

1982

Walt Baker and Dave Novelle v. Kenneth Hansen : Brief of Respondents

Utah Supreme Court

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Richard D. Lamborn; Attorney for Appellant;

Terry L. Christiansen; Attorney for Respondents;

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IN THE SUPREME COURT
OF THE STATE OF UTAH

WALT BAKER and)
DAVE NOVELLE,)
)
Plaintiffs - Respondents,)
)
vs.)
)
KENNETH HANSEN,)
)
Defendant - Appellant.

BRIEF OF RESPONDENTS

Appeal from a Judgment of the Third Judicial
District Court in and for Summit County, Utah
Honorable Peter F. Leary, Judge

Terry L. Christiansen
ADKINS & CHRISTIANSEN
201 Silver King State Bank Bldg.
P.O. Box 2297
Park City, Utah 84060
Attorneys for Respondents

Richard D. Lamborn
Attorney at Law
P.O. Box 331
Randolph, Utah 84064
Attorney for Appellant

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P.O. Box 2297
Park City, Utah 84060
Attorneys for Respondents

Richard D. Lamborn
Attorney at Law
P.O. Box 331
Randolph, Utah 84064
Attorney for Appellant

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IN THE SUPREME COURT
OF THE STATE OF UTAH

WALT BAKER and)
DAVE NOVELLE,)

Plaintiffs-Respondents,)

vs)

KENNETH HANSEN,)

Defendant-Appellant,)

BRIEF OF RESPONDENTS

NATURE OF THE CASE

In October, 1979, Walt Baker and Kenneth Hansen entered into an oral agreement whereby Baker agreed to care for livestock owned by Hansen for a period of one year. Baker was to be compensated by receiving 60 percent of the calf crop delivered by the impregnated cows and was to be reimbursed for the reasonable expenses incurred in connection with feeding and caring for any remaining livestock. This is an action to recover 60 percent of the calf crop and the reasonable expenses incurred in connection with feeding and caring for livestock other than the impregnated cows during the initial year and all cattle thereafter. Hansen counterclaimed alleging Baker had failed to properly care for his animals and requested \$18,000.00 in actual damages and \$25,000.00 in punitive damages.

DISPOSITION IN LOWER COURT

The Trial Court held that Baker and Novelle were entitled to 60 percent of the calves born and \$32,140.00 for the care of livestock to and including April 30, 1981. Respondents were also awarded judgment against appellant on appellant's Counter-Claim of "no cause of action".

RELIEF SOUGHT ON APPEAL

Respondents seek affirmance of the judgment of the trial court.

STATEMENT OF FACTS

Baker is a cattle rancher in Kamas, Utah, who has been raising cattle his entire life. At all times pertinent hereto, Baker had 200 acres of property in Kamas, Utah, for his cattle operation. (Tr. 12, 13).

Hansen is a livestock farmer in Evanston, Wyoming. (Tr. 108). In 1979 a drought and a beseige of ground squirrels resulted in the area where Hansen kept his cows being declared a disaster area. (Tr. 130). As a consequence, Hansen's financial condition was such that he was unable to care for his livestock and in October, 1979, Hansen advertised in the Salt Lake Tribune that he had 150 cattle for lease on a calf-share basis. (Tr. 14, 130). Baker responded to the ad and went with his employer, David Novelle, to Idaho where they observed the cattle and met with Hansen. (Tr. 15). Baker stated to Hansen that the cows were in poor shape, the grass was dry, and it looked like there was not much salt or water. Hansen responded that the cattle were not in as good shape as they should be and that it had been dry. (Tr. 16).

To induce Baker to enter into a calf-sharing agreement, Hansen represented that: there were no liens on the cattle; all cows would be pregnancy tested either prior to delivery to Baker or immediately thereafter and Hansen would remove all cows not with calf; Hansen would deliver approximately 150 cows and four bulls. (R. 51-2; Tr. 17,18,19). Based on these statements, Baker entered into an oral agreement with Hansen whereby Baker agreed to pasture and care for Hansen's livestock for a period of one year and Hansen agreed to pay Baker 60 percent of the calf crop delivered by the impregnated cows in 1980 and to reimburse him for the expenses incurred in connection with feeding and caring for the remaining livestock. (R. 52; Tr. 17,20,21).

