IN THE COURT OF APPEALS OF IOWA

No. 1-619 / 10-0892
No. 1-624 / 10-1447
Filed September 8, 2011

RUDYARD GROUP, L.L.C.,
Plaintiff-Appellant,

vs.

ROBERT DINGLE,
Defendant-Appellee.

Appeals from the Iowa District Court for Harrison County, James S. Heckerman, Judge.

Rudyard Group, L.L.C. appeals from the district court's decision to grant Robert Dingle's motion for directed verdict and from the district court's ruling declining to impose sanctions against Dingle. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Warren L. Bush of Bush Law Office, Wall Lake, for appellant.

Robert Dingle, Lady Lake, Florida, pro se appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.

This consolidated appeal involves Rudyard Group L.L.C.'s appeals from the district court's decision to grant a directed verdict in favor of Robert Dingle and from the court's later decision not to impose sanctions against Dingle. Dingle has not participated in the appeal.

I. Background Facts and Proceedings

In early 2005, Rudyard was the owner of a Prevost motor coach (the bus). On March 6, 2005, Rosemary Grady (Rose) emailed Robert Dingle, a friend who sold coaches for a living and had sold her the bus as an agent of Rudyard. She informed Dingle she was ill, had moved out of Iowa, and was leaving her longtime companion, John Kyreakakis, with whom Dingle was also friends. Her email continued,

> So, I think we better sell the bus and get it turned into green stuff and get on with life. Frankly John did not like traveling . . . so I have to sell the bus in order to get the funds to get him on his way.
>
> No matter what, I will not sell for less than $750,000 which does not include your commission.
>
> Let me know your thoughts.
>
> Rose

Dingle testified that after receiving Rose's email, he had phone conversations with her in which she gave him authority to take the bus and sell it.

Dingle testified that he arranged appointments with several potential customers to see the bus and sometime between March 10 and March 13, 2005, he drove the bus to Gulfport, Mississippi, to sell it.

Dingle testified he found a buyer, Greg Ervin, who, along with his daughter Kylee Ervin, met Dingle and John in Gulfport on May 26, 2005. Dingle had

previously communicated with Ervin via email, giving Ervin instructions as to how to pay a $5000 deposit on the bus and stating, "John is the owner." Greg and Dingle both stated they had had negotiations regarding the sale of the bus prior to meeting in Gulfport. Greg and Kylee both testified by deposition that they met John and Dingle in Gulfport to complete the sale of the bus. Kylee stated Dingle informed her they were selling the bus because John's wife Rose, who actually drove and operated the bus, had passed away. At trial, Dingle testified he never told the Ervins Rose had passed away, but he heard John say this.

Ultimately, the Ervins bought the bus that day for $735,000.[1] Dingle testified both John and Rose agreed to this sale price. Greg stated Dingle carried out the negotiations, and Kylee stated John was present during discussions regarding the sale price. Dingle testified at a pretrial deposition read into the record at trial that he believed the bus was subject to a fairly large lien, which was released when the Ervins purchased the bus. Dingle's testimony in depositions and at trial regarding the details of the sale was inconsistent and will be discussed in further detail below.

Rose apparently never received any proceeds from the sale of the bus and did not know it had been sold. On October 3, 2005, Rose sent a letter to John stating it had come to her attention that he had not paid the insurance premium for the bus. She then gave him two choices: (1) purchase the bus for $400,000; or (2) return the bus to Rudyard. John did not do either; he had

[1] The bus sold for a total price of $740,000, including the $5000 deposit paid by the Ervins.

already sold the bus. In December 2005, Rose hired a private investigator to locate the bus, but the investigator was unsuccessful.

On January 6, 2006, Rose called the Harrison County Sheriff's Office to report the bus as stolen. According to the transcript of this call, she informed the deputy on duty that she knew who had stolen the bus and named John. She stated he took the bus in March 2005, but she had not spoken with him since April 2005. She stated at that time he told her "he was going to live in [the bus] for awhile and then he'd figure out what he was going to do." Rose stated John did not have permission to take the bus.

Sometime in January 2006, Rose saw the bus on Extreme Makeover: Home Edition and tracked it to the Ervins. Kylee spoke with Rose and testified by deposition that Rose was irate, claiming John and Dingle had stolen her bus because they thought she would be dead and would not know. Kylee testified Rose stated she had physical possession of the title to the bus and believed Dingle and John had applied for a duplicate title.

