IN THE COURT OF APPEALS OF IOWA

No. 1999-183 (9-407) 98-1221
Filed October 15, 1999

FILED
OCT 15
CLERK SUPREME

JOHN A. HOUSE,
Plaintiff-Counterclaim Defendant/Appellant,

vs.

RICHARD H. HOUSE and KELLY HOUSE f/k/a KELLY KING,
Defendants-Counterclaimants/Appellees.

Appeal from the Iowa District Court for Mills County, Charles Smith, Judge.

Plaintiff-appellant appeals a judgment in favor of defendants-appellees for breach of contract. The district court's finding of breach of contract is supported by the evidence, as are part but not all of the damages awarded. **AFFIRMED AS MODIFIED, AND REMANDED.**

Paul M. Shotkoski and Joseph D. Thornton of Smith Peterson Law Firm, Council Bluffs, for appellant.

Richard H. House and Kelly House, Malvern, pro se.

Considered by Sackett, C.J., and Zimmer and Miller, J.J.

MILLER, J.

Plaintiff-appellant John House appeals that part of the district court's judgment which found for the defendants-appellees Richard House and Kelly House on their counterclaim for breach of contract. He urges that there is not sufficient evidence in the record to support either the finding of the breach of contract or the amount of damages awarded. Finding substantial evidence to support the finding of a breach of contract, and substantial evidence to support some but not all of the damages awarded, we affirm as modified.

This sad state of family affairs began in 1996, when the plaintiff John House sold approximately twelve acres of farm property, including a house and other improvements, in Mills County, Iowa to his son, Richard House, and Richard's wife, Kelly. As part of the sale John was granted a lease for three years to the use of three grain bins located on the property near the house. Soon after this lease arrangement began, Richard and Kelly can e to the belief that John was breaching the lease agreement.

Richard and Kelly contacted an attorney who, in August of 1997 wrote a letter to John stating, in essence, that due to John's breach of the lease the lease was terminated. John responded by filing this lawsuit, seeking delcaratory relief and specifically asking the court to declare the defendants had no right to terminate the lease and that he had continued use of the grain bins and full access to them pursuant to the lease agreement. John further requested that the court temporarily and permanently enjoin the defendants from interfering with his quiet enjoinment and use

of the grain bins as allowed by the lease agreement. Richard and Kelly then counterclaimed, asking for, among other things, damages for John's alleged breach of the lease.

After trial to the court in February 1998, the district court ruled in June of 1998 that the defendants could not terminate the lease unilaterally, denied all requests for restraining orders, and awarded the defendants one thousand five hundred fifty dollars on their counterclaim for breach of contract. The plaintiff appeals.

Our review is governed by how the case was tried in district court. *Ralfs v. Mowry*, 580 N.W.2d 369, 371 (Iowa 1988). This case was filed as an equity action and nothing in the record before this court indicates it was ever transferred to the law docket. However, at trial the judge ruled on evidentiary objections. This is "normally the hallmark of a law trial". *Howard v. Schildberg Construction Co., Inc.*, 528 N.W.2d 550, 552 (Iowa 1995). For three reasons we will treat this case as a law action for purposes of review. First, at trial the judge ruled on evidentiary objections and no one objected to such procedure, the court and parties thus treating it as if it were a law action. Second, the issues on appeal are limited to questions of breach of contract and resulting damages, matters that are typically and appropriately filed and tried as law actions. Third, on appeal the appellant asserts standards of review that apply in law actions rather than in equity actions, and the appellee does not object.

Our review of this action tried at law is for the correction of errors of law. IowaR.App.P. 4. The trial court's findings of fact thus have the force of a jury verdict, we view the evidence in its light most favorable to those findings, and if they

are supported by substantial evidence we are bound by them. *Murray v. Conrad*, 346 N.W.2d 814, 817 (Iowa 1984). If the findings are ambiguous, they will be construed to uphold, not defeat, the judgment. *Byers v. Contemporary Industries Midwest, Inc.*, 419 N.W.2d 396, 397 (Iowa 1988).

Although such discretion is not without limits, the determination of the amount of damages in a bench trial ordinarily lies within the sound discretion of the trial court. *Hawkeye Motors, Inc. v. McDowell*, 541 N.W.2d 914, 917 (Iowa App. 1995). The trial court may not disregard evidence and arbitrarily fix an amount of damage for which no basis in the evidence exists. *Id.* On the other hand, precision is not required. *Id.* at 918. We will uphold an award of damages so long as the record discloses a reasonable basis for which the award can be inferred or approximated. *Id.* An award of damages within the range of the evidence will not be disturbed on appeal. *Id.*

In a breach of contract claim, the complaining party must prove: (1) the existence of a contract, (2) the terms and conditions of the contract, (3) that it has performed all of the terms and conditions required under the contract, (4) the defendant's breach of the contract in some particular way, and (5) that plaintiff has suffered damages as a result of the breach. *Iowa-Illinois Gas & Electric Co. v. Black & Veatch*, 497 N.W.2d 821, 825 (Iowa 1993). The only issues on appeal are whether there is substantial evidence to support the trial court's findings of breach of the lease agreement and the amount of damages awarded. After a thorough review of the record, we find substantial evidence supporting the trial court's finding that a breach

of contract has occurred, and substantial evidence supporting some but not all of the damages awarded.

The trial court found that defendants had met their burden of proving their claims that the plaintiff had caused damage to their landscaped yard and adjacent areas with machinery, vehicles and trailers (and to some extent with horses). The plaintiff argues that although damage occurred to the landscape, it was only normal wear and tear, no more than would occur on any other farm in Iowa where similar activities occurred. Both testimony and photographs show deep ruts and trenches cut by plaintiff's machinery, vehicles and trailers. Damage occurred not only in the immediate area of the leased bins, but into landscaped yard area as well. The evidence is such that the trial court could have, as it apparently did, find that the damage went beyond normal wear and tear. We find no error in the trial court's finding of a breach of contract by plaintiff.

The trial court awarded defendants one thousand five hundred fifty dollars. This amount included five hundred dollars for the work that would be necessary to make any repairs to the landscape to repair it to the condition it was in before the plaintiff damaged it. This amount is supported by evidence in the form of testimony of the defendant Richard House. He is by reason of his employment as a growing supervisor for Henry Fields Seed & Nursery knowledgeable concerning landscaping and its costs. The trial court did not err in awarding this amount.

The trial court awarded an additional one thousand fifty dollars, apparently based on its finding that Richard House had "testified that he had expended $1,050

on the landscape to date." However, a review of the trial transcript shows that this one thousand fifty dollar expense was incurred for bulldozer work and grass seed for landscaping done shortly after the defendants purchased their property and before the damage caused by plaintiff. It was not money spent or to be spent to repair the damage caused by the plaintiff.

The evidence supports only the five hundred dollars to repair the damage caused by plaintiff, and not the additional one thousand fifty dollars. The trial court erred in awarding this additional one thousand fifty dollars.

We affirm the trial court's finding of a breach of the lease. We decrease the defendants' judgment for damages from one thousand five hundred fifty dollars to five hundred dollars. We remand for the district court to enter an amended judgment in accordance with this opinion.

AFFIRMED AS MODIFIED AND REMANDED.