

IN THE COURT OF APPEALS OF IOWA

No. 6-1010 / 05-1934
Filed July 25, 2007

DEBRUCE GRAIN, INC.,
Plaintiff,

vs.

MAURICE D. MITCHELL, SR.,
Defendant-Appellant,

CARGILL INCORPORATED,
Defendant-Appellee,

MARVIN MITCHELL AND CHARLES SMITH,
Bankruptcy Trustees for the Estate of Marvin
Mitchell,
Defendants.

Appeal from the Iowa District Court for Union County, Sherman W.
Phipps, Judge.

Maurice D. Mitchell, Sr. appeals the district court's ruling finding Marvin
Mitchell was the owner of a grain contract with DeBruce Grain, Inc. **AFFIRMED.**

David L. Leitner of Leitner Law Office, West Des Moines and Peter C.
Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Jacob D. Bylund of Faegre & Benson, L.L.P., Des Moines, for appellee.

Heard by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

Maurice D. Mitchell, Sr. (Maurice) appeals the district court's ruling finding Marvin Mitchell (Marvin) was the owner of a grain contract with DeBruce Grain, Inc. (DeBruce). He contends the court erred in failing to find he was the owner of the grain contract, failing to recognize that his changes to the contract confirmation modified the contract, and failing to find he was the owner of the grain. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

The record reveals the following facts. DeBruce is a Missouri corporation which operates a grain elevator in Creston, Iowa. The location manager at DeBruce, Dean Michaelson, oversees the grain portion of the facility and makes contracts to buy grain from sellers. DeBruce makes forward contracts in the spring to buy grain from farmers in the fall by offering them a quote based on the futures market value for the particular grain. These forward contracts are often made over the phone and are almost always oral contracts.

Maurice and Marvin, father and son, are both farmers and residents of West Des Moines, Iowa. Marlene Mitchell (Marlene) is Marvin's wife. Maurice has farmed all of his adult life and thus is experienced in buying and selling grain. Prior to and following a bankruptcy filing by Marvin and Marlene in 2002, Marvin and Marlene conducted business under names including "Mitchell Farms." In August 2003, Maurice opened a bank account at Liberty Bank which he called the "Mitchell Farms Clearing Account."

On April 12, 2004, Marvin contacted Michaelson at DeBruce by phone to obtain a bid for the sale of soybeans. Although Michaelson did not know Marvin personally, he had heard of him from the business Marvin had done with the fertilizer division of DeBruce. Marvin requested a bid for October delivery of 36,000 bushels of soybeans. Michaelson offered to pay Marvin \$7.43 per bushel. Marvin accepted. Marvin did not have an account with DeBruce so he requested Michaelson set one up for him under the name "Mitchell Farms Clearing Account." Michaelson did so and assigned Marvin a customer account number. While Michaelson was on the telephone with Marvin he recorded information onto a written form. The form included Marvin's name, phone number, social security number, and an address given to him by Marvin which was actually Maurice's address. Michaelson testified he had never heard of Maurice at that time and thus could not have been aware the address given to him by Marvin was actually Maurice's address. During the conversation Marvin never mentioned he was in any way acting on behalf of Maurice.

After the information provided to DeBruce by Marvin was entered into the computer, DeBruce generated a confirmation entitled "Purchase Contract Confirmation" and mailed it to the address provided by Marvin. The confirmation listed DeBruce as the "Buyer" and Marvin as the "Customer Representative" and "Seller." It further provided that the soybeans were "Bought From: Mitchell Farms Clearing Acct" and listed the customer identification number Michaelson had assigned to Marvin.

Upon receiving the confirmation sent by DeBruce, Maurice wrote "Mitchell Farms Clearing act" above the signature spaces, crossed out Marvin's first name, substituted his first name for Marvin's as "Seller", dated it April 16, 2004, and signed it as the "Seller" and person "accepting" the confirmation. At trial Maurice testified that he called DeBruce about correcting the confirmation because he was not sure if he needed to initial the change. He alleged someone at DeBruce told him to scratch out Marvin's name, insert the correct one, sign it and send it back. However, Maurice did not know the name of the person at DeBruce to whom he allegedly had spoken and did not mention this call until his testimony during trial. Maurice then mailed the confirmation back to DeBruce where a clerical employee at DeBruce logged it into the computer and initialed and dated it to indicate it had been so logged.

