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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PAUL MORRIS,)
Plaintiff-Appellee,) Filed February 26, 1986 157
vs.)
JERE M. KNOLES,) 5-623 / 84-1761
Defendant-Appellant.)

Appeal from the Iowa District Court for Appanoose County (No. CL-1141-0383) - Richard J. Vogel, Judge.

Defendant appeals from judgment for plaintiff in an action for breach of a farm lease, asserting that the evidence was insufficient to support either the award of damages or a finding that plaintiff had not failed to mitigate damages. **AFFIRMED.**

Marvin V. Colton of Colton Law Office, Albia, for defendant-appellant.

Daniel P. Wilson of Drake, Wilson & Jay, Centerville, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

Defendant appeals from judgment for plaintiff in an action for breach of a farm lease, asserting that the evidence was insufficient to support either the award of damages or a finding that plaintiff had not failed to mitigate damages.

The tenant, Morris, entered into a lease in April of 1980 to farm 320 acres of which 240 acres was suitable for tillage, with the landowner, Knoles. This land was adjacent to Morris's homestead. The lease provided all profits on row crops would be shared equally by Morris and Knoles. The lease also contained a carry-over provision which allowed Morris to farm the land in 1981. Morris was under the impression this arrangement would continue for 1982. Morris received no notice that Knoles did not intend to allow Morris to farm this land until May of 1982. Morris did not rent any additional land in 1982.

Morris filed his petition on March 16, 1983. The jury trial commenced on September 11, 1984, and rendered verdict in favor of Morris for $10,125 in lost profits. Defendant appeals from his denial of motion for directed verdict and his motion for judgment notwithstanding verdict or new trial.

The standard form lease for cash or crop shares provided, in relevant part:

> This lease shall be continued for the lease term herein provided [April 21, 1980 to March 1, 1981], except as it may be terminated by default of tenant. Further, such lease shall continue after such agreed term from year to year, upon the same terms and conditions, unless either party gives due timely and legal written notice to the other of election to cancel or terminate any such extended lease period whereupon the tenancy shall terminate March 1, following; provided further such tenancy shall not continue because of absence of notice in case there be default in the performance of the existing rental agreement. Due, timely and legal written notice shall be notice on or before September 1, as provided by law (Section 562.7 I.C.A. as amended) unless by express agree-

> ment, the parties provide the same notice at an earlier time.

Knoles does not contest the breach of the lease by his allowing another person to farm this land in 1982, but bases this appeal upon the alleged speculative damages and alleged failure of tenant to mitigate damages.

On appeal, Justices McCormick and Harris overruled a total of three motions to dismiss based on appellant's failure to timely perform certain acts required by the rules of appellate procedure.

I.

Knoles submits that his motions should have been granted because computing lost profits in this instance involved conjecture and was too speculative. We cannot agree.

To recover damages for lost profits from breach of a contract, the claim must be supported by reasonable certainty and no damages can be awarded if damages are based on conjecture or speculation. See Harsha v. State Savings Bank, 346 N.W.2d 791, 797 (Iowa 1984); Brown Township Mutual Insurance Association v. Kress, 330 N.W.2d 291, 299-300 (Iowa 1983); Shinrone, Inc. v. Tasco, Inc., 283 N.W.2d 280, 286 (Iowa 1979); King Features Syndicate v. Courrier, 241 Iowa 870, 883, 43 N.W.2d 718, 726 (1950).

A well-known principle is that no recovery can be granted if it is uncertain whether any damage has been sustained; but if the uncertainty involves the amount of damage, then a recovery can be granted provided proof existed to form a reasonable basis. Natkin and Company v. R. F. Ball Construction Co., 255 Iowa 1156, 1167, 123 N.W.2d 415, 422 (1963) (citing Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 688, 66 S. Ct. 1187, 90 L. Ed. 1515 (1945); Eastman Kodak Company of New York v. Southern Photo Materials Company, 273 U.S. 359, 47 S. Ct. 400, 71 L. Ed. 634 (1926) (emphasis added). Difficulty in proving

amount of damages, once damages are established, does not preclude recovery. Orkin Exterminating Company, Inc. v. Burnett, 160 N.W.2d 427, 430 (Iowa 1968) (citations omitted).

Damages awarded pursuant to a jury verdict are not disturbed "unless they are flagrantly excessive or inadequate, so out of reason so as to shock the conscience, the result of passion or prejudice, or lacking in evidentiary support." Harsha, 341 N.W.2d at 797 (citing Fetters v. City of Des Moines, 260 Iowa 490, 499, 149 N.W.2d 815, 821 (1967), rev'd on other grounds, Morse v. Fox, 200 N.W.2d 791 (Iowa 1972).

The only disputed testimony we find regards the potential output for the leased land because a drought year occurred in 1982. Knoles' lessee averaged only 10 bushels per acre for soybeans on the leased land in 1982, but Morris did much better by averaging 100 bushels per acre for corn and 30 bushels per acre for soybeans on his adjacent land that same year. Testimony indicated that better farming techniques can result in substantial yield variances even for adjacent property.

Morris submitted the bushels produced, costs, and profits he made in 1980 and 1981 from farming the leased land. Morris earned $15,097 from corn and $16,933 from soybeans in 1980 from such land, and $9,542 from soybeans in 1981. Morris sold 16,695 bushels of corn grown on Knoles' land in 1981, but the profit, if any, was not indicated in the briefs.

The record indicates that in 1982 Morris was going to plant 104 acres of corn, which sold for $2.50 a bushel, and 136 acres of soybeans, which sold for $6.50 a bushel. Morris estimated 60% of his gross receipts was allocated to production costs.

After computing the figures submitted into evidence, we find that damage was sustained and the jury's award was well within reasonable grounds. The

trial court properly denied Knoles' motions for directed verdict, judgment notwithstanding the verdict, and new trial as to the speculative nature of the damages.

II.

Knoles also contends Morris had notice, at the very latest, in May of 1982 that the land would not be leased to him and did not attempt to mitigate damages because he failed to look for other ground to rent. A jury instruction was submitted which indicated that Morris had to seek to mitigate damages.

We do not presume the jury disregarded the instructions absent a specific showing, see Fleener v. Board of Supervisors of Poweshiek County, 246 N.W.2d 335, 338 (Iowa 1976), which Knoles has failed to make. Moreover, Iowa law indicates that while Morris had a duty to mitigate damages, Knoles had to plead and prove such damages. See Iowa Code §§ 619.7, .8 (1983); R.E.T. Corp. v. Frank Paxton Co. Inc., 329 N.W.2d 416, 422 (Iowa 1983); Iowa Light & Power Co. v. Board of Water Works Trustees, 281 N.W.2d 827, 833 (Iowa Ct. App. 1979). For purposes of a directed verdict, the evidence was viewed in the light most favorable to Morris to determine whether he made a good faith effort of mitigation. See Iowa R. App. P. 14(f)(2).

Knoles claimed other land existed which was reasonably close to Morris's farming operation so that he could have rented this other land. Morris, however, demonstrated that Knoles could not prove that any particular land was available in May of 1982 which was suitable to Morris's needs. Morris also claimed notice in May is too late to rent farmland for that upcoming summer due to planning considerations and planting requirements. From such evidence, a jury could find Knoles failed to prove Morris did not attempt to mitigate damages. The trial court properly denied Knoles' motions for directed verdict, judgment notwithstanding the verdict, and new trial on the mitigation of damages issue.

AFFIRMED.