On October 16 and 24, 1979, Hansen delivered to the Baker ranch 125 cows, 85 yearlings, 5 fall calves and 1 bull. (R. 52; Tr. 21,22,117). Hansen admitted the cattle looked gaunt and ragged when they arrived, but explained their condition was a result of the four hour trip. (Tr. 117,118,142,143). Mr. Robert Beall, an experienced cattle rancher who saw the cattle in late October, 1979, testified that the animals were not in the best of condition. Their flanks were not filled out as much as he would liked to have seen them at the start of the winter, the hair or hide was not indicative that the cattle were in good physical shape, and the cattle were docile whereas a cow that is in good condition is more frisky than the cattle he observed. (Tr. 59,60,61).

The pasture where Hansen's cattle were placed had been used for approximately thirty days immediately preceding their arrival. However, Hansen testified that the pasture was in fair condition, it was sufficient to hold the cattle until the snow fell, and he always pastures low because there is more proteins, vitamins and minerals in shorter grass. (Tr. 23-24). In November, 1979, Baker started feeding the animals approximately 20 pounds of hay per animal each day from 150 tons of hay he had in storage. (Tr. 24,26).

On January 1, 1980, Hansen took 10 cows, 83 yearlings, and 5 fall calves from the Baker ranch. (Tr. 27). While Hansen complained of the cows condition, he did indicate that the cows were still strong, but both the cows and calves had lost weight. (Tr. 121). Baker testified that the animals were in better condition and had grown substantially during the two and one-half months they were in his care. (Tr. 26). Baker did, however, indicate as did Robert Beall that a suckling calf draws nutrition from the mother and the calves were pulling the cows down. (Tr. 27,66). Two of the yearlings were not returned to Hansen because one had been killed by a neighbor's dog and one had fallen through ice in the cannal. (Tr. 27). Baker testified that he was not present when Hansen took the livestock on January 1, 1980 and after he left Baker had only 104 cows when he should have had 115 cows remaining. Baker indicated that Hansen could have taken the 11 missing cows and he had no other explanation for their absence. (Tr. 28,55,56).

Hansen failed to pay Baker for the livestock taken on January 1, 1980, despite his agreement to compensate Baker for caring for these animals. (Tr. 21,28). Approximately one month later when questioned regarding payment for said animals, Hansen indicated that he would pay Baker as soon as he got some money. (Tr. 28).

In the spring, 1980, 65 of the cows delivered calves but 5 of the calves died during birth. (Tr. 32). Dr. Stanley Hull, a veterinarian who testified on behalf of defendant, indicated that the gestation period for cows is a little over nine months and that conception for the calves born in the spring of 1980, would have occurred during the summer of 1979. (Tr. 105-106). Hansen testified that it was his intent to pregnancy test the cows but that he never did. (Tr. 128-129).

On December 6, 1980, Baker delivered 64 cows to Hansen and retained 31 cows and 30 calves as security for the monies owing from Hansen. (Tr. 37-38).

Walt Baker, Dave Novell, Robert Beall and Robert Berry all testified that the animals were in better condition after the winter of 1980 than they were on their arrival in the fall of 1979. (Tr. 34,63,88,98). While Dwayne Lambert, a neighbor of Baker, testified that the cattle were not properly taken care of, his observations were limited to only nine of the 200 acres, he never stepped onto the property to observe the cattle being fed and he did not know how much the animals were being fed.

Lambert further testified that a reasonable and prudent cattle rancher would feed each animal twenty pounds of hay each day which is the exact amount Baker testified he was feeding the livestock. (Tr. 149,155,159). Nine cows and one bull died while under the care of Baker. Two cows died while delivering oversized calves; three died from uterus protrusion; one died from c-section shock; one died from bloat; one died from old age and one died as a result of falling between two cars being stored at the Baker Ranch and tearing its rib cage. (Tr. 32,33,173).