At the end of September DeBruce began to run lien searches on Marvin in anticipation of his delivery of soybeans on his contract because Marvin was the person DeBruce believed the contract to be with and the only person it knew to be connected with the account. Through these searches DeBruce learned of a judgment debt Marvin owed to Cargill, his bankruptcy, and the fact he might be selling grain under names other than his own.

In October 2004, soybeans were delivered to DeBruce pursuant to the April contract. There was an overrun of 115.66 bushels, so DeBruce drafted an overrun contract confirmation for that amount to "Mitchell Farms Clearing Account in care of Marvin R. Mitchell." Following delivery of the soybeans, and upon learning DeBruce was preparing to make payment to Marvin and his

creditors, Maurice demanded DeBruce make payment on the contract to him. DeBruce refused to make payment to Maurice because it believed its contract to be with Marvin.

Maurice lodged a complaint with the Iowa Department of Agriculture against DeBruce for non-payment. Marvin also had his attorney send DeBruce a letter demanding the proceeds be paid to Maurice. DeBruce responded by filing the current interpleader petition on October 25, 2004, naming Marvin, Maurice, and Charles Smith, Marvin's bankruptcy trustee, as defendants.¹ DeBruce deposited the proceeds of the April bean contract with the county clerk of court. The petition was later amended to add Cargill as a defendant and claimant to the proceeds. Cargill claimed the contract proceeds as a judgment creditor of Marvin while Maurice claimed the proceeds on the ground it was his contract and he owned the beans.

Affidavits of all three defendants were prepared and presented to the district court. Marvin and Smith both disclaimed any interest in the proceeds while Maurice claimed them. Based on these affidavits, the court ordered the clerk of court to issue a check for the full amount of the proceeds to Maurice. This order was later set aside on November 8, 2004. Marvin did not file an answer to DeBruce's interpleader petition, and DeBruce filed a motion for default against him which was granted by the district court. DeBruce then filed a motion for statutory discharge which was also granted as to the sums deposited with the clerk of court. The matter then proceeded to trial on June 13-15, 2005, with Cargill and Maurice as the only remaining parties.

¹ Marvin and Marlene had filed a Chapter 7 bankruptcy petition in March 2002.

The district court noted that the parties had agreed the only issue before the court was with whom DeBruce contracted to purchase soybeans and thus to whom the court was required to remit the contract proceeds, Marvin or Maurice. The court noted that if the contract at issue was with Marvin, as pled by DeBruce, then Cargill as a lien creditor of Marvin with the senior interest in his agricultural products or their proceeds would be entitled to the contract proceeds.

The court concluded the contract was by and between Marvin and DeBruce and therefore ordered that contract proceeds be released to Cargill in an amount sufficient to satisfy its judgment against Marvin. More specifically, the court found (1) an oral contract was entered into between Marvin and DeBruce via their telephone conversation on April 12, 2004; (2) Maurice failed to meet his burden to prove the existence of an employment relationship between himself and Marvin and thus Marvin was not acting as Maurice's employee in entering into the oral contract with DeBruce; and (3) Maurice's act of removing Marvin's name on the contract confirmation, and then signing and returning the confirmation to DeBruce, did not create a written contract with DeBruce or otherwise make Maurice a party to the contract.

Maurice filed motions to amend or enlarge the court's findings and conclusions, for new trial, and for a stay. The motions for new trial and stay were denied. His motion to amend or enlarge was granted and the court issued a corrected ruling adding specific findings that there was not sufficient credible evidence in the trial record to determine who owned the soybeans delivered to

DeBruce, and there was not sufficient evidence that Marvin was acting as Maurice's agent in making the contract with DeBruce.