Rose died on August 2, 2006, and did not testify at trial or by deposition.[2] She assigned her interest in Rudyard to her brother, James Grady. He continued Rose's pursuit of the bus sales proceeds. On June 21, 2007, Rudyard filed a petition naming Dingle as a defendant, asserting he had taken possession of the bus and sold it without permission. Rudyard later amended the petition to add

[2] Rose and John both died before trial. Portions of John's deposition testimony were admitted at trial. Rose's statements were presented to the jury through her e-mail, Dingle's testimony, a police incident report, a transcript of her 2006 call to the Harrison County Sheriff, and the testimony of her brother, James Grady.

John as a defendant.[3] The petition alleged Dingle was liable for conversion and John and Dingle were both liable for conspiracy. The petition also alleged John had wrongfully received the proceeds from the bus sale.

Dingle was deposed on May 12, 2008. He stated he did not know what happened to the proceeds from the bus sale. He explained he believed the Ervins wired the money to an account belonging to Rose. He stated John had never told him he got any money from the sale. At trial, Dingle testified he did not learn until the time of his deposition that the money had not been wired to Rose's account but had instead gone to an account owned by Whiteway Investments Inc, which was ultimately linked to John.

The matter was tried to a jury in April 2010. At the close of all the evidence, the court noted it was "having difficulty at this understanding why Mr. Dingle is in this case." Dingle made a motion for directed verdict, asserting the circumstantial evidence clearly established he had permission to take the bus. The district court sustained Dingle's motion for directed verdict, relying heavily on Rose's March 6, 2005 email to Dingle "as being authority for him . . . to sell the [bus]."[4] The jury returned a verdict against John's estate for $375,000 for conversion of the bus. The conspiracy count was not submitted, since the court had dismissed the case against Dingle.

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[3] When John died on October 1, 2008, Elena Kyreakakis, administrator of his estate, was substituted in his place as a defendant. Rudyard also named its insurance carrier as a defendant. The insurance carrier is not involved on appeal.

[4] The court also relied on this exhibit to grant Rudyard's motion for directed verdict on a claim by Dingle for unpaid commission. The court found the email clearly stated Dingle would only be awarded commission in the amount the sale exceeded $750,000.

On May 12, 2010, Rudyard filed an application to show cause and to impose sanctions, asserting Dingle gave false testimony in his depositions relating to the sale of the bus. Specifically, Rudyard asserted Dingle gave false testimony regarding who owned the account to which the money was wired and who provided him with the title, the release of lien documents, and the wire transfer information. Rudyard alleged that because of Dingle's false testimony, it had wasted hundreds of hours trying to determine who actually provided the documents relating to the sale of the bus and who received the money from the sale. In an affidavit in support of this application, Rudyard argued Dingle failed to supplement discovery asking for the name, address, and telephone number of the officers, directors, and shareholders of Whiteway. As proof of Dingle's knowledge regarding Whiteway, Rudyard asserted John had given Dingle an envelope containing "all of the records" relating to Whiteway, which Dingle had opened after John's death per John's instructions and had mailed to his attorney in October 2008. Rudyard claimed one of the documents had information relating to a trust created by John which indicated John had power of attorney with respect to Whiteway Investments Inc.

On May 21, 2010, Dingle filed a resistance to Rudyard's application, asserting his testimony was consistent throughout the case and that any documentation he had was not specifically requested by Rudyard in discovery and was not relevant to the case.

On August 4, 2010, after a hearing on Rudyard's application to show cause and impose sanctions, the district court overruled the application. The

court concluded documents possessed by Dingle made no reference to the ownership of Whiteway, would not be reasonably calculated to lead to the discovery of any admissible or relevant information, and had not been specifically requested by Rudyard. The court further concluded Dingle should not be held in contempt for lying under oath, stating, "Any inconsistencies in statements were merely a mistake in fact."

Rudyard appeals from the district court's ruling sustaining Dingle's motion for directed verdict and from the district court's ruling declining to impose sanctions against Dingle. We consolidate the two appeals for purposes of our opinion.

II. Directed Verdict

Rudyard asserts the district court erred in granting Dingle's motion for directed verdict. Rudyard argues substantial evidence existed showing Dingle and John conspired to convert Rudyard's bus. When viewing the evidence in the light most favorable to Rudyard, we agree.

We review appeals from the grant of a motion for directed verdict for correction of errors at law. *Mensink v. Am. Grain*, 564 N.W.2d 376, 379 (Iowa 1997). A directed verdict should be granted only if there is not substantial evidence to support the elements of a party's claim. *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 472 (Iowa 2005). In determining whether there is substantial evidence, the court must view the evidence in the light most favorable to the non-moving party. *Id.* at 473. If reasonable minds could differ on an issue

of fact, a directed verdict on the issue is not appropriate. *Harriott v. Tronvold*, 671 N.W.2d 417, 418 (Iowa 2003).