During the winter of 1979-1980, Baker spent between four and eight hours each day caring for the animals, which care included among other things, the feeding of hay and grain, watering the livestock, and cleaning the corrals and feed lot. (Tr. 36). During the spring of 1980, Baker and his family worked from daylight until dark and half the night caring for the livestock. (Tr. 36-37).

Respondent Dave Novelle was not a party to the calf-sharing agreement between Baker and Hansen. In November, 1979, Baker approached Novelle and indicated he was running out of hay and asked for financial assistance in the cattle operation. Novelle consented on the basis that Baker was a diligent and dependable employee and he didn't want to see him get into financial problems. (Tr. 69,70). During the period December 18, 1979 through May 9, 1980, Novelle advanced \$15,555.05 for hay, feed and veterinary expense in connection with Hansen's cattle. (Exhibit p-2; Exhibit p-4; Tr. 70-71).

Baker and Novelle did not charge Hansen for feeding and caring for the pregnant cows and their spring calves during the period October, 1979 through October 1980. (Tr. 80-81). Hansen was charged the sum of \$32,140.00 for caring for his remaining livestock and for the mother cows and 1980 calf crop after the expiration of the one year agreement. The \$32,140.00 was calculated as follows: (Exhibit P-3).

<u>Description of Animals</u>	<u>Time Period</u>	<u>Rate</u>	<u>Charge</u>
85 Yearlings & 10 mother cows taken by Hansen on January 1, 1980	2 1/2 Months	\$20.00 Month	\$ 4,750.00
42 barren cows	Oct. 16, 79 through Oct. 15, 80	\$30.00 Month	\$15,120.00
64 mother cows taken by Hansen on December 6, 1980	Oct. 16, 79 through Dec. 6, 80	\$30.00 Month	\$ 3,360.00
30 cows retained by Baker and Novelle pursuant to Ajistors Lein	Oct. 16, 80 through Apr. 30, 81	\$30.00 Month	\$ 4,950.00
24 calves representing Hansen's share of the 1980 calf crop	Oct. 16, 80 through Apr. 30, 81	\$30.00 Month	\$ 3,960.00
		TOTAL	\$32,140.00

ARGUMENT

I.

THE TRIAL COURT'S AWARD OF \$32,140.00 REPRESENTS THE REASONABLE COST OF FEEDING AND CARING FOR HANSEN'S LIVESTOCK AND IS BASED UPON BOTH AN AGREEMENT OF THE PARTIES AND AN AGISTOR'S LIEN.

Utah law provides ranchers and farmers with a lien for the caring of livestock. 38-2-1 Utah Code Annotated 1953, as amended, provides:

Every ranchman, farmer, agistor, herder of cattle, tavern keeper or livery stable keeper to whom any domestic animal shall be entrusted for the purpose of feeding, herding or pasturing shall have a lien upon such animals for the amount that may be due him for such feeding, herding or pasturing, and is authorized to retain possession of such animals until such amount is paid.

As set forth in the Statment of Facts, Baker and Novelle charged \$20.00 and \$30.00 per head per month which sums represent the reasonable cost of caring for Hansen's livestock not subject to the calf-sharing agreement. While counsel for Hansen argues there is no substantial evidence that \$20.00 and \$30.00 is a reasonable charge, such argument is refuted by the testimony and exhibits presented at trial.

Novelle testified that during the period in question he was paying \$80.00 a ton for hay. Baker stated under oath that he was feeding the animals 20 pounds of hay each day which is equivalent to \$0.80 of hay each day per animal or a total of \$24.00 each month. Baker further testified that he fed hay during the period November, 1979, through May, 1980.