Maurice appeals contending the court erred in (1) failing to find the he was the owner of the grain contract because he was the owner of the "Mitchell Farms Clearing Account" and Marvin entered into the contract on Maurice's behalf as his agent, (2) failing to recognize Maurice's changes to the contract confirmation as a modification to the contract with DeBruce, and (3) failing to find he was the owner of the grain and therefore entitled to the proceeds.

II. SCOPE AND STANDARDS OF REVIEW.

Interpleader is an equitable action. *C.F. Sales, Inc. v. Amfert, Inc.*, 344 N.W.2d 543, 550 (Iowa 1983). Both parties agree they consider the case to have been tried as an equitable action. We will review a case on appeal in the same manner it was tried in district court. *Johnson v. Kaster*, 637 N.W.2d 174, 177 (Iowa 2001). We review equity cases de novo. Iowa R. App. P. 6.4. Accordingly, we examine the facts and law and decide anew the issues properly preserved. *Johnson*. 637 N.W.2d at 177. We give weight to the fact findings of the district court, especially when considering witness credibility, but we are not bound by such findings. Iowa R. App. P. 6.14(6)(g); *Orud v. Groth*, 708 N.W.2d 72, 75 (Iowa 2006).

III. MERITS.

Maurice first claims that the district court erred in failing to find he was the owner of the grain contract with DeBruce. As noted above, during the April 12, 2004, phone conversation between Michaelson and Marvin, Marvin did not once

state he was calling on behalf of Maurice. Marvin simply called to request a bid for October delivery of 36,000 bushels of soybeans to DeBruce. Michaelson testified he had heard of Marvin and knew of his large farming operation from Marvin's dealings with DeBruce's fertilizer division, but had never heard of Maurice. While on the telephone with Marvin, Michaelson recorded information onto a written form to set up an account for Marvin. The form, which was entered into evidence at trial, included Marvin's name, phone number, social security number, and an address given to Michaelson by Marvin.² Michaelson also assigned Marvin an account number at that time. At Marvin's request, DeBruce identified his account with DeBruce as the "Mitchell Farms Clearing Account" and that is who the contract confirmation shows the grain was bought from. The address given to Michaelson by Marvin was in fact Maurice's address, but because Michaelson did not know Maurice he was unaware of that and believed the address given was Marvin's.

Maurice does not dispute that an oral contract was in fact entered into during the telephone conversation on April 12, 2004, but only disputes who the parties to the contract were. He first argues the contract was with him because he is the owner of the "Mitchell Farms Clearing Account" and Marvin entered into the oral contract with DeBruce on Maurice's behalf as his agent.³

The confirmation on its face provides that the soybeans were bought from "Mitchell Farms Clearing Account." In August 2003 Maurice did in fact open a

² Although Marvin's social security number could not be seen on the copy of the form admitted at trial, Michaelson testified he wrote it on the original form.

³ Maurice does not claim on appeal the district court erred in finding Marvin was not acting as his employee.

bank account at Liberty Bank which he called the “Mitchell Farms Clearing Account,” and he owned that account. Although his argument is not entirely clear Maurice appears to argue that the contract at issue was with “Mitchell Farms Clearing Account,” he owned a bank account with the same name, and he is therefore the owner of the contract. However, we agree with the district court that a bank account is not a legal entity and is therefore not capable of entering into a contract. Thus, the contract cannot have been with the Liberty Bank “Mitchell Farms Clearing Account.”

Furthermore, it is clear from the record that the name “Mitchell Farms Clearing Account” refers to two entirely separate and distinct things in this case. It is the name Maurice assigned to his account at Liberty Bank. It is also a name Marvin provided to be used on the account arising from the contract he discussed with DeBruce during his April 12, 2004, telephone conversation with Michaelson. The only one of these two accounts which has any bearing on the issue at hand, who owns the grain contract with DeBruce and is thus entitled to the proceeds therefrom, is the second one. Accordingly, the fact Maurice owns a Liberty Bank account by the name “Mitchell Farms Clearing Account” does not mean he owns the contract DeBruce entered on April 12, 2004, an account to which Marvin assigned an identical name.

