FILED
AUG 27 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-183 / 90-1215

DALE F. DRISCOLL and RITA J. DRISCOLL,

Plaintiffs-Appellants,

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vs.

LEO MALLIE,

Defendant-Appellee.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

Plaintiffs appeal the trial court's refusal to grant them a new trial. **AFFIRMED.**

Peter C. Riley of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellants.

Larry R. Kurt, Dubuque, for appellee.

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

PER CURIAM

The sole question in this appeal is whether former tenants, who claimed a lease on farmland, should have a new trial where the jury found they should have been entitled to lease the farmland but awarded no damages. The trial court denied plaintiffs a new trial. We affirm.

Plaintiffs-appellants Dale R. Driscoll and Rita J. Driscoll originally owned the farmland subject to a mortgage to Federal Land Bank. Federal Land Bank filed an action seeking to foreclose their mortgage. Defendant-appellee Leo Mallie was appointed receiver. Defendant rented the farmland to a third party during foreclosure. Plaintiffs subsequently sued defendant to enforce a right of first refusal to rent the farmland and to enforce a lease. The jury determined plaintiffs were entitled to rent the land for the crop year 1985. The jury found plaintiffs were not damaged. Plaintiffs filed a motion for new trial which was overruled. Plaintiffs appeal, contending the verdict is contrary to the evidence, and they should have been granted a new trial.

In determining whether the trial court should have granted plaintiffs a new trial, we review for an abuse of discretion. Witte v. Vogt, 443 N.W.2d 715, 716 (Iowa 1989); Householder v. Town of Clayton, 221 N.W.2d 488, 493 (Iowa 1974); Moore v. Bailey, 163 N.W.2d 435, 436 (Iowa 1968); Young v. Gibson, 423 N.W.2d 208, 210 (Iowa App.

1988); Yoch v. City of Cedar Rapids, 353 N.W.2d 95, 98 (Iowa App. 1984). Plaintiffs had the burden to prove they were entitled to a lease, and they suffered damages by not having the lease. Plaintiffs had to prove if they had been given the lease on the farmland they would have made a profit.

The plaintiffs sold all their farming equipment and livestock in 1983. There was evidence they had no way to put in and harvest crops. The lease they sought to enforce required an $8,000 advance. There was evidence plaintiffs would have been unable to make the $8,000 advance. Plaintiffs do not strenuously argue they could have farmed the land and made a profit. They contend if they had the lease they could have received government payments. There is no evidence the government payments would have exceeded the rent due under the lease.

The evidence presents a fact question of whether plaintiffs would have profited from the lease. A verdict should fairly and adequately compensate a plaintiff for damages suffered, but the amount of damages to be awarded is peculiarly a jury, not a court, function. Waddell v. Peets Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978). The verdict was not contrary to the evidence. The trial court did not abuse its discretion in failing to grant a new trial.

AFFIRMED.