Rent pasture in the Kamas area during the period in question varied between \$18.00 and \$20.00 per month per head according to Baker's testimony. Taking into consideration the hay and pasture costs together with the labor associated with caring for livestock, \$20.00 and \$30.00 per head represents a reasonable cost to Hansen.

The actual expense incurred by Baker and Novelle is set forth in Exhibit P-2 which indicates that during the period November, 1979, through May, 1980, Novelle and Baker paid \$15,428.05 for hay and other feed. In addition, Baker used 100 tons of his own hay for feeding Hansen's cows which adds an additional \$6,000.00 in hay cost based upon his purchase price of \$60.00 per ton.

Counsel for Hansen attempts to discredit the reasonableness of the \$20.00 and \$30.00 monthly charge by showing that Baker rented his pasture for not more than \$7.00 per head per month prior to allowing Hansen's livestock on his property. However, the \$7.00 per head charge was during the summer and the lessee was responsible for all labor and costs in connection with the livestock, including maintenance of fences. Hansen further argues that his livestock were not adequately fed. However, the animals were each fed 20 pounds of hay each day which Hansen's own witness, Dwayne Lambert agreed a reasonable and prudent cattleman would feed his livestock. Furthermore, the animals gained weight and improved in appearance during the time they were at the Baker Ranch.

Exhibit P-3 sets forth the charges for feeding and handling Hansen's livestock. An examination of this Exhibit reveals that with the exception of the 42 barren cows which were cared for during the period October 16, 1979, through October 15, 1980, the charges for the remaining livestock were incurred primarily during the winter months when the cattle required hay for sustenance.

The Trial Court's award of \$32,140.00 is reasonable, supported by the evidence and should be upheld.

II.

BAKER AND NOVELLE ARE ENTITLED TO THE REASONABLE COST OF FEEDING AND CARING FOR THE BARREN COWS.

Counsel for Hansen argues in his brief that Baker and Novelle should not be paid for feeding and caring for the barren cows because: (1) Baker prevented the pregnancy testing of the cows; and (2) Baker and Novelle failed to mitigate their damages by not having the cows pregnancy tested and releasing the barren cows to Hansen or selling them pursuant to their lien.

Hansen, not Baker, was to have the cows pregnancy tested prior to their shipment to the Baker ranch, and he failed to do so. When confronted by Baker regarding pregnancy testing the cows after their arrival to Kamas, Utah, Hansen indicated that "he would make arrangements to have it done". (Tr. 30). At trial Hansen attempted to excuse his failure to pregnancy test the animals because of Baker's inadequate facilities.

However, on cross-examination Hansen admitted that cows are pregnancy tested by having the veterinarian insert his hand up the uterus to see if there is a calf in gestation. If some means of restraining the animal was necessary, it was the responsibility of Hansen to provide the same.

Based on Hansen's testimony as to his financial condition, the only reasonable explanation for the failure to pregnancy test the cows was that Mr. Hansen did not want or was unable to go to the expense of hiring a veterinarian. Furthermore, Hansen had insufficient funds to pay the cost of caring for any cows determined to be barren

The mitigation argument raised by Hansen is covered in Point III herein.

III.

BAKER AND NOVELLE ARE ENTITLED TO THE REASONABLE COST OF FEEDING AND CARING FOR HANSEN'S CATTLE SUBSEQUENT TO OCTOBER 16, 1980.

On October 16, 1980, the one year Agreement entered into between baker and Hansen expired and Baker retained possession of a portion of Hansen's livestock as authorized by 38-2-1 Utah Code Annotated 1953, as amended, until paid. The right to reimbursement for feeding and caring for the animals after an agreement terminates has been adjudicated by this Court in Hughes v. Yardley, 19 Utah 2d 166, 428 P.2d 158 (1967). Hughes is analogous to the instant case in that the parties entered into a contract whereby the defendant agreed to pasture cattle owned by the plaintiff for the period of May 1, 1964, to October 1, 1964.

