IN THE COURT OF APPEALS OF IOWA

No. 9-285 / 08-1450
Filed July 22, 2009

WILLIAM B. OEHLERT and
MABEL D. OEHLERT,
Plaintiffs-Appellees,

vs.

FRANK L. CAMPBELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Clarke County, Gary G. Kimes, Judge.

Frank Campbell appeals from a district court ruling denying his motion for new trial following a judgment in favor of William and Mabel Oehlert on a promissory note and dishonored check. **AFFIRMED AND REMANDED.**

Verle W. Norris and Daniel R. Rockhold, Corydon, for appellant.

Unes J. Booth of Booth Law Firm, Osceola, for appellees.

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

MILLER, J.

Frank Campbell appeals from a district court ruling denying his motion for new trial following a judgment in favor of William and Mabel Oehlert (the Oehlerts) on a promissory note and dishonored check. We affirm the judgment of the district court and remand for the limited purpose of determining attorney fees on appeal.

I. BACKGROUND FACTS AND PROCEEDINGS.

The Oehlerts filed a petition at law against Frank Campbell, alleging that Campbell had executed a promissory note on September 1, 2002, promising to pay them $15,832.29 by December 1, 2002, which he failed to do. Their petition further alleged Campbell gave William a check dated December 1, 2002, for $15,832.29 that was dishonored for insufficient funds. The Oehlerts sought judgment against Campbell for $15,832.29 plus interest payable at the rate provided in the promissory note and attorney fees. Copies of the note and dishonored check were attached to the petition. Campbell filed an answer denying that he had signed the promissory note and an affidavit stating the "signature on said promissory note is not a genuine or authorized signature."

The matter proceeded to trial before the district court. William testified that his brother, Robert Oehlert, introduced him to Campbell in March 1997 after learning that Campbell had lost the financing for his feeder pig operation. William agreed to finance Campbell's venture and advanced him an initial loan of $10,200. Campbell made some payments on that debt, and William continued to loan him money. But by November 1997, William had become dissatisfied with

Campbell's repayment of the debt. He thought Campbell "had been selling some hogs and not paying him as he should."

William asked Robert to help him collect money from Campbell. When no payment was forthcoming, William had his attorney prepare the promissory note for $15,832.29. The note was originally dated September 1, 2002, and provided payment was due on demand. It further provided the amount due "represents a consolidation of certain loans made in 1997 totaling $27,008.01 less payments totaling $17,643.39, leaving a balance due of $15,832.29, which is comprised of $10,445.86 in principal and $5,386.43 in accrued interest."

William and Robert both testified that they met with Campbell on September 1, 2002, to discuss Campbell's debt. William presented the promissory note for $15,832.29 to Campbell, who requested that the payment date on the note be changed to December 1, 2002. The date was changed, and Campbell signed the note in front of William and Robert. Campbell then gave William a check, which he postdated for December 1, 2002, in the amount of $15,832.29. Some time later, William attempted to cash the check, but it was returned due to insufficient funds.

Campbell conversely testified that he did not meet with William and Robert on September 1, 2002. He denied signing the promissory note and testified the signature on the note was "absolutely" not his. Campbell did not, however, deny signing the postdated check for $15,832.29. He testified he gave Robert that check in early September 2002 with the condition that "he not give it to Bill." He did so in order to help Robert appease William, who was upset with Robert about

the debt Campbell owed him. Campbell also presented the testimony of Dr. Joe Alexander, a handwriting expert, who opined that the signature on the December 1, 2002 promissory note was not authentic.

At the close of the evidence, the district court stated that "what this case boils down to, [is] what witnesses are more credible than others." It found the testimony of William and Robert to be more credible than that of Campbell and his expert witness. The court accordingly entered judgment in favor of the Oehlerts on the dishonored check and promissory note in the amount of $15,832.29 with interest payable at the rate provided in the note, plus attorney fees and court costs. Campbell filed a motion for new trial, which was denied. This appeal followed.

