

**IN THE COURT OF APPEALS OF IOWA**

No. 9-943 / 09-0714  
Filed February 10, 2010

**INJECTION TECHNOLOGY DIESEL  
SERVICE, INC. and DENNIS O. STONEKING,**  
Plaintiffs-Appellants,

**vs.**

**SPHERION CORPORATION,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge.

Plaintiffs appeal from the district court's ruling following a bench trial on their claim of negligence against defendant. **AFFIRMED.**

David C. Laudner of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellants.

John P. Lander of Brown, Kinsey, Funkhouser & Lander, P.L.C., Mason City, and Gerald L. Maatman Jr. and Colin M. Connor of Seyfarth Shaw L.L.P., Chicago, Illinois, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**DOYLE, J.**

Plaintiffs Dennis Stoneking and Injection Technology Diesel Service, Inc. appeal from the district court's ruling following a bench trial on their claim of negligence against defendant Spherion Corporation. Plaintiffs contend the district court erred in concluding they failed to prove Spherion breached its duty of care by a preponderance of the evidence. Upon our review, we affirm.

***I. Background Facts and Proceedings.***

Dennis Stoneking is the owner and operator of Injection Technology Diesel Service, Inc. (InjectTech), a small business operating in diesel fuel injection and related repair and work. Defendant Spherion Corporation is a temporary staffing and recruiting company that provides temporary, temp-to-hire, and direct-hire employees to its clients, i.e. employers looking for employees. In 2003 and 2004, Spherion maintained an office in Clear Lake, Iowa, which was owned and operated by a Spherion license-holder.

Sometime in December 2003, Stoneking contacted the Clear Lake Spherion office looking to fill InjectTech's secretary/bookkeeper position on a temp-to-hire basis. Spherion and Stoneking entered into an oral agreement whereby Spherion would search its database for applicants qualified to fill InjectTech's open position, and then provide the names of the best candidates to Stoneking. Spherion did not represent that it would perform a criminal background check on the candidates, and Stoneking did not ask that a criminal background check be performed on the candidates. Stoneking did not specify that candidates should not have a history of any felony, fraud, or theft convictions.

Spherion named Barbara Krauth as a potential candidate for InjectTech's open position. Krauth had previously provided her resume to Spherion and completed a Spherion application listing her employment and educational history. On the application, Krauth did not check the boxes for "felony" or "breach of trust." Unbeknownst to Spherion, Krauth misrepresented her educational and criminal histories. She had in fact been previously convicted of felony fraud.

Stoneking interviewed Krauth for the position and agreed to have her work at InjectTech on a temp-to-hire basis. Krauth began working at InjectTech on February 2, 2004. As a temp-to-hire employee, Krauth was employed by Spherion. Krauth faxed her timesheets, signed by Stoneking, to the Spherion office, and Spherion then paid Krauth for her work. The Spherion office then billed InjectTech for Krauth's time plus its fees.

Krauth continued working as a temp-to-hire employee for Spherion at InjectTech for ninety days. No complaints were made about Krauth's work performance. At the end of ninety days, InjectTech offered Krauth full-time permanent employment with the company. Krauth accepted InjectTech's employment offer and subsequently terminated her employment with Spherion.

Prior to offering Krauth the full-time bookkeeper position with InjectTech, Stoneking did not require Krauth to complete an InjectTech employment application. Stoneking did not require Krauth to provide references, and Stoneking did not verify Krauth's educational history or perform a criminal background check.

In approximately August 2006, Stoneking discovered Krauth had a criminal record, including the conviction for felony fraud. However, Stoneking

continued to employee Krauth. In October 2006, Stoneking learned that, beginning in January 2005, Krauth had altered and/or forged checks drawn on plaintiffs' accounts, used plaintiffs' credit cards without permission, and failed to comply with required payroll and other tax procedures as required by both federal and state law. Stoneking alleged Krauth had directly embezzled and/or defrauded InjectTech of \$138,350 and that he had incurred additional monetary damages.

Plaintiffs filed a petition at law, asserting claims of negligence and negligent misrepresentation against Spherion. Spherion moved for summary judgment on both claims. The court granted summary judgment on plaintiffs' negligent misrepresentation claim and dismissed the claim. The court denied Spherion's motion as to the negligence claim.

