IN THE COURT OF APPEALS OF IOWA

No. 8-1045 / 08-0765
Filed April 8, 2009

WILSON BROS.-DUBUQUE, INC.,
and WILSON BROS. LEASING CO.,
Plaintiffs-Appellees,

vs.

JOHN P. WILSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

John P. Wilson appeals from the judgment entered by the district court against him and in favor of Wilson Brothers-Dubuque, Inc. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.**

Webb L. Wassmer of Simmons Perrine P.L.C., Cedar Rapids, for appellant.

David L. Hammer, Angela C. Simon, and Susan M. Hess of Hammer, Simon & Jensen, Dubuque, for appellees.

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

EISENHAUER, J.

John P. Wilson appeals from the judgment entered by the district court against him and in favor of Wilson Brothers-Dubuque, Inc. (Wilson Brothers) in the amount of $191,708.42. He contends substantial evidence does not support the award. We affirm in part, reverse in part, and remand for further proceedings.

I. Background Facts and Proceedings. Wilson Brothers is a corporation owned by Eugene and Lorraine Wilson. It was incorporated in the 1950s as a car dealership. The Wilsons' son, John, became general manager of the dealership in the mid-1980s when Eugene withdrew from active management of the business.

As general manager, John drew an annual salary of $100,000.00. He also took advances from the business in the form of accounts receivable, notes receivable, and purchases made from company funds. Vehicles on the dealership inventory were taken for personal use.

John also owned and operated two other dealerships while general manager of Wilson Brothers: Wilson Brothers Ford, which was liquidated in 2001, and Wilson Brothers of Hanover (Galena Chrysler). John moved funds between the businesses at his discretion.

John's management of Wilson Brothers and misappropriation of funds dissipated the company's value. As a result, John was terminated from his employment on December 16, 2004. In 2005, Wilson Brothers ceased operating as a dealership, selling many of its assets to another dealership.

On February 17, 2006, Wilson Brothers filed suit against John, alleging that he owed money on a variety of debts he incurred while operating the dealership, totaling $417,473.49. A bench trial was held in January 2008. On April 7, 2008, the district court filed its ruling, finding Wilson Brothers had proved John owed the corporation $106,660.00 for a note receivable, $55,858.53 for the book value of vehicles taken from the dealership, and $29,189.89 for money taken from a drawing account. The court entered judgment in favor of Wilson Brothers in the amount of $191,708.42.

John appeals from the judgment. He contends there is insufficient evidence to support the existence of any of the three debts against him in the amounts found by the district court. He argues the debt for the book value of the vehicles and the note receivable should be reversed. He also argues the debt for the drawing account should be reduced to $5946.89.

II. Scope and Standard of Review. Because the district court tried the action at law, our review is for the correction of errors at law. *Frontier Props. Corp. v. Swanberg*, 488 N.W.2d 146, 147 (Iowa 1992).

In a case tried at law, the findings of fact are binding upon us if supported by substantial evidence. *Id.* Evidence is substantial if reasonable minds would find it adequate to reach the same conclusion, even if we might draw a contrary inference. *Id.*

> A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Hawkeye Land Co. v. Iowa Power & Light Co., 497 N.W.2d 480, 483 (Iowa Ct. App. 1993) (*quoting Briggs Transp. Co. v. Starr Sales Co*., 262 N.W.2d 805, 808 (Iowa 1978)). Furthermore, evidence is substantial when a reasonable mind could accept it as adequate to reach the same finding. *Id.* Evidence is not insubstantial merely because it could support contrary inferences. *Id.*

III. Analysis. In its petition, Wilson Brothers alleged John owed it $417,473.49 on "an open and running account." Wilson Brothers, therefore, "had the burden of proving the account, including that the prices charged were fair and reasonable." *See McIntire v. Muller*, 522 N.W.2d 329, 331 (Iowa Ct. App. 1994). To be successful, Wilson Brothers must not only prove John owed it something, but how much he owed. *See id.*

> Although an account in its narrow sense envisions something evidenced by book records, in a general sense, it encompasses any claim or demand based on a transaction creating a debtor-creditor relationship. We have held that, when the evidence fails to establish the elements of an account stated, the creditor may nevertheless recover by proving a contractual obligation for the individual items in the account and the fair and reasonable value of the amounts claimed.

Roger's Backhoe Serv., Inc. v. Nichols, 681 N.W.2d 647, 650 (Iowa 2004) (citations omitted).

A. Vehicles. John first contends there was insufficient evidence to prove Wilson Brothers' claim for vehicles he allegedly converted to his own use. He argues there was no evidence he took some of the vehicles, Wilson Brothers failed to prove a fair market value for any of the vehicles, and that he paid for the vehicles he did have.

The district court found a preponderance of evidence established:

> The defendant had a practice of purchasing vehicles for his personal use with company funds. In addition, he allowed family members to take used vehicles off the company lot for their personal use. When he left the business the defendant took with him titles to a number of used or leased vehicles. The business records of Wilson Bros. Dubuque established that, at the time of his separation from employment, the book value of the vehicles taken by the defendant was $55,858,53. (Plaintiffs' Exhibit 10).