Plaintiff was to pay defendant for the pasturage one-half of the market value of the gain of the cattle during that period. The animals were not taken by plaintiff on October 1, 1964, and the defendant moved the cattle to a different location where they were fed until December 11, 1964. The cattle were then sold at auction pursuant to a stipulation of the parties. This Court affirmed the ruling of the lower Court that defendants were entitled to one-half of the market value of the gain of the cattle between their delivery to the pasture and October 1, 1964, and the reasonable cost of feeding the cattle thereafter until they were sold.

Hansen argues that Baker and Novelle failed to mitigate their damages by retaining possession of the livestock and not releasing them to Hansen or selling them pursuant to their agistor's lien. This position is unsupported by the evidence. Bker released 10 mother cows, 83 yearlings and 5 fall calves to Hansen on January 1, 1980, a period of only 2 1/2 months after they were delivered to him. It wan't until spring, 1980, that Baker had knowledge that 43 of the mother cows were barren. Baker notified Hansen in February, 1980, he was going to retain possession of the livestock until paid and on June 24, 1980, Baker and Novelle filed the Complaint herein. On December 6, 1980 Baker allowed Hansen to remove an additional 64 cows and 1 bull to further mitigate their damages.

Baker and Novelle retained only 31 cows and 30 calves believing retention of these animals necessary to adequately protect their lien. The propriety of retaining possession of the livestock is best shown by Ahlswede v. Schoenveld, 488 P.2d 908 (Nev. 1971) where the defendant allowed cattle to be taken from his possession and the Court ruled he relinquished his agistor's lien. The Court stated:

Possession is essential to the creation and preservation of liens under the common law. The rule is no different with regard to Statutory Liens. The right begins and ends with possession. An Agister's Lien attaches only while the animals remain in possession of the Lienholder. (citations omitted.) 488 P.2d at 910.

Had Baker and Novelle released more animals to Hansen they would have destroyed their lien rights and jeopardized their ability to recover against Hansen.

It was not Baker and Novelle but Hansen who failed to mitigate damages. Hansen could have requested that a portion of the animals be sold to satisfy the agister's lien which would have eliminated any potential liability of Baker and Novelle for selling Hansen's cattle. Alternatively, Hansen could have paid Baker and Novelle the monies owing for caring for his livestock either through selling other property or borrowing funds.

IV.

HANSEN MISREPRESENTED FACTS TO BAKER TO INDUCE HIM TO ENTER INTO THE CALF-SHARING AGREEMENT.

Hansen cites Horiwitz v. Davis, 250 P.2d 435 (Okla. 1952) and Hilburn v. Broadhead, 79 N.M. 460, 444 P.2d 971 (1968) as authority for the proposition that equity demands that parties to a transaction deal fairly and not gain advantage through fraud, misrepresentation, concealment or bad faith. In the case at bar, Hansen not Baker acted in bad faith, concealed facts and made material misrepresentations.

Hansen made the following fraudulent material misrepresentations which induced Baker to enter into the Agreement: (a) all cows would be pregnancy tested before coming into Utah and any cows not pregnant would be taken to Hansen's Ranch in Wyoming; (b) there were no liens on the cattle; (c) Hansen would compensate Baker for caring for the small calves which needed more time with the mother cows and the bigger calves would be taken to his ranch in Evanston, Wyoming; and (d) four bulls would be delivered with the cows.

Baker testified that he asked Hansen if there were any liens on the cattle prior to making his decision whether to enter into the subject Agreement. Baker indicated the importance of having lien free animals was that if a finance or cattle company had a first lien against the calf crop, he could end up with nothing. Baker did not want to care for barren cows or calves without compensation. Baker certainly would not have agreed to allow the small calves to remain with their mothers had Hansen disclosed that he could not financially afford to pay for their care. But for the above representations, Baker would not have entered into the Agreement with Hansen.

Hansen argues that Baker made the following misrepresentations: (a) inadequate pasture; (b) inadequate feed; and (c) failure to redeliver animals upon request by Hansen.