On appeal, Campbell claims the district court erred in denying his motion for new trial because the court did not apply the correct burden of proof in determining the genuineness of Campbell's signature on the promissory note and substantial evidence does not support the court's finding on that issue. He additionally claims the court erred in admitting an exhibit at trial.[1]

II. SCOPE AND STANDARDS OF REVIEW.

Our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). When the motion

[1] We observe that Campbell has not challenged the judgment that was entered on the dishonored check for $15,832.29. His claims on appeal instead relate solely to the judgment on the promissory note, which allowed the Oehlerts to collect interest at the rate of nine percent (rather than the statutory interest rate on judgments) plus attorney fees. Our review will therefore be similarly limited. *See Hyler v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996) ("[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal.").

and ruling are based on discretionary grounds, our review is for abuse of discretion. *Id.* However, when the motion and ruling are based on a claim that the district court erred on issues of law, our review is for correction of errors at law. *Id.*

If a verdict "is not sustained by sufficient evidence" and the movant's substantial rights have been materially affected, it may be set aside and a new trial granted. Iowa R. Civ. P. 1.1004(6); *Olson v. Sumpter*, 728 N.W.2d 844, 850 (Iowa 2007). "Because the sufficiency of the evidence presents a legal question, we review the trial court's ruling on this ground for the correction of errors at law." *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004). We review the admission of evidence at trial, on the other hand, for abuse of discretion. *Clinton Physical Therapy Servs.*, 714 N.W.2d at 609-10.

III. MERITS.

The central issue presented by Campbell's claims on appeal is whether the district court erred in determining that Campbell's signature on the promissory note was genuine. We conclude it did not.

Campbell first claims the district court did not use the correct burden of proof applicable under Iowa Rule of Civil Procedure 1.405(4)(*a*) when a party denies the authenticity of a signature on a document attached to a pleading. Rule 1.405(4)(*a*) provides:

> If a pleading copies a writing purporting to be signed by an adverse party, such signature shall be deemed genuine for all purposes in the case, unless such party denies it and supports the denial by the party's affidavit that it is not a genuine or authorized signature.

When a party files a verified denial of the signature to the instrument in suit, as Campbell did here, the burden is on the plaintiff to prove the genuineness of the signature by a preponderance of the evidence. *See Old Line Life Ins. Co. v. Jones*, 206 Iowa 664, 666, 221 N.W. 210, 211 (1928); *Damman v. Vollenweider*, 126 Iowa 327, 330, 101 N.W. 1130, 1131 (1905).

Campbell argues the district court failed to properly apply this burden of proof because the court "made no mention in its [rulings] that Plaintiffs had proven by a preponderance of the evidence the genuineness of Mr. Campbell's signature. It merely found the self-serving testimony of the Oehlert brothers more credible." We reject this argument for several reasons.

First, in its order denying Campbell's motion for new trial, the district court expressly stated, "The Court finds plaintiffs carried the burden of proof in this case." We agree with the Oehlerts that the "preponderance standard is implicit in the court's ruling." *See* Iowa R. App. P. 6.14(6)(*f*); *State ex rel. Miller v. Rahmani*, 472 N.W.2d 254, 257 (Iowa 1991) ("The general presumption in Iowa is that in civil cases the burden of proof is a preponderance of the evidence."). Furthermore, our supreme court has recognized that a court's "failure to specifically state the applicable burden of proof is not a basis to conclude it applied the wrong standard." *Wilson v. Vanden Berg*, 687 N.W.2d 575, 586 (Iowa 2004). "[I]n the absence of any suggestion in the record that the court used an erroneous burden of proof, we assume it properly applied the law." *Id.* We do not agree with Campbell that the court's consideration of the credibility of

the witnesses indicates it applied a less rigorous burden of proof than that required in this case.

"The trier of fact—here, the district court—has the prerogative to determine which evidence is entitled to belief." *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). To that end, the court found

> Campbell would have this Court believe that [the check for $15,832.29] was written just to accommodate his friend Bob Oehlert. I can't believe that. That is just not credible . . . . Campbell denies signing [the promissory note]. He doesn't deny giving Bob Oehlert the check made payable to Bill Oehlert in the exact same amount with the promise to pay on December 1st but denies signing the promissory note. Both Oehlerts [William and Robert] testified and they testified under oath they saw Frank Campbell execute the promissory note at Hy-Vee here in Osceola, Iowa. Frank Campbell claims he never signed it. And then we have an expert witness that says that that is not Frank Campbell's signature . . . . [T]he expert witness is entitled to no more credibility than a lay witness. I can believe any of it or none of it . . . .
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> So, it appears to me and I am going to find that there is no compromise between these parties. Either Mr. Oehlert wins in its entirety or Mr. Campbell; one or the other. There is nothing in-between.
>
> Based upon this evidence this Court is going to find that the testimony of both Oehlerts are more credible and I am going to find that [Campbell] did, in fact, execute the promissory note . . . .

"Factual disputes depending heavily on credibility of witnesses are best resolved by the trial court, which has a better opportunity to evaluate credibility than do we." *Claus v. Whyle*, 526 N.W.2d 519, 524 (Iowa 1994). "We will not weigh the evidence or the credibility of the witnesses." *Id.* Rather, the question is whether there was substantial evidence to support the findings of the trial court according to the witnesses whom the court believed. *Id.* We conclude there was, contrary to Campbell's claim otherwise.