After a bench trial, the district court entered its ruling in favor of Spherion and dismissed plaintiffs' petition. The district court ultimately concluded that although Spherion owed plaintiffs a duty of reasonable care, plaintiffs failed to prove Spherion breached that duty by a preponderance of the evidence. Specifically, the district court found:

It appears that criminal background checks and education verification were neither a Spherion policy nor an industry standard. Spherion did not assert or hold out that it provided such verification or investigation. It also appears that Spherion did check employment references. Through testing, Spherion established that Krauth was able to perform the type of work the plaintiffs requested. Throughout these procedures, no "red flags" arose, which would have indicated to Spherion that more in-depth investigation was called for. Additionally, Spherion did not know at the time of placement the extent of financial access that Krauth was to be given, which also may have made further investigation appropriate. Finally, Krauth's fraudulent activity occurred primarily, if not exclusively, after InjectTech hired her on a permanent basis.

While Spherion had provided her as a candidate for the initial temporary position, [Spherion] did not provide any information as to Krath's appropriateness for a permanent position and was not involved in that hiring process. As a whole, the court does not find that Spherion's actions or omission were unreasonable.

Plaintiffs now appeal.

## ***II. Scope and Standards of Review.***

We review the judgment of a district court following a bench trial in a law action for correction of errors at law. The district court's findings of fact have the force of a special verdict and are binding on us if supported by substantial evidence. Evidence is substantial if a reasonable person would accept it as adequate to reach a conclusion. "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." In determining whether substantial evidence exists, we view the evidence in the light most favorable to the district court's judgment. If the district court's "findings are ambiguous, they will be construed to uphold, not defeat, the judgment."

*Chrysler Fin. Co. v. Bergstrom*, 703 N.W.2d 415, 419 (Iowa 2005) (internal citations omitted).

## ***III. Discussion.***

To establish plaintiffs' claims of negligence, they must prove that (1) Spherion owed them a duty of care, (2) Spherion breached or violated that duty of care, (3) its breach or violation was a proximate cause of their injuries, and (4) damages. *Raas v. State*, 729 N.W.2d 444, 447 (Iowa 2007). Although the existence of a legal duty is a question of law, *Kolbe v. State*, 661 N.W.2d 142, 146 (Iowa 2003), the question of whether a party's conduct constituted a breach of that duty is usually a fact question for the fact-finder rather than a question of law. *Knake v. King*, 492 N.W.2d 416, 417 (Iowa 1992). Here, the district court found that Spherion owed a duty to exercise reasonable care in

providing information for the plaintiffs' guidance; however, the court found that plaintiffs failed to prove Spherion breached that duty by a preponderance of the evidence. The district court's factual finding that Spherion did not breach the requisite duty of care, as stated above, has the force of a special verdict and is binding on us if supported by substantial evidence. Viewing the evidence in the light most favorable to the district court's judgment, we find the judgment to be supported by substantial evidence.

Foremost, it was undisputed that Spherion did not represent to Stoneking that it would verify an employment candidate's educational and criminal history, and Stoneking did not specifically ask Spherion to perform such services. The Spherion license-holder who operated the Clear Lake Spherion office testified that her office and Spherion's corporate office did not have a blanket policy of performing criminal background checks on every employment candidate, and they did not represent to their employer-clients that they did perform that service. Plaintiffs did not offer any evidence that verifying educational and criminal histories of employment candidates was an industry standard in similar staffing firms. Stoneking admitted he told Spherion he needed someone to answer the phones, get the mail, and take care of general bookkeeping. He also admitted he did not tell Spherion that Krauth would be allowed access to signed, blank checks, would be the sole person to review the general ledger, would be handling cash, and would have complete access to his and InjectTech's bank accounts. Furthermore, other than providing Krauth's name as a potential employment candidate, Stoneking admitted that Spherion had no part in his

ultimate hiring decision. We find the district court's judgment to be supported by substantial evidence. We accordingly affirm the judgment of the district court.

***IV. Conclusion.***

Because we find the district court's judgment to be supported by substantial evidence, we affirm.

**AFFIRMED.**