

**IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA**

**TRI R ANGUS, INC., a Nebraska corporation,**

Plaintiff,

vs.

**DUANE GILL,**

Defendant.

Case No. CI00-16

**JOURNAL ENTRY ON TRIAL**

**DATE OF TRIAL:** December 4, 2000.

**APPEARANCES:**

For plaintiff: Matthew McKeever with Jon L. Neiman, corporate representative of plaintiff.

For defendant: No appearance (no counsel of record).

**SUBJECT:** Jury Trial.

**PROCEEDINGS:**

The juror orientation video was displayed. The case was called, and the defendant failed to appear for trial, either in person or by any counsel. There is no counsel of record for defendant. After introductory comments by the court, the jury panel was duly sworn for examination. At the plaintiff's request, the panel was excused from the courtroom. In the absence of the panel, the plaintiff requested leave to make an additional pretrial motion. Leave was granted, and the plaintiff moved to waive a jury and to discharge the jury panel and proceed with a bench trial. The plaintiff's counsel argued in favor of the motion. Findings were stated on the record. The plaintiff's request to waive a jury was granted, but in the absence of any waiver by the defendant, the motion to discharge the jury and proceed with a bench trial was denied. The panel returned. Pursuant to the stipulation of the parties in the pretrial order, the names of 15 prospective jurors were duly drawn by the clerk. Voir dire examination was conducted by the court.

Voir dire examination was then conducted by counsel for plaintiff. The plaintiff passed the panel for cause. In the absence of the defendant or any counsel for defendant, the matter proceeded directly to peremptory challenges. Peremptory challenges (4 challenges per side pursuant to pretrial order) to the panel of 15 prospective jurors were exercised by counsel for plaintiff and drawn by lot by the clerk on

behalf of the defendant. The trial jury of 7 persons was duly sworn and admonished, and a mid-morning recess was taken.

Following the recess, the jury returned, and preliminary instructions were given by the court to the jury. The plaintiff's opening statement was presented by counsel for plaintiff. In the absence of the defendant or any counsel for defendant, no opening statement was presented on behalf of the defendant. Excerpts of the deposition testimony of the defendant, Duane Gill, were read to the jury by counsel for plaintiff, including 4:7 to 5:2, 19:8 to 19:15, 19:19 to 20:12, 20:20 to 21:4, 44:5 to 52:22, 56:14 to 56:20, 57:3 to 57:12, 57:24 to 59:4, 59:10 to 62:2, and 70:10 to 70:16. The jury was admonished, and recess was taken for lunch.

Following the lunch recess, Frances Neiman and Jon R. Neiman were sworn and testified. The jury was admonished and a brief recess was taken.

Following the recess, Timothy M. Osienger Sr. was sworn and testified. The plaintiff rested. The jury was admonished and excused from the courtroom. An informal instruction conference was held with counsel in the courtroom off the record. A recess was taken.

The court noted that the defendant was deemed to have rested. In the absence of the jury at the close of all of the evidence, the plaintiff moved to amend the plaintiff's petition to conform to the proof. The plaintiff's counsel argued in support of the motion. The court denied the motion for the reasons stated on the record. The plaintiff moved for directed verdict on the issues of liability and damages. The plaintiff's counsel argued in support of the motion. The motion was granted as to the matter of liability and denied as to the issue of damages. In the absence of the jury, a formal instruction conference was held in open court. The court's proposed instructions Nos. 1 through 8, inclusive, and the proposed verdict form were considered. There were no objections or additional requested instructions. Counsel for plaintiff advised the court that the plaintiff's counsel would remain present during the jury deliberations and until receipt of verdict.

With counsel for plaintiff present, and the plaintiff's corporate representative present, the jury returned, and the court advised the jury that the defendant was deemed to have rested. The counsel for plaintiff presented closing argument. There was no closing argument for the defendant, in the absence of the defendant or any counsel for defendant. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 4:11 p.m. The jury retired to the jury room.

Upon receipt of a written question from the jury, the court considered the matter informally with counsel for plaintiff. Proposed Instruction No. 9 was prepared and tendered to counsel for plaintiff. With counsel for plaintiff present, and with plaintiff's corporate representative also present, a formal instruction conference was held on the record. There was no objection to proposed Instruction No. 9. Whereupon, the jury returned at 4:50 p.m., and Instruction No. 9 was read to the jury and the cause resubmitted at 4:51 p.m.

At 5:40 p.m., with plaintiff's counsel and corporate representative present, the jury returned and announced that it had reached verdict. The verdict form was duly filed by the clerk, and read aloud by the clerk in open court. Upon inquiry by the court if it was their unanimous verdict, all 7 jurors joined in an affirmative response. Further polling of the jury was waived by all counsel or parties present. The verdict was accepted by the court. Separate signed judgment was entered on the verdict. The jury was discharged with the thanks of the court.

Dated: December 4, 2000.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_.
- 9 Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_.
- 9 Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_.
- 9 (Trial docket entry dictated.)

Mailed to:

BY THE COURT:

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William B. Cassel  
District Judge