

IN THE COURT OF APPEALS OF IOWA

No. 8-529 / 07-1816
Filed August 13, 2008

**MICHAEL D. UMBDENSTOCK and
DEAN UMBDENSTOCK,**
Plaintiffs-Appellants,

vs.

**INTERSTATE POWER COMPANY, a/k/a
INTERSTATE POWER AND LIGHT CO.,
a/k/a INTERSTATE POWER AND LIGHT
COMPANY, a/k/a ALLIANT ENERGY,
a/k/a ALLIANT ENERGY COMPANY,
a/k/a ALLIANT ENERGY CORPORATION,
a/k/a IES UTILITIES, INC.**
Defendant-Appellee

Appeal from the Iowa District Court for Linn County, Mitchell E. Turner,
Judge.

The plaintiffs appeal from a judgment entered on a jury verdict in
defendant's favor in plaintiffs' action for damages caused to plaintiffs' dairy
operation as a result of stray voltage from defendant's electrical system.

AFFIRMED.

Peter Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellants.

Leonard Strand of Simmons Perrine P.L.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Michael and Dean Umbdenstock appeal a judgment entered for Interstate Power and Light Company (IPLC) after a jury trial in this negligence case.¹ The Umbdenstocks claim the trial court erred in admitting into evidence a portion of a United States Department of Agriculture (USDA) publication.

Michael and Dean Umbdenstock operated a dairy farm in Tama County. Umbdenstocks suspected stray voltage was harming their dairy cows and contacted IPLC, the utility company that provided electricity to the farm.² In 2003 IPLC visited the farm, conducted testing, made adjustments to the electrical service, and made recommendations to Umbdenstocks regarding their electrical system. IPLC visited the farm again in 2004 and 2005 to conduct additional testing. The results of the three testings showed stray voltage under 1.0 volt.

Umbdenstocks brought an action against IPLC on May 24, 2005, contending IPLC was liable for alleged damages to Umbdenstocks' dairy farm as a result of stray voltage. On June 30, 2007, the district court granted IPLC's motion for summary judgment as to Umbdenstocks' claims of strict liability and breach of implied warranty of fitness for a particular purpose and denied IPLC's motion for summary judgment as to Umbdenstocks' negligence claim.

Trial commenced and on August 24, 2007, the jury returned a verdict finding IPLC was not at fault. During trial, IPLC offered as Exhibit "O," chapter

¹ The parties refer to the defendant in their briefs as Interstate Power and Light Company and Alliant Energy. The appropriate defendant is unclear given a series of mergers and other transactions. The district court entered judgment for Interstate Power and Light Company. We will therefore refer to the defendant in this case as Interstate Power and Light Company (IPLC).

² The parties dispute whether Umbdenstocks first contacted IPLC in 2000 or 2003.

three of a USDA publication dealing with stray voltage entitled “*Effects of Electrical Voltage/Current on Farm Animals: How to Detect and Remedy Problems.*” The exhibit was received into evidence over Umbdenstocks’ objection. Umbdenstocks sought a new trial, contending the district court erred in admitting Exhibit “O.” The court denied the motion on September 25, 2007. Umbdenstocks now appeal.

We review hearsay rulings for corrections of errors at law. *State v. Newell*, 710 N.W.2d 6, 18 (Iowa 2006); *State v. Buenaventura*, 660 N.W.2d 38, 50 (Iowa 2003). In addition, error may not be predicated upon a ruling which admits or excludes evidence unless a “substantial right of a party is affected. . . .” Iowa R. Evid. 5.103(a).

At trial, Umbdenstocks objected to the admission of the entire exhibit on the grounds that it did not come within the public records and reports exception pursuant to Iowa Rule of Evidence 5.803(8). Rule 5.803(8) provides an exception to the hearsay rule for:

[R]ecords, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to a duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

The Umbdenstocks argue the district court erred in admitting IPLC’s Exhibit “O.” Exhibit “O” is chapter three of the USDA Red Book, published in December of 1991, and authored by fifteen scientists recognized as credible researchers and reviewers of scientific literature and who were active in farm electric issues at that time. Specifically, chapter three was authored by Daniel J.

Aneshansley and R.C. Gorewits, and deals with physiological and behavioral effects of stray voltage, summarizing the levels of stray voltage current which have an effect on dairy cows.

We find no error in the admission of Exhibit "O" over Umbdenstocks' hearsay objection. It was admissible as a public record or report pursuant to rule 5.803(8). In addition, Umbdenstocks' expert witness Gerald Bodman testified about chapter three of the Red Book during direct and cross examination, and IPLC's expert witness Charles Forster later testified about chapter three of the Red Book without objection. Therefore, we further conclude that even if the hearsay exception set forth in Iowa Rule of Evidence 5.803(8) does not apply, no substantial rights of the Umbdenstocks were affected by the district court's ruling. Iowa R. Evid. 5.103(a); *Buenaventura*, 660 N.W.2d at 50. Prejudice has not been established in this case. *State v. Long*, 628 N.W.2d 440, 447 (Iowa 2001). We affirm.

AFFIRMED.