We conclude reasonable minds could differ on whether Rose gave Dingle permission to take the bus. Rose's March 6, 2005 email did not expressly give Dingle permission to sell the bus, but rather sought Dingle's advice, as was evidenced by her closing, "Let me know your thoughts." Further, when she later spoke with a police officer about filing a stolen vehicle report, she explicitly stated no one had permission to take the bus. Dingle's credibility in testifying Rose and he had telephone conversations in which she asked him to sell the bus was a question for the jury, not the court.

Viewing the evidence in the light most favorable to Rudyard, we find there was substantial evidence tending to show Dingle acted with John to convert the bus. Dingle's testimony to the contrary was subject to the jury's credibility determination. We conclude the district court erred in granting Dingle's motion for directed verdict. We remand for a new jury trial. *See Wernimont v. State*, 312 N.W.2d 568, 571 (Iowa 1981) (citing *Larkin v. Bierman*, 213 N.W.2d 487, 490 (Iowa 1973) for the proposition that trial courts should delay sustaining a motion for directed verdict until after the jury verdict to avoid retrial if there is a reversal).

III. Sanctions

Rudyard asserts the district court "abused its discretion by ignoring a plethora of prior false and inconsistent testimony" and erred in declining to impose financial sanctions against Dingle for failure to produce discovery and for

false testimony. Rudyard points specifically to Dingle's testimony regarding: (1) who obtained the account number to which the Ervins wired the proceeds for the sale of the bus; (2) whether Dingle knew who received the money from the sale of the bus; and (3) whether Dingle knew John was the owner of Whiteway. Rudyard also asserts Dingle should be sanctioned for failing to timely supplement his answers to interrogatories seeking information about the officers, directors, and shareholders of Whiteway.

We review a district court's decision on whether to impose sanctions for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). We find such an abuse when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State ex rel. Miller v. Nat'l Dietary Research, Inc.*, 454 N.W.2d 820, 822 (Iowa 1990). "Unreasonable" in this context means not based on substantial evidence. *Citizens' Aide/Ombudsman v. Rolfes*, 454 N.W.2d 815, 819 (Iowa 1990).

A. False and Inconsistent Testimony

Rudyard asserts Dingle repeatedly made false statements designed to frustrate Rudyard's attempts to track and recover the bus proceeds. The district court disagreed, finding Dingle's responses "were directed toward different parties, and therefore, were not entirely related, misleading, and the defendant did not answer the questions with knowledge of falsity." We find the district court's conclusions in this regard were within its discretion.

During a trial on separate matters in 2007 and during Dingle's first deposition in May 2008, Dingle stated unequivocally that Rose gave him an

account number to which the sale proceeds should be wired. He stated he handed this information over to the Ervins. At his deposition in November 2009, when Dingle was asked who provided the buyer with details as to where the funds should be transferred, Dingle testified, "John had it." Further, Dingle stated he never had "the identity of the account or the name of the account or the location of the account where the money was to be transferred." At trial, however, Dingle testified that he could not remember whether he obtained the transfer numbers or whether John did, concluding, "I can't positively say I got them but I thought I had." Dingle further testified that despite his previous statements to the contrary, he did not give the account number to the Ervins. He testified John walked into another building with the Ervins and the wire transfer occurred there.

Regarding the title and lien release, Dingle stated at a May 2008 deposition that Rose had sent him the title to the bus with a letter via FedEx. At a deposition in November 2009, Dingle stated John had the title and lien release in an envelope. At trial, Dingle testified that although he knew it was an important detail, he could not remember how he and John had obtained the title and lien release. He simply remembered it being in a brown FedEx envelope.

Dingle was also questioned about who received the proceeds from the sale of the bus. At his May 2008 deposition, Dingle stated he did not know what happened to the money, but he believed it was wired to Rose's account. He further stated John had never told him that he received the money. At his November 2009 deposition, Dingle stated he had learned at "that deposition"

(presumably his May 2008 deposition) that the money from the sale of the bus had been received by Whiteway. He stated that since that time he came to know that John owned Whiteway. He further stated he did not believe Rose had an interest in Whiteway. He also stated that based on conversations he had with John in August 2005, he assumed John had received the proceeds from the sale of the bus, but John had never told him he received the proceeds. At trial, Dingle testified he learned at his May 12, 2008 deposition that the money went to an account owned by Whiteway.

After examining in detail Dingle's testimony regarding who obtained the account number to which the funds would be transferred, who gave the transfer instructions to the buyer, and whether Dingle had knowledge that Whiteway had received the bus sales proceeds, we affirm the district court's decision declining to impose sanctions against Dingle for alleged false testimony. The district court did not abuse its discretion in finding that Dingle answered questions "to the best of his own factual perception" at the times of deposition and trial.