Maurice also argues the DeBruce contract was with him because Marvin entered into the contract on his behalf as his agent. The burden of proving the existence of an agency relationship rests with the party seeking to establish its existence. *Chariton Feed & Grain, Inc. v. Harder*, 369 N.W.2d 777, 789 (Iowa

1985). Thus, the burden here lies with Maurice to prove Marvin was acting as his agent at the time he called DeBruce. The question of the existence of a principal-agent relationship is ordinarily a question of fact. *Pillsbury Co. v. Ward*, 250 N.W.2d 35, 38 (Iowa 1977). An agency relationship results from (1) a manifestation of consent by one person that another shall act on the former's behalf and subject to the former's control and (2) the consent of the latter to so act. *Id.*

On the specific issue of an agency relationship, the district court found “there was not sufficient evidence in the record at trial to find that Marvin Mitchell was acting at any time relevant to the issues herein as Maurice Mitchell, Sr.’s agent.” More generally, the court found that Maurice’s testimony on the matter was “not credible” and that

there was no employee/employer, or other, relationship existing between Marvin and Maurice on April 12, 2004, which would have enabled Marvin to act on behalf of Maurice. The court finds that there is no credible evidence that Marvin was acting on behalf of Maurice at the time of his phone call to DeBruce/Michaelson on April 12, 2004.

(Emphasis added.) We agree with the district court that Maurice failed to meet his burden to prove a principal-agent relationship existed between himself and Marvin.

The only evidence at trial of the agency relationship Maurice alleges was his own in-court testimony, which was contradicted by his prior testimony in his answers to interrogatories regarding the relationship between himself and Marvin. Through interrogatories, Maurice was asked to identify services that Marvin had performed on his behalf. He answered that Marvin and he had

exchanged labor and Marvin had assisted him in crop inputs. Maurice did not indicate that Marvin had at any time solicited, negotiated, or entered any contract on Maurice's behalf. Through interrogatories, Maurice was asked to identify all persons who had provided him professional services. Maurice listed six individuals, but did not identify Marvin as having provided any such services. Through interrogatories, Maurice was asked to identify any contract or agreement that Marvin entered into on his behalf. He did not identify the contract with DeBruce. Through his answers to interrogatories Maurice acknowledged that no actual wages had been paid to Marvin and there was no formal documentation of the alleged agency relationship. Other than what might be implied from Maurice's testimony, the record contains no substantial evidence that Marvin consented to act on Maurice's behalf and subject to his control with respect to such things as grain sale contracts.⁴

The district court further found the fact that Maurice's prior testimony directly contradicted his "conclusory trial testimony significantly undercuts the credibility of his testimony, thereby reducing its evidentiary value." We give deference to the court's credibility findings and agree with the court that the inconsistencies between Maurice's answers to interrogatories and his trial testimony undermine his credibility. We conclude Maurice has not met his burden to establish the existence of a principal-agent relationship between himself and Marvin, or that Marvin acted as his agent in entering the oral contract

⁴ Marvin did not testify at trial even though prior to trial Maurice successfully resisted Cargill's motion in limine to exclude Marvin from testifying. Accordingly, there was no testimony from Marvin with respect to the existence of the alleged agency relationship.

with DeBruce. We further conclude that Maurice was not a party to the oral contract with DeBruce.

Maurice next claims that even if we find Marvin did not enter into the oral contract on his behalf as his agent and he himself was not a party to the oral contract with DeBruce, the district court erred in failing to recognize that his changes to the contract confirmation and his act of signing it and returning it to DeBruce created a written contract between himself and DeBruce.