There is a conflict in evidence between the parties regarding representation as to the quality of Baker's pasture in Kamas, Utah. Hansen testified that Baker indicated there were two lush meadows but this was disputed by the testimony of Baker and Novelle. Regardless of any representations which were made, Baker had 200 acres of ground where the cattle were pastured and he testified the pasture was sufficient to hold the animals until the snow fell in the fall of 1979.

Baker did need financial assistance from Novelle due to the number of animals Hansen delivered to him. However, Baker and Novelle spent over \$21,00.00 for hay to feed Hansen's livestock and the animals gained weight during the time they were under Baker's care and supervision.

Baker's refusal to deliver the animals to Hansen when requested is not indicative of fraud or bad faith, but was a necessary decision to protect lien rights. Baker and Novelle retained the minimum number of animals they considered sufficient to protect their interests.

V.

THE TRIAL COURT PROPERLY DISMISSED HANSEN'S COUNTER CLAIM.

In Ann., Agister's Liability for Injury, Weight Loss, or Death of Pastured Animals, 94 A.L.R.2d 319 (1964), the standard of care required of an agister is summarized as follows:

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The general rule that an agister is not, in the absence of contract, an insurer of the safety of the animals in his charge and is held only to the duty of exercising toward them that degree of care that a man of ordinary prudence would exercise under similar circumstances toward his own property seems to enjoy the unanimous approval of the courts in cases involving liability for weight loss, injury, or death. 94 ALR2d at 323

See also 3A CJS Animals § 49, where it is stated:

In the absence of special contract, an agistor or other keeper of animals for the owner is bound to exercise ordinary diligence in keeping, feeding, sheltering, and otherwise caring for animals committed to his custody, liable for loss or injury to the animals resulting from his breach of such duty. However, he is not an insurer; exercise of ordinary care satisfies his obligations, and he may not be held liable for loss or damage occurring without his fault.

In Henry McCleary Timber Co. v. Sewell, 72 Nev. 231, 301 P.2d 1047 (1956) the court indicated an agister's liability is dependent upon proof of fault and affirmed a judgment denying recovery against the agister. As in the instant case, the owner's cattle had been delivered in a weakened condition and the court approved the trial judge's conclusion that the loss of 298 cattle out of 2,700 delivered to the agister resulted from drifting or natural causes due to the weakened condition of the livestock.

Based on the above general rule regarding the duty of an agister, the lower court's dismissal was proper. Viewing the evidence in the light most favorable to Baker, he can account for every animal under his care and supervision. Although Hansen delivered 125 cows in October, 1979, after he removed livestock from the Baker Ranch on January 1, 1980, Baker was left with 104 cows.

Sixty-four cows were taken by Hansen on December 6, 1980, nine cows died from causes beyond the control of Baker and the remaining 31 cows were retained by Baker and Novelle pursuant to their agistor's lien. Of the 85 yearlings delivered in October, 1979, 83 were returned to Hansen on January 1, 1980. One yearling died from falling in the ice in the canal and the other yearling was killed by a neighbor's dog.

Even viewing the evidence in the light most favorable to Hansen, there is no evidence that supports his allegation that 26 cows and 5 yearlings are unaccounted for.

There is case authority that supports the position that when Hansen breached his agreement by failing to pregnancy test the cows and refusing to pay the cost of caring for the cattle taken on January 1, 1980, Baker was under no obligation to continue feeding the animals. In Rea v. Alfalfa Products Co., 53 Mont. 90, 161 P.708 (1916) the court exonerated the agister for weight loss in connection with the alleged improper feeding of the owners sheep. The court held the owner's refusal to pay the monthly feed bill breached the contract and the agister was under no necessity to go on with it.

As indicated previously in this brief, Baker and Novelle properly fed and cared for Hansen's livestock. While the animals may not have been in top condition, the reason therefor was the poor condition of the cattle when they arrived at the Baker ranch and the difficulty of putting weight on a cow with a suckling calf.