> The signature to a promissory note may be proven by a person who saw it placed there, or by those who know the handwriting and signature of the maker, or by experts by comparison, or by comparison by the jury with writings of the same person, which are proved to be genuine.

In re Estate of Work, 212 Iowa 31, 36, 233 N.W. 28, 31 (1930). The district court was thus not required to accept the testimony of the handwriting expert, as Campbell suggests. *See Northrup v. Miles Homes, Inc.*, 204 N.W.2d 850, 857 (Iowa 1973) (recognizing testimony of handwriting expert was "not binding . . . but may be accepted or rejected, in whole or in part"). William and Robert both testified that they saw Campbell sign the promissory note. Campbell denied doing so, yet he admitted giving Robert a check dated December 1, 2002, (the same date payment was due on the note) for $15,832.29 (the same amount due on the note). In addition, documents bearing Campbell's admittedly genuine signatures were admitted into evidence for consideration by the court. *See* Iowa Code § 622.25 (2005) ("Evidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person which are proved to be genuine.").

The evidence was clearly conflicting, and it was within the province of the district court, as the trier of fact, to resolve the factual dispute. *See Baker v. Mygatt*, 14 Iowa 131, 135 (1862) (declining to interfere with jury's determination as to genuineness of the writings in controversy); *In re Estate of Coleman*, 238 Iowa 768, 773, 28 N.W.2d 500, 503 (1947) (affirming court's determination that decedent executed contract where evidence was clearly in dispute). Upon viewing that evidence in the light most favorable to the verdict, *see Estate of*

Pearson ex rel. Latta v. Interstate Power & Light Co., 700 N.W.2d 333, 345 (Iowa 2005), we conclude substantial evidence supports the district court's decision that Campbell's signature on the promissory note was genuine.

This brings us to Campbell's final assignment of error on appeal: whether the district court erred in admitting an exhibit at trial that listed the loans William made to Campbell and the payments he received from him. Campbell objected to the exhibit on hearsay and foundation grounds. The court admitted the exhibit over Campbell's objections as a "demonstrative exhibit," stating it "deems it to be a summary only and potentially helpful to the Court in deciding this case."

We need not and do not address whether the court abused its discretion in admitting the exhibit for that limited purpose as the information contained in it simply summarized other evidence properly in the record. *See Estate of Long ex rel. Smith v. Broadlawns Med. Ctr.*, 656 N.W.2d 71, 88-89 (Iowa 2002) ("[W]here substantially the same evidence is in the record, erroneously admitted evidence will not be considered prejudicial."); *In re Estate of Hettinga*, 514 N.W.2d 727, 733 (Iowa Ct. App. 1994) (noting cumulative evidence, "which only corroborates other evidence properly in the record, does not constitute reversible error"). William testified as to the loans he made to Campbell and the payments that Campbell made on those loans. Copies of checks in the amounts listed on the exhibit were also admitted as evidence at trial.

In addition, the exhibit did not have any bearing on the central issue in the case—whether the signature on the promissory note was genuine. *Cf. Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168, 184 (Iowa 2004) (holding admission of

hearsay evidence was prejudicial where it directly addressed a central issue). We thus cannot say Campbell was prejudiced by the admission of the exhibit. *See Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 149 (Iowa 2002) (stating reversal is warranted only if the trial court clearly abused its discretion, to the complaining party's prejudice); *see also* Iowa R. Evid. 5.103(*a*).

The Oehlerts seek an award of appellate attorney fees. The promissory note provided for the payment of attorney fees. *See* Iowa Code § 625.22 (authorizing payment of attorney fees when judgment is recovered on a written contract containing an agreement to pay for attorney fees). However, we prefer that the district court determine the reasonable amount of attorney fees the Oehlerts should be awarded on appeal. *Bankers Trust Co. v. Woltz*, 326 N.W.2d 274, 278 (Iowa 1982). We therefore remand the case to the district court for the limited purpose of an evidentiary hearing on and the fixing of appellate attorney fees.

IV. CONCLUSION.

We conclude the district court did not err in denying Campbell's motion for new trial. The court did not apply an improper standard of proof in determining that the signature on the promissory note was genuine and substantial evidence supports that determination. We further conclude Campbell was not prejudiced by the admission of an exhibit at trial. The judgment of the district court is therefore affirmed, and the case is remanded for the limited purpose of determining attorney fees on appeal.

AFFIRMED AND REMANDED.