As previously noted, following the telephone conversation between Marvin and Michaelson wherein an oral contract was formed, a contract confirmation was generated by DeBruce and sent to Maurice's address. Michaelson testified he believed he was sending the confirmation to Marvin's address. On the confirmation DeBruce was listed as the "Buyer" and Marvin was listed as the "Seller." The confirmation further provided that the soybeans were "Bought From: Mitchell Farms Clearing Acct" and listed the customer identification number Michaelson had assigned to Marvin. Upon receiving the confirmation sent by DeBruce, Maurice wrote "Mitchell Farms Clearing act" above the top of the signature space, crossed out Marvin's first name and substituted his first name as "Seller," dated it April 16, 2004, and signed it as the "Seller" and person "accepting" the confirmation. In the lower left-hand corner, the contract confirmation provides:

The above covers our understanding of the contract made with you today subject to the terms and conditions on the reverse side of this document. Please sign and return the attached duplicate copy immediately calling any errors or omissions to our attention. Failure to advise us immediately on receipt of this document will be understood by us as your acceptance of these terms.

For several reasons we find this second claim of trial court error to be without merit. First, a contract confirmation such as the “Purchase Contract Confirmation” here is not a contract. See *McCubbib Seed Farm, Inc. v. Tri-Mor Sales, Inc.*, 257 N.W.2d 55, 58 (Iowa 1977). A confirmation is an instrument which is utilized to negate the Statute of Frauds and to allow the introduction of evidence to prove the existence of the oral contract. *Id.* However, a confirmation does not prove the existence of the contract. *Id.* Accordingly, a contract exists irrespective of the existence of a confirmation, and the existence of a confirmation does not establish the existence of a contract. *Id.* at 59. Thus, Maurice’s act of changing terms on the confirmation had no legal significance as it is clear that the contract in this case was the oral contract entered by Marvin and DeBruce on April 12, 2004, not the confirmation that was generated and mailed afterward.

Second, even if we were to assume the confirmation could act as a contract, Maurice had no authority to make modifications, substitutions, or additions to the contract because only parties to a contract can make modifications or additions to the contract and we have already determined Maurice was not a party to the contract. See *Klipp v. Iowa Grain Indem. Fund Bd.*, 502 N.W.2d 9, 11 (Iowa 1993) (“To establish a substitution or novation, the claimant must show (1) a previous valid obligation, (2) agreement of all parties to the new contract, (3) extinguishment of the old contract, and (4) validity of the new contract”). As a non-party he could not somehow become a party to the

contract or make a new contract with DeBruce simply by scratching out Marvin's name and replacing it with his own.

Finally, Maurice argues that regardless of his status as a non-party to the "original" contract by and between DeBruce and Marvin, he was a party to a subsequent contract with DeBruce because DeBruce accepted his proposed modifications to the contract on the contract confirmation form.⁵ In support of his argument Maurice, for the first time at trial, alleged he called DeBruce after he received the confirmation to inform DeBruce the contract should be with him and not Marvin. He testified that an unidentified DeBruce employee told him he could scratch out Marvin's name and insert his own. Thus, he contends DeBruce actually instructed him to modify the confirmation and accepted the modification by so doing.

There is no evidence in the record to support Maurice's testimony that any such phone conversation took place or that any DeBruce employee ever told him to make such modifications. Maurice's own in-court testimony again contradicted his previous sworn statements. In interrogatories Maurice was asked to identify each person with any knowledge of the facts related to the subject of the litigation and what knowledge such persons possessed. Maurice did not identify the DeBruce employee with whom he purportedly had spoken, or state that any such conversation took place. In interrogatories he was also asked to identify "any

⁵ Because we have already determined the confirmation was not a contract, and that Maurice was not a party to the contract at issue, there is no way any amount of scratching out and adding on the confirmation form by Maurice or acceptance by DeBruce employees could have created a contract between himself and DeBruce. However, we will address this issue to the extent it inures in the other issues before us and for the sake of clarity and closure of the issue.

and all alleged statements and/or admissions” by either DeBruce or Cargill which he believed to be pertinent in any respect to the lawsuit, and to provide additional information such as who made the statement(s) or admission(s), and the content thereof. Maurice identified only Michaelson as having made any statement or admission and did not in any manner suggest that Michaelson had made any statements or admissions such as the purported directions from the unidentified DeBruce employee first suggested at trial.