There is substantial evidence in the record that Hansen's animals were properly cared for and the trial court properly dismissed Baker's counterclaim.

VI.

THE JUDGMENT OF THE TRIAL COURT SHOULD NOT BE DISTURBED ON APPEAL.

The issues in this case involving the proper care of Hansen's livestock and the amount of damages to be awarded are issues of fact that can best be resolved by the trial court. In Casey v. Nelson Brothers Construction Company, 24 Utah 2d 14, 465 P.2d 173 (1970) the defendant attacked the judgment on the basis the evidence did not support the court's finding that he breached a contract for the use of a road grader nor the amount of damages awarded. The Court acknowledged there was a dispute in the evidence but held the trial court's judgment would not be disturbed if there was a reasonable basis to support the same. The Court stated:

The answers to the defendant's contentions are found in the so-often repeated rule: that where there is dispute in the evidence we assume that the trial court believed those aspects of the evidence, and drew the inferences which could fairly and reasonably be drawn therefrom, which tend to support the findings and judgment; and that upon our review of the record in that light, if there is a reasonable basis in the evidence to support them they will not be disturbed. 465 P.2d at 174.

In Winger v. Gem State Mutual of Utah, 22 Utah 2d 132, 449 P.2d 982 (1969) the issue was whether an insurance agent had authority to bind the defendant in a contract of insurance at the time the application was made. This Court stated the standard of review as follows:

The question of the agent's authority being a mixed question of law and fact will not be disturbed by this court if appearing to have been made upon substantial evidence upon which evidence the court determined as a matter of law that there was no enforceable contract. 449 P.2d at 983.

This same principle was applied in the early Utah case of Iverson v. Carrington, 60 Utah 79, 206 P. 707 (1922) dealing with an agistment. The jury returned a verdict in favor of plaintiff on his second cause of action for the value of corn and syrup fed to defendant's livestock and this court upheld the jury verdict, stating:

There is substantial evidence in the record to sustain the findings or verdict of the jury that the corn and syrup were provided for the cattle by the plaintiffs at the instance and request of the defendant, and that defendant promised and agreed to pay for the same. Therefore, the judgment entered upon that verdict of the jury should not be disturbed. 206 P. at 710.

The trial court having ruled in favor of Baker and Novelle and there being substantial evidence to support said decision, the judgment should be upheld.

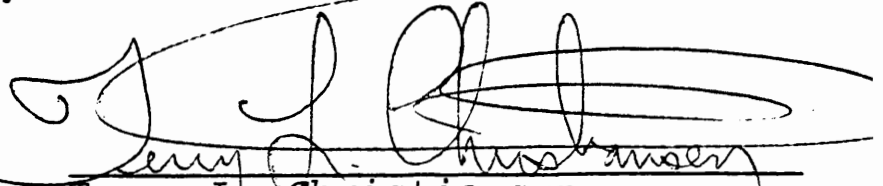
CONCLUSION

Hansen solicited the assistance of Baker to care for his livestock during the period October 16, 1979, through October 15, 1980. Pursuant to the agreement of the parties, Baker and Novelle properly were awarded 60 percent of the 1980 calf crop. In addition, because Hansen failed to limit the cattle delivered to Baker to pregnant cows, Baker and Novelle are

entitled to recover the \$32,140.00 representing the reasonable value of feeding and caring for Hansen's livestock not subject to the calf-sharing agreement and all animals subsequent to October 16, 1980.

The Judgment of the Trial Court should be affirmed.

Respectfully submitted.



Terry L. Christiansen
ADKINS & CHRISTIANSEN
201 Silver King State Bldg.
P.O. Box 2297
Park City, UT 84060
Attorneys for Respondants
Walt Baker and Dave Novelle

MAILING CERTIFICATE

I hereby certify that two copies of the foregoing Brief of Respondants were mailed, postage prepaid, to Richard D. Lamborn, Attorney for Appellant, Box 331, Randolph, Utah 84064 this 10th day of May, 1982.

