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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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WILLIAM L. MELTON,	)	Appeal from the Circuit Court
	)	of Jo Daviess.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-SC-197
	)	
TYLER MILLERSCHONE,	)	Honorable
	)	Kevin J. Ward,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices McLaren and Schostok concurred in the judgment.

**ORDER**

*Held:* The trial court did not err in denying plaintiff damages for defendant's breach of contract: although plaintiff established how much he subsequently paid a third party to do the job, he could only speculate as to how much he would have paid defendant under the contract, and thus the court could not determine the position that plaintiff would have been in had the contract been performed.

¶ 1 Plaintiff, William L. Melton, filed a *pro se* small claims complaint against defendant, Tyler Millerschone, alleging that defendant breached an oral agreement with plaintiff to restore a car at a \$15 hourly rate, plus the cost of materials. Plaintiff alleged that, when defendant failed to perform the agreement, plaintiff paid another party \$25 per hour to restore the car. Plaintiff sought damages

in the amount of \$7,175, plus costs. Plaintiff's computation of damages was based on the \$10 difference between the rate that defendant agreed to and the rate that plaintiff had to pay another party. The trial court found in favor of plaintiff but awarded only \$320 in consequential damages. Following the denial of his motion for reconsideration, plaintiff timely appealed. The issue on appeal is whether the trial court's failure to award plaintiff the full amount of damages sought was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 2

### I. BACKGROUND

¶ 3 The following relevant testimony was adduced at a bench trial. Plaintiff testified that, in January 2007, he showed defendant photographs of a car that he was considering purchasing and having restored. Defendant agreed to perform the restoration work at a rate of \$15 per hour plus materials, and plaintiff purchased the car. When the car arrived in February 2007, defendant told plaintiff that he could not begin to work on it for another two to three weeks, so plaintiff put the car in storage at a cost of \$40 per month. Despite plaintiff's repeated requests for defendant to pick up the car, defendant did not pick up the car until October 2007. Thereafter, plaintiff called defendant numerous times and left messages but never heard back. In January 2008, plaintiff went to the body shop where defendant worked and saw the car sitting unprotected in an open barn. After attempting to contact defendant for several days with no success, he received a call from defendant. Defendant told plaintiff that he had been very busy and suggested to plaintiff that plaintiff have the work done by the shop where defendant worked. The shop's rate was \$35 per hour.

¶ 4 Plaintiff further testified that, after defendant told him that he could not work on the car, plaintiff began to look for someone else to do it. This took a good deal of time, because it was a big job. Plaintiff contacted Jason Schubert, who had originally introduced plaintiff to defendant.

Schubert told plaintiff that he would be willing to do the work but that he was booked for a year. Plaintiff agreed to wait. Schubert began working on the car in November 2010 and finished in October 2011. Schubert charged plaintiff \$25 per hour and took 717 hours to complete the job. Plaintiff asked the court to award him \$7,175, which amounted to the \$10 difference between defendant's hourly rate and Schubert's hourly rate. On cross-examination, plaintiff testified that Schubert was a mentor to defendant. They worked in the same shop, and defendant was like an apprentice to him.

¶ 5 Defendant testified that he was self-employed and did auto body work. In 2007, he worked at Koning's Body Shop. He discussed restoring the car with plaintiff and agreed to do the work at a rate of \$15 per hour. He was not able to work on the car, because his father became ill. He needed to help his father with the family farm and was also working full-time.

¶ 6 At the close of evidence, the court found the existence of a contract between the parties, which defendant breached (or repudiated). It then considered the issue of damages, stating:

“What I don't know on the basis of this record and I don't think is frankly knowable is, had [defendant] done the job, would it have taken him twice as long? Because that's a possibility and because I don't have any indication that a reasonable amount of time which would have been expended by someone who was less qualified to do this work would have been something less, I am unable to award any damages relating to the difference in the price negotiated initially between the parties and the price ultimately paid to Mr. Schubert, however, I do believe that [defendant], on the basis of this record, is responsible for, what I would characterize as, the consequential damage of the need to store the vehicle for eight

months at the rate of \$40, so I am going to award the amount of \$320 as judgment in favor of [plaintiff] and I am going to require each party to pay their own costs.”

