

IN THE COURT OF APPEALS OF IOWA

No. 8-824 / 07-2015
Filed February 4, 2009

KAYE DELL d/b/a E.J.'S LEGACY,
Plaintiff-Appellant/Cross-Appellee,

vs.

E. BUD CORIERI,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh,
Judge.

The plaintiff/counterclaim-defendant Kaye Dell appeals, and the defendant/counterclaim plaintiff E. Bud Corieri cross-appeals, following the district court's entry of judgment dismissing the parties' claims. **AFFIRMED ON APPEAL AND CROSS-APPEAL.**

Jonathan Barnhill, West Des Moines, for appellant.

Barry Nadler, Ames, and Hannah Rogers, Des Moines, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

Kaye Dell operated her business, E. J.'s Legacy, in real estate she leased from E. Bud Corieri pursuant to a written lease. The lease, which ran for three years from September 10, 1998 to September 9, 2001, and was then extended for three years, expired September 9, 2004. On September 11, 2004, the portion of the property in which Dell had operated her business¹ was damaged by fire.

Soon after the fire Corieri told Dell that he wanted the property occupied again as soon as possible and that for each month it took him to get the building back in shape Dell could have a month's rent free. No part of the parties' discussion was reduced to or memorialized in writing, there were no further conversations or communications about Dell again renting from Corieri, no terms or conditions for a new lease were discussed or agreed on, and about three months after the fire Corieri informed Dell that he had leased the property to someone else.

Dell sued Corieri in three counts, claiming (1) Corieri had breached an oral contract by failing to lease the property to her once the property was in shape for her business to again be conducted in it, (2) Corieri had slandered her by making statements concerning her to third parties, statements that Earl Williams² had stolen some of Corieri's property from the fire-damaged premises, and (3) Corieri's statements about Earl Williams constituted slander per se of Dell. Corieri denied most material allegations of Dell's petition and asserted a

¹ The business is at places in the record described as a "bar" and at other places as a "strip club."

² Mr. Williams is at places in the record described in various ways, including but not limited to Legacy's "bar manager" and Dell's "long-time boyfriend."

counterclaim for damages, claiming that Dell or persons acting on her behalf had broken into the property and removed equipment and fixtures belonging to Corieri.

The district court sustained Corieri's motion for summary judgment as to Dell's breach of oral contract claim, but denied the motion as to the slander per quod and slander per se counts. The court later denied Dell's motion for directed verdict as to the two slander counts and sustained Corieri's motion for directed verdict as to Dell's count 2 slander per quod claim. The jury returned verdicts finding against Dell on her claim of slander per se and against Corieri on his conversion claim. The district court entered judgments of dismissal consistent with the jury's verdicts and the court's earlier rulings. Dell appeals and Corieri cross-appeals.³

Dell first claims the district court erred in granting summary judgment to Corieri on Dell's breach of contract count. Our scope and standards of review of summary judgment rulings are well established, are briefly summarized in relevant part in *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000), and need not be set forth here. The record fully supports the district court's determination that "[t]he 'reasonable certainty' required for the terms of an enforceable oral contract is entirely missing." The record also fully supports the court's determination that "[a]t most, the record shows the parties' agreement to

³ We note as a preliminary matter that although Dell's notice of appeal expressly limits her appeal to the district court's "Ruling on [Corieri's] Motion for Summary Judgment and each and every other order and ruling [inhering] therein," her issues stated on appeal go further. However, as Corieri has responded to the issues stated by Dell without objection we choose to address both of them.

agree in the future on some type of lease agreement.” Such an agreement does not constitute an enforceable contract. *Whalen v. Connelly*, 545 N.W.2d 284, 293 (Iowa 1996) (“A contract is however generally not found to exist when the parties agree to a contract on a basis to be settled in the future.”).

Dell also claims the district court erred in denying her motion for directed verdict on her count 2 claim of slander per quod and her count 3 claim of slander per se. We review this claim for correction of errors at law. *Wolbers v. Finley Hosp.*, 673 N.W.2d 728, 734 (Iowa 2003).

In making the motion [for directed verdict] plaintiff assumed a heavy burden. See Iowa R. App. P. [6.14(6)(b), (g)]. The burden is even heavier here because the motion for directed verdict was made by the plaintiff. [S]eldom does a party having the burden of proof satisfy that burden as a matter of law.

Locksley v. Anesthesiologists of Cedar Rapids, 333 N.W.2d 451, 456 (Iowa 1983). “The evidence is considered in the light most favorable to the nonmoving party.” *Wolbers*, 673 N.W.2d at 734. “[I]f reasonable minds could reach different conclusions based upon the evidence presented, the issue is properly submitted to the jury.” *Id.*

Dell’s claim of slander per quod required Dell to prove damages. *Johnson v. Nickerson*, 542 N.W.2d 506, 510 (Iowa 1996). The district court sustained Corieri’s motion for directed verdict as to the slander per quod count, finding Dell had presented no evidence of actual damages from the alleged slander. The

record fully supports the district court's determination, and we affirm on this issue.⁴

Dell's claim of slander per se was based on her claim that Corieri's statements that Earl Williams had stolen some of Corieri's property from the fire-damaged premises were statements "concerning Kaye Dell." Viewing the evidence in the light most favorable to Corieri, reasonable minds could conclude otherwise. We affirm on this issue.

By cross-appeal Corieri claims the district court erred in denying his motion for summary judgment on Dell's slander claims, and erred by denying his motion for directed verdict on Dell's slander per se claim. The district court's later directed verdict on Dell's slander per quod claim, together with the jury's verdict on Dell's slander per se claim and our affirmance on the issues presented in Dell's appeal render moot the issues raised by Corieri on cross-appeal and we do not further address them.

AFFIRMED ON APPEAL AND CROSS-APPEAL.

⁴ We do note that, as pointed out by Corieri, on appeal Dell does not contend she in fact proved any actual damages.