B. Failure to Supplement Answers to Interrogatories

Rudyard asserts the district court erred in declining to sanction Dingle for failing to timely supplement his answers to interrogatories seeking information about the officers, directors, and shareholders of Whiteway. Rudyard sent Dingle an interrogatory asking:

> List the name and, if known, the address and telephone number of the corporate officer, member of the board of Directors, and each and every shareholder or unit holder of Whiteway Investments Inc. or Whiteway Investments LLC from inception to the present time. Also identify any document showing any changes in corporate officers, members of the Board of Directors and

> shareholders of such entities. Under the laws of what state or country was the entity formed?

Dingle responded, "I don't know." Rudyard asserts Dingle should have supplemented his response once he obtained knowledge regarding John's involvement in Whiteway from a trust document and a quitclaim deed containing relevant information.

The trust document at issue was executed in January 2007 and arranged for Dingle to be the beneficiary of a trust created by John. The document was signed by both John and Dingle. A schedule attached to the document was signed by John and listed the property made part of the trust, including property "Held by Title under White Way Investments Inc. of Panama City, Panama, under my power of attorney John Kyreakakis." Dingle asserted the attachment, page five of the trust document, was not part of the trust document at the time he signed it. The trust document specifically referenced an attached scheduled, and John's signature was witnessed by an individual who signed a statement saying the trust instrument consisted of five pages.

In addition, on August 4, 2008, John signed a quitclaim deed granting Dingle a property in Florida for the consideration of ten dollars. John signed the document as the "Attorney-in-Fact for WHITEWAY INVESTMENTS, INC., Grantor, Pursuant to written General Power of Attorney dated February 25, 2005." Though the document was not signed by Dingle, it clearly listed Dingle as the grantee and Whiteway as the grantor.

Rudyard asserts Dingle's response that he did not know who owned Whiteway was further contradicted by Whiteway's bank records showing that at

the time of his May 2008 deposition, Dingle had received over $85,000 from Whiteway. Dingle testified, however, that when money was wired to his account from Whiteway's account, the transfer listed only the name of Whiteway's bank. He stated he received money from the Whiteway account as repayment for John's expenses, which he frequently paid.

Rudyard asserts the trust document, bank records, and quitclaim deed prove Dingle had knowledge regarding John's involvement in Whiteway and should have supplemented his response to the interrogatory to reflect such knowledge.

Iowa Rule of Civil Procedure 1.503(4) provides:

> a. A party is under a duty seasonably to supplement the response [to a request for discovery] with respect to any question directly addressed to any of the following:
> (1) The identity and location of persons having knowledge of discoverable matters.
> . . . .
> (3) Any matter that bears materially upon a claim or defense asserted by any party to the action.

"[D]iscovery rules are to be liberally construed to effectuate disclosure of relevant information to the parties." *Pollock v. Deere & Co.*, 282 N.W.2d 735, 738 (Iowa 1979). Discovery rules permitting wide-ranging discovery in civil cases permit civil litigants "to discover information regardless of its relevance and its admissibility in their civil lawsuit if the information appears reasonably calculated to lead to the discovery of admissible evidence." *State ex rel. Shanahan v. Iowa Dist. Ct.*, 356 N.W.2d 523, 530 (Iowa 1984) (internal quotation omitted).

The district court concluded, "[T]he trust made no reference to the ownership of Whiteway Inv., Inc.; only that John Kyreakakis had power of

attorney with respect to Whiteway Inv., Inc." The court continued, "Because the trust did not identify the ownership of Whiteway, Inv., Inc., it must be determined whether the document was reasonably calculated to lead to the discovery of admissible evidence which would indicate the ownership of Whiteway Inv., Inc." The court found Dingle "never possessed documentation identifying John Kyreakakis as sole owner" of Whiteway. The court concluded the trust document "would not be reasonably calculated to lead to discovery of any admissible or relevant information without a specific request."

We find the district court did not abuse its discretion in declining to impose sanctions against Dingle for failing to supplement his answers to this interrogatory. The question, as worded, did not impose upon Dingle a duty to disclose any knowledge he had regarding Whiteway. Rather, the interrogatory specifically requested information regarding the officers, directors, and shareholders of Whiteway. Neither the quitclaim deed nor the trust document suggested that John served in any of these positions. The documents in Dingle's possession simply listed John as an individual having a power of attorney for Whiteway, a fact not requested in Rudyard's interrogatories. Because Rudyard failed to show that Dingle possessed knowledge regarding the officers, directors, and shareholders of Whiteway, we conclude the district court did not abuse its discretion in declining to impose sanctions against Dingle for failing to supplement his answer to Rudyard's interrogatory on this subject.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.