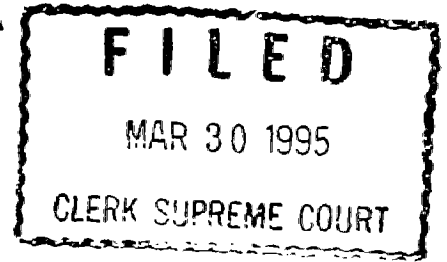


IN THE COURT OF APPEALS OF IOWA

No. 4-579 / 94-0164



DONALD E. CLARK d/b/a
EDGEWOOD FARM,

Plaintiff-Appellant,

vs.

DEPARTMENT OF NATURAL
RESOURCES, STATE OF IOWA,

Defendant-Appellee.

Appeal from the Iowa District Court for Appanoose
County, Phillip R. Collett, Judge.

The plaintiff appeals from the district court's ruling
dismissing plaintiff's action against the Department of
Natural Resources seeking damages for crops destroyed by
the department's alleged mismanagement of the state deer
population. **APPEAL DISMISSED.**

Donald E. Clark, Centerville, pro se.

Bonnie J. Campbell, Attorney General, and Robert D.
Wilson, Assistant Attorney General, for appellee.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

CADY, J.

Donald Clark appeals from the district court's ruling dismissing his action against the Iowa Department of Natural Resources (DNR). Donald sought damages for the destruction of crops as a result of the DNR's alleged mismanagement of the state deer population. We conclude we do not have jurisdiction and dismiss.

On November 15, 1993, Clark, filed a pro se action against the DNR seeking damages for the destruction of his crops by deer. He asserted the DNR mismanaged the state deer herd resulting in overpopulation in the herd and the destruction of his crops. Clark also asserted the DNR's solution to encourage hunting was not adequate. Clark claimed the DNR's alleged mismanagement resulted in a taking of his property without just compensation. Clark stated his damages were in excess of \$2500 but only sought damages of \$3000 plus interest and costs.

The DNR filed a motion to dismiss. They asserted the state could not be liable for the damage done by the state deer population and, therefore, Clark failed to state a claim upon which relief could be granted.

The district court entered a ruling granting the State's motion to dismiss. The court concluded that under Metier v. Cooper Transport Co., 378 N.W.2d 907, 914 (Iowa 1985), the State could not be liable for damages caused by the deer population. Clark appealed.

On our review, we must first determine whether we have

jurisdiction to decide this appeal. Iowa Rule of Appellate Procedure 3 provides in pertinent part: "[N]o appeal shall be taken in any case . . . where the amount in controversy, as shown by the pleadings, is less than five thousand dollars unless the supreme court or a justice thereof certifies that the cause is one in which appeal should be allowed."

The test for determining the requisite amount in controversy under rule 3 is whether the trial court could have entered judgment against any party for that amount. United Food & Commercial Workers Local P-13 v. v. City of Fort Dodge, 519 N.W.2d 100, 102 (Iowa App. 1994); Electra Ad Sign Co. v. Cedar Rapids Truck Center, 316 N.W.2d 876, 878 (Iowa 1982). As indicated by the rule, the amount is determined by the pleadings not the verdict or final judgment. Id.

Here, Clark only claimed damages of \$3000 plus interest and costs. While his claim may have had a greater value, we will not consider an element of damages not sought in the trial court in assessing whether the amount in controversy is \$5000. City of Fort Dodge, 519 N.W.2d at 102. Because the amount in controversy as shown by the pleadings is less than \$5000, certification by the supreme court was required. There is no supreme court order certifying this case as "one in which appeal should be allowed." We, are therefore without jurisdiction to entertain Clark's appeal.

APPEAL DISMISSED.