding, "in spite of the good intentions of the parties and their hope that an agreement could eventually be reached, no meeting of the minds ever occurred." The alleged oral agreement was for millions of dollars, was the type of contract usually put in writing, and needed a formal writing for a full expression of its many details and contingencies. For example, the High Country counteroffer proposed a covenant in the alternative (private club or sale of golf course) that was to "run with the land." Poots presented a written offer which was specifically contingent upon the approval of both form and content by Leff, his attorney. Years later, Leff described the agreement as embryonic. While each party expended substantial

sums of money in the expectation they would eventually reach agreement, their actions do not provide evidence of the terms and conditions of the alleged oral contract. We conclude Poots failed to establish an enforceable oral contract.

IV. Hearsay Statements.

Alternatively, Poots seeks a retrial claiming the court erred in allowing Jeffress to testify to statements made by Shoemaker. We review the admission of alleged hearsay for the correction of errors at law. *In re Long v. Broadlawns Med. Ctr.*, 656 N.W.2d 71, 88 (Iowa 2002). Even if we assume the court erred in allowing the testimony, reversal is not required because our review of the record shows a lack of prejudice. *See id.* (finding erroneously admitted hearsay evidence will not be considered prejudicial where substantially the same evidence is in the record.).

AFFIRMED.