Maurice’s testimony at trial again thoroughly contradicts his several answers to interrogatories and undermines his credibility. The fact that he did not at any time prior to trial mention this seemingly important telephone conversation is telling. We find there is no credible evidence in the record that the alleged conversation with the unidentified employee ever took place.

Maurice also argues DeBruce’s acceptance of his modifications is evidenced by the initials DeBruce placed on the confirmation upon receipt. The confirmation does bear the initials of a DeBruce clerical employee and the date April 20, 2004. However, Michaelson testified that the role of that clerical employee was simply to log the confirmations into the computer when they were returned to DeBruce. When she would receive the returned confirmations she would merely check “yes” or “no” in the computer system to indicate whether a signed confirmation had been returned. Maurice provided no evidence at trial that this clerical employee had any authority to accept changes to a contract for DeBruce or that the initials meant anything more than that a signed confirmation

had been returned. The district court found the initials and date on the confirmation were

nothing more than a notation showing return of the purchase contract confirmation document, which notation was made by a clerical employee of DeBruce assigned the responsibility of noting the date of receipt of such documents but having no authority reflected in this record to act on behalf of DeBruce in modifying contracts or accepting proposed modifications, if in fact this had been a proposed modification.

We fully agree with the court's findings with regard to the notation on the confirmation form. Thus, even if Maurice somehow had the authority to change the contract terms and/or add himself as a party to the contract with DeBruce, there is no evidence of any acceptance by DeBruce of such changes.

Finally, Maurice claims that even if the contract was strictly by and between Marvin and DeBruce, the district court erred in failing to find he was the owner of the soybeans delivered to DeBruce on said contract and therefore entitled to the proceeds. The district court found

There is no evidence in the record made at trial, other than Maurice Mitchell, Sr.'s own self-serving testimony (which the court does not find credible), as to where the beans delivered to DeBruce were raised or by whom they were raised. In any event, the court finds that the beans were clearly delivered on behalf of Marvin Mitchell pursuant to the contract between Marvin and DeBruce.

Prior to trial Maurice filed an affidavit with the court swearing he had produced in his farming operation and owned at all times all of the grain delivered pursuant to the contract at issue. During his trial testimony he admitted he did not raise all of the soybeans as earlier stated in his affidavit. Thus, the affidavit was in fact false in that regard. Maurice then claimed at trial that even though he did not raise all of the soybeans, he in fact owned all of them. His testimony on

this issue was confusing and contradictory, claiming alternately that he had bought some of the soybeans from Marlene Mitchell on October 20, 2004, then that he actually bought them from her earlier and just paid for them on October 20, 2004, and then that some of the soybeans may have actually been owned by the Lucht Trust and may have been produced in 2003.

Based on Maurice's conflicting and contradictory testimony on this issue, as well as the conflicts and contradictions in his sworn statements and testimony throughout the record, we agree with the trial court and conclude that his testimony is almost totally lacking in credibility. We conclude there is not sufficient credible evidence in the record before us to determine that Maurice owned the soybeans delivered to DeBruce. Further, regardless of who owned the soybeans we conclude they were delivered on behalf of Marvin pursuant to his contract with DeBruce and thus Marvin, or his creditors in this case, are entitled to the proceeds from the sale of the soybeans.

IV. CONCLUSION.

Based on or de novo review, and for all of the reasons set forth above, we conclude the contract at issue here was an oral contract by and between Marvin and DeBruce, and those two parties alone. Maurice failed to prove Marvin entered this contract on behalf of Maurice as his agent. We further conclude because the contract confirmation document was not a contract and Maurice was not a party to the oral contract between Marvin and DeBruce, the changes Maurice made to the confirmation could not and did not modify the contract. Finally, we conclude there is not sufficient credible evidence in the record to

determine that Maurice owned the soybeans delivered under the DeBruce contract, and that they were delivered in satisfaction of the contract between DeBruce and Marvin. We therefore affirm the trial court's judgment.

AFFIRMED.