

TUESDAY, APRIL 27, 2010
9:00 A.M.

NO. 1

#25389

JAMES E. SELLE and
ROSEMARY A. SELLE,
Plaintiffs and Appellees,

vs.

JAMES TOZSER,
Defendant and Appellant.

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Mr. Ross K. Den Herder
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(FOR APPELLANT)

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(FOR APPELLEES)

The Honorable Kathleen F. Trandahl
Sixth Judicial Circuit
Gregory County

(CIV 07-36)

ISSUES ON APPEAL

1. Did Selle present sufficient evidence to establish that Tozser's conduct was improper?

Trial Court's Ruling: The trial court denied Tozser's motion for judgment as a matter of law and submitted Selle's tortious interference claim to the jury. The jury entered judgment in favor of Selle.⁶ The trial court subsequently denied Tozser's post-trial renewed motion for judgment as a matter of law.⁷

Relevant Authority:

- *Dykstra v. Page Holding Co.*, 2009 SD 38, 766 N.W.2d 491
- *Restatement (Second) of Torts* § 767 (1979)
- *Briesemeister v. Lehner*, 720 N.W.2d 531 (Wis. Ct. App. 2006)

2. Did Selle establish that Tozser's actions caused his damages?

Trial Court's Ruling: The trial court denied Tozser's motion for judgment as a matter of law and submitted Selle's tortious interference claim to the jury. The jury entered judgment in favor of Selle.⁸ The trial court subsequently denied Tozser's post-trial renewed motion for judgment as a matter of law.⁹

Relevant Authority:

- *Johnson v. Schmitt*, 309 N.W.2d 838 (S.D. 1981)
- *First National Bank of Phillip v. Temple*, 2002 SD 36, 642 N.W.2d 197
- *Rushmore State Bank v. Kurylas, Inc.*, 424 N.W.2d 649 (S.D. 1988)
- SDCL 57A-9-102(a)(42) (2009)

3. Can a civil conspiracy claim exist when one of the individuals alleged to be part of the conspiracy is a party to the underlying contract?

Trial Court's Ruling: The trial court denied Tozser's motion for judgment as a matter of law and submitted Selle's civil conspiracy claim to the jury. The jury entered judgment in favor of Selle.¹⁰ The trial court subsequently denied Tozser's post-trial renewed motion for judgment as a matter of law.¹¹

Relevant Authority:

- *Setliff v. Stewart*, 2005 SD 40, 694 N.W.2d 859
- *Landstrom v. Shaver*, 1997 SD 25, 561 N.W.2d 1

4. Does the jury's award of \$46,220.67 as damages on Selle's civil conspiracy claim – an amount that is exactly the amount of prejudgment interest claimed by Selle – reveal that the jury palpably mistook the rules of law by which Selle's damages were to be measured?

Trial Court's Ruling: The trial court denied Tozser's post-trial motion for judgment as a matter of law and for new trial.¹²

Relevant Authority:

- *Setliff v. Stewart*, 2005 SD 40, 694 N.W.2d 859
- *Henry v. Henry*, 2000 SD 4, 604 N.W.2d 285
- *Estate of Billings v. Deadwood Congregation of Jehovah's Witnesses*, 506 N.W.2d 138 (S.D. 1993)

5. Was the trial court's decision to submit Selle's claim for punitive damages clearly erroneous?

Trial Court's Ruling: The trial court denied Tozser's motion for judgment as a matter of law and submitted Selle's punitive damages claim to the jury. The jury awarded \$30,000 in punitive damages to Selle.¹³ The trial court subsequently denied Tozser's post-trial renewed motion for judgment as a matter of law.¹⁴

Relevant Authority:

- *Hoaas v. Griffiths*, 2006 SD 27, 714 N.W.2d 61
- *Dahl v. Sittner*, 474 N.W.2d 897 (S.D. 1991)
- *Flockhart v. Wyant*, 467 N.W.2d 473 (S.D. 1991)