¶ 7 Following the denial of his motion for reconsideration, plaintiff timely appealed.

¶ 8 II. ANALYSIS

¶ 9 Plaintiff argues that the trial court erred in denying him his claimed damages on the basis that it was not clear how long defendant would have taken to complete the job. According to plaintiff, he presented sufficient uncontroverted evidence on the issue of damages.

¶ 10 A trial court’s award of damages will not be reversed unless it is against the manifest weight of the evidence. *Royal’s Reconditioning Corp. v. Royal*, 293 Ill. App. 3d 1019, 1022 (1997). A trial court’s damages award is against the manifest weight of the evidence when it ignored the evidence or used an incorrect measure of damages. *Royal’s Reconditioning Corp.*, 293 Ill. App. 3d at 1022.

¶ 11 When a contract is breached, the injured party is entitled to be placed in the position he would have been in had the contract been performed, but he may not be placed in a better position. *Stendera v. State Farm Fire & Casualty Co.*, 2012 IL App (1st) 111462, ¶ 18. In proving damages, the burden is on the plaintiff to establish a reasonable basis for computing damages. *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 107 (2006). Damages must be proved with reasonable certainty and cannot be based on conjecture or speculation. *Razor*, 222 Ill. 2d at 106-07. While absolute certainty with regard to damages is not required, the evidence must nevertheless establish a basis for the assessment of damages with a fair degree of probability. *Prairie Eye Center, Ltd. v. Butler*, 329 Ill. App. 3d 293, 302 (2002). If the plaintiff proves his right to damages but fails to provide a proper basis for computing those damages, only nominal damages may be awarded. *Keno & Sons Construction Co. v. LaSalle National Bank*, 214 Ill. App. 3d 310, 312 (1991).

¶ 12 Here, plaintiff's calculation of his damages was based on an assumption. He started with what he paid Schubert to complete the job: \$17,925, or \$25 per hour for 717 hours. He then subtracted what he assumes he would have paid defendant: \$10,755, or \$15 per hour for those same 717 hours.<sup>1</sup> The obvious assumption was that defendant would have completed the job in the same amount of time. This assumption was not only speculative but highly improbable, given that defendant was less experienced than Schubert. Thus, the evidence simply did not reveal the position that plaintiff would have been in had the contract been performed.<sup>2</sup>

¶ 13 Plaintiff's reliance on *Sorenson v. Fio Rito*, 90 Ill. App. 3d 368 (1980), does not warrant a different conclusion. In *Sorenson*, the plaintiff brought a malpractice action against the defendant, her former attorney, for damages incurred as a result of the defendants' failure to timely file certain tax forms. Her damages included \$1,500 in attorney fees incurred in her attempts to mitigate her damages resulting from the defendant's malpractice. At trial, her attorney testified concerning the cost of services he performed, and the plaintiff testified that she paid the bill. The trial court awarded the attorney fees, and the award was affirmed on appeal. According to plaintiff, *Sorenson* supports his argument that the amount he paid Schubert was reasonable. However, the reasonableness of that amount did not establish what he would have paid under the contract. Without any evidence of that crucial figure, any damages would have been speculative.

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<sup>1</sup>This difference comes to \$7,170, though plaintiff asked for \$7,175.

<sup>2</sup>Nor did the evidence reveal even that plaintiff would have been in a *better* position had the contract been performed. If defendant would have spent more than 478 additional hours, plaintiff would have been in a *worse* position.

¶ 14 We recognize that this was a small claims action and thus not subject to strict rules of evidence and procedure. See Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992) (“At the informal hearing all relevant evidence shall be admissible and the court may relax the rules of procedure and the rules of evidence.”). Nevertheless, these relaxed rules did not lessen plaintiff’s burden of proof; he still had to establish a reasonable basis for computing damages. Given the evidence presented, we cannot say that the court’s conclusion that plaintiff failed to provide a reasonable basis upon which to calculate damages was against the manifest weight of the evidence.

¶ 15 In light of the foregoing, the judgment of the circuit court of Jo Daviess County is affirmed.

¶ 16 Affirmed.