

¶ 3

FACTS

¶ 4 Plaintiff, Clarence Potthast, Jr., and defendant, Allen Potthast, are brothers. On December 7, 2006, defendant entered plaintiff's sawmill, turned on the power in the sawmill, and then used one of his power cords, which was defective in that it had previously overheated, to heat defendant's tractor overnight. He exited the sawmill leaving the defective cord plugged in despite his knowledge that plaintiff always kept the power to the sawmill off for safety purposes. Sometime that evening, the sawmill caught fire, destroying the building itself, along with plaintiff's stored wood, equipment, and tools.

¶ 5 At trial, plaintiff testified as to the contents and value of the building and his stored wood. His testimony was that the wood had been accumulated over a period of time and that it alone was worth more than \$500,000 if sold in bulk but that if various types of wood were sold individually, the total sale would result in close to \$1 million in proceeds. He further testified that the equipment stored in the sawmill at the time of the fire was worth more than \$54,000, putting a head rig's value at \$80,000 and a wood chipper's at \$26,000. Plaintiff also testified that the sawmill building itself was worth more than \$30,000. Plaintiff testified to these values both as the owner of the property and its contents and based on his long experience in the business. The record indicates that in the course of direct and cross-examination, various details of plaintiff's business were brought before the jury. The purchase price of the sawmill in 2000 was \$7,000, and at the time of the sawmill's purchase, plaintiff's inventory was low. The purchase price included the land, the building, and the building's contents. Plaintiff was engaged in the sawmill and tree removal business with minimal profits as noted in tax returns, with three years of profits of \$400 or less, a loss in 2003 of more than \$2,000, and losses in 2003, 2005, and 2006 of \$2,214, \$2,821, and \$5,321, respectively. An appraisal conducted in 2005 resulted in a determination that the fair market value of the real estate was \$5,000.

¶ 6 Defendant called a professional real estate appraiser and auctioneer who testified that the value of the equipment at the time of the fire was approximately \$54,316 and the value of the building and real estate would be \$19,000.

¶ 7 Plaintiff filed a posttrial motion which was denied by the trial court, a motion for new trial on damages which was denied by the trial court, and an alternative motion for new trial, which was also denied. The trial court noted in its written order that "[t]he court cannot say that the jury's verdict is against the manifest weight of the evidence, or that it was otherwise inadequate as a matter of law."

¶ 8 Plaintiff timely appealed.

¶ 9 ANALYSIS

¶ 10 The essence of plaintiff's argument is that the verdict of the jury was against the manifest weight of the evidence, that evidence being the uncontradicted testimony of plaintiff as to the value of the building and its contents that were destroyed in the fire. Defendant's argument is that this evidence was contradicted and contested and that the jury was appropriately allowed to determine the weight to be given to this contested evidence and made a decision which was not against the manifest weight of the evidence. We agree with defendant.

¶ 11 Plaintiff argues that this situation is covered by this court's determinations in *Usselmann v. Jansen*, 257 Ill. App. 3d 978, 629 N.E.2d 193 (1994), in which we determined that the jury award therein was inadequate because it ignored proven and uncontroverted evidence as to various elements of damages. Plaintiff also cites