

IN THE COURT OF APPEALS OF IOWA

No. 9-812 / 09-0441
Filed November 12, 2009

MICHAEL COLLIER,
Plaintiff-Appellant,

vs.

SWEDE, L.L.C.,
Defendant-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

Michael Collier appeals the district court's dismissal of his nuisance claim.

AFFIRMED.

Scott H. Peters and Sarah J. Millsap of Peters Law Firm, P.C., Council Bluffs, for appellant.

William R. Hughes, Jr. and Robert M. Livingston of Stuart Tinley Law Firm L.L.P., Council Bluffs, for appellee.

Considered by Eisenhauer, P.J., Doyle, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, J.

Michael Collier appeals the district court's dismissal of his nuisance claim. Nuisance cases can be tried at law or in equity. *Woody v. Machin*, 380 N.W.2d 727, 731 (Iowa 1986). "Our review of the court's decision after trial is governed by how the case was tried in the district court." *Howard v. Schildberg Const. Co.*, 528 N.W.2d 550, 552 (Iowa 1995). Collier's petition was filed in equity and both parties assert de novo appellate review is appropriate. However, the trial judge ruled on objections, the "hallmark of a law trial." See *Sille v. Shaffer*, 297 N.W.2d 379, 380-81 (Iowa 1980). While we "disapprove of the practice of making evidentiary rulings in equity cases, the fact that the trial judge did so does not automatically transform an equity case to one at law." *Howard*, 528 N.W.2d at 552 (noting neither party claims that the trial court improperly excluded evidence). We conclude the trial court's ruling on objections under the circumstances of this case does not prevent a de novo review.

Upon de novo review, we agree with the court's reasoning, its conclusions under the facts presented, and its application of the law. Accordingly, we affirm pursuant to Iowa Rule of Appellate Procedure 6.1203(a), (d).

AFFIRMED.