We focus on the value of the vehicles as this is dispositive of the issue. The general rule to determine damages for conversion is the fair market value of the property at the time of taking. *Murray v. Conrad,* 346 N.W.2d 814, 821 (Iowa 1984). The court found John used the vehicles legitimately until he was terminated in December 2004. The court relied on the testimony of Denise Deckert and the values shown on Exhibit 10 to determine the damages. The testimony and document established these values were "the actual cash value of the vehicle when it was traded in" to the dealership. Those values bore no relation to the fair market value in December 2004. Without such evidence the court was left with nothing to assess the fair market value. Accordingly, it was error to award Wilson Brothers $55,858.53 for the vehicles John converted. *See Data Documents, Inc. v. Pottawattamie County*, 604 N.W.2d 611, 616 (Iowa 2000) ("As a general rule, the party seeking damages bears the burden of proving them; if the record is uncertain and speculative as to whether a party has sustained damages, the factfinder must deny recovery."). We modify the award to reduce it by $55,858.53.

2. Account Receivable. John next contends the district court erred in finding he owed $29,189.89 on an account receivable. He argues the uncontradicted evidence shows the amount should be $5946.89.

The district court explained its findings on this issue as follows:

> Wilson Bros. Dubuque maintained a separate account for advances that John Wilson took against his salary. In the last financial statement, before the defendant was fired, show the obligation to be $71,739.89. The defendant made no payments personally after December 2004. Monthly distributions to the defendant of $1,150.00 from another family corporation, Marion Realty, were credited against the obligation.
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> One of the plaintiffs' exhibits prepared for trial contains calculations of the defendant's obligations to the corporation. It lists this obligation as being $36,996.89 but contains no explanation of how that figure was derived. Based on the defendant's monthly credits, the amount of this receivable as of the time of trial was $29,189.89 ($71,739.89 – 42,550.00). The credit is for 37 months of payments of $1,150.00.

John argues the court's calculation was in error. Exhibit 1, prepared by Certified Public Accountant James Purdy, has the account receivable showing an amount due of $36,996.89 as of October 31, 2005. John claims the court should have used this figure and reduced from that amount $1150.00 per month up through the time of trial in January 2008 (twenty seven months), which leads to a further reduction of $31,500.00. For this reason, John claims the amount of damages should be reduced to $5946.89.

It is undisputed John owed $71,739.89 on the account receivable in November 2004. This amount was established by the records kept in the regular course of Wilson Brothers' business. The court found the record did not establish how the figure of $36,996.89 was arrived at in October 2005, and thereby disregarded it. There is no evidence of any payments being made on the

accounts receivable between November 2004 and trial, other than the $1150.00 payments made by Marion Realty. On this basis, the court made its own calculation to arrive at an amount due of $29,189.89. Viewing the evidence in the light most favorable to the court's ruling, we find substantial evidence supports the finding.

3. Note Receivable. Finally, John contends the court erred in finding he owed Wilson Brothers $106,660.00 on an alleged note receivable. He argues there is insufficient evidence supporting the claim.

The district court made the following finding:

> Chrysler Corporation wanted more equity in the defendant's company, Wilson Bros. of Hanover (Galena Chrysler). As a result, the defendant instructed the bookkeeper at Wilson Bros. Dubuque to credit Galena Chrysler with $106,660.00. To balance this entry, the bookkeeper was told to enter an account receivable in the same amount with the defendant as the debtor. The transfer to Galena Chrysler was made but the defendant never paid Wilson Bros. Dubuque. The obligation continued on the books at the time he was fired.

John argues there is no evidence as to the terms of the note payable. As a result, he claims there is no evidence he breached the terms of repayment. Regarding the lack of express terms of the contracts John entered into with Wilson Brothers while general manager, the district court stated:

> The defendant was the general manager of the company and was dealing with himself. When engaged in such self-dealing, it is unrealistic to expect that he had an explicit conversation with himself wherein he agreed to pay for the goods and services he was receiving from the company.

The court then held if there was a contract to be found, it must be an implied contract.

Recovery may be had under an implied-contract theory where the party seeking recovery shows: (1) the services were carried out under such circumstances as to give the recipient reason to understand (a) they were performed for him and not some other person, and (b) they were not rendered gratuitously, but with the expectation of compensation from the recipient; and (2) the services were beneficial to the recipient. *Roger's Backhoe Serv., Inc.*, 681 N.W.2d at 651. Deckert testified Chrysler Corporation wanted more working capital in Galena Chrysler and

> John said he was going to pay the debt for Galena Chrysler that was on the books so, in turn, we credited the Galena Chrysler account that was owed to Wilson Bros. Dubuque and John was going to pay that money.

We conclude substantial evidence supports the existence of an implied contract.

John also claims there was no money paid to him, and therefore there was no consideration for the note. Although the sum of $106,600.00 was not provided to John directly, he benefited from the payment of the funds to Galena Chrysler, his business.

John alleges the funds were not actually transferred because the note on Exhibit 11, which memorializes the transaction, states, "No money was actually put into business account." However, Deckert testified that Galena Chrysler owed a sum of money to Wilson Brothers. In lieu of giving Galena Chrysler $106,600.00 in cash, Wilson Brothers credited that amount back to the dealership and instead held John personally responsible for that amount. Although no money physically changed hands in the transaction, Wilson Brothers was giving money to Galena Chrysler.

IV. Conclusion. We affirm the district court's judgment in favor of Wilson Brothers, but reverse the award of damages for the allegedly converted vehicles. We remand for entry of judgment consistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.