IN THE COURT OF APPEALS OF IOWA

No. 2-298 / 91-1475

MICHAEL D. SHAFAR and
JANET L. SHAFAR,

Plaintiffs-Appellees/Cross-Appellants,

vs.

JOSEPH COOK,

Defendant-Appellant/Cross-Appellee.

FILED
NOV 30 1992
CLERK SUPREME COURT

Appeal from the Iowa District Court for Taylor County, Jerrold W. Jordan, Judge.

Defendant appeals and plaintiffs cross-appeal a district court decision finding defendant breached an oral contract between the parties and awarding damages to plaintiffs. **AFFIRMED.**

Richard McConville of Scalise, Scism, Sandre, McConville, Miller, Holliday, Schwarz, Carr & Renzo, Des Moines, for appellant.

James A. Pugh and Joel S. Hjelmaas of Morain, Burlingame, Pugh, Peyton & Koop, West Des Moines, for appellees.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

Michael and Janet Shafar live in a house on a farm owned by Michael's father, Alvin Shafar, in rural Taylor County, near Gravity, Iowa. In April 1989 the house was damaged by a tornado. The Shafars hired Joseph Cook to repair the damage.

While Cook was working on the house, the Shafars approached him about building an addition, with a basement, onto the house. Cook estimated the addition would cost about $22,000. The Shafars specifically told Cook they wanted the new basement to be dry. Cook assured them the basement would not leak. The parties had no written contract concerning the construction of the addition.

The Shafars were concerned about water leakage because water sometimes seeped into the basement of the original house. The house was situated so that the land on the north, east, and south sides sloped towards the house.

Cook's employee, Ron Kammerer, supervised the construction of the addition. A foundation drain system was installed along the outside of the basement walls. The drain system consisted of perforated drain tube placed above pea gravel. This foundation drain system was installed about one foot higher than the level of the basement floor. The addition was completed in November 1989.

On July 24, 1990, it rained about three inches. The next morning there was about three to four inches of water in the basement of the addition. The Shafars called Cook. He sent Kammerer out to inspect. Cook did not personally come out to the property, and he refused to do anything about the water leakage.

The Shafars took out the carpet in the new basement and had it cleaned. The pad had to be replaced. There was no damage to the furniture.

The Shafars contacted Ed Akes to repair the basement. Akes cut through the basement floor and installed perforated drain tube above pea gravel. The tube was connected to an outside pipe.

In the spring of 1991, a small wet patch appeared in the southeast corner of the basement. Akes piped the southeast and southwest corner downspouts to the outside pipe used before. No problems have occurred after this repair.

Shafars filed suit against Cook in November 1990 claiming breach of contract. The district court found that a dry basement was a condition of the oral contract between the parties and that Cook breached this condition. The court awarded damages of $2,929. This amount represented damages for inside and outside tiling, carpet cleaning, carpet pad replacement, carpet installation, paint, and stain. The court denied Cook's motion for a new trial. Cook appealed and the Shafars cross-appealed.

I. This case was heard at law and our review is for the correction of errors at law. Iowa R. App. P. 4. Under this standard of review, we give the district court's factual findings the weight of a special verdict; they are binding on us if supported by substantial evidence in the record. Hulme v. Barrett, 480 N.W.2d 40, 41 (Iowa 1992).

II. Cook contends the district court should not have admitted certain exhibits into evidence. The Shafars presented their bills, which were exhibits 2 through 5. At trial Cook objected to the admission of the exhibits on the grounds of proper foundation and hearsay. The exhibits were admitted through Michael, who admitted he had nothing to do with the preparation of them. The Shafars did not testify they had paid the bills.

Generally, the trial court has considerable discretion to determine the admissibility of evidence. Henkel v. R & S Bottling Co., 323 N.W.2d 185, 193 (Iowa 1982). This standard applies to foundational questions as well. See State v. Hershey, 348 N.W.2d 1, 2 (Iowa 1984). We will not interfere with the trial court's decision unless it has clearly abused its discretion, to the prejudice of the complaining party. Henkel, 323 N.W.2d at 193.

We conclude the district court did not abuse its discretion here. As the court noted, Cook's objections went more to the weight of the evidence than to whether there was sufficient foundation to admit the evidence. We affirm the district court's decision.

III. Cook also contends there was not substantial evidence in the record to support the district court's award of damages. He states that even if exhibits 2 through 5 were properly admitted into evidence, there was not sufficient evidence to support the court's findings on the amount of damages.

There is a distinction between proof of the fact that damages have been sustained and proof of the amount of those damages. Orkin Exterminating Co., Inc. v. Burnett, 160 N.W.2d 427, 430 (Iowa 1968). If it is speculative and uncertain whether damages have been sustained, recovery is denied. Id. If the uncertainty lies only in the amount of damages, recovery may be had if there is proof of a reasonable basis from which the amount can be inferred and approximated. Id.

In the present case, it is clear the Shafars sustained damages. The only question concerned the amount of those damages. We conclude exhibits 2 through 5 disclosed a reasonable basis from which the amount of damages could be inferred or approximated by the court. We affirm the award of damages.

IV. The Shafars have cross-appealed, claiming they were not awarded a sufficient amount of damages. They ask for an additional $751 for repairs and loss of use of the basement. The court ruled, "Other items of claimed damages by the Plaintiffs are not a proper measure of damages or

fail as a result of insufficient proof." The Shafars contend that the denial of damages on one of these grounds, that there was not a proper measure of damages, is not supported by law. They also point out that the court did not specify which items of damages were denied on this improper ground.

The Shafars did not file a motion to enlarge or amend the district court's ruling pursuant to Iowa Rule of Civil Procedure 179(b). The court was never given an opportunity to enlarge or amend its findings to specify which items of damages had been denied on the ground of an improper measure of damages and which items of damages were denied on the ground of insufficient proof. We conclude the Shafars failed to preserve error on this claim. See Farmers State Bank v. United Central Bank, 463 N.W.2d 69, 72 (Iowa 1990). Therefore, we will not review it on appeal.

We affirm the decision of the district court. Costs of this appeal are assessed one-half to each party.

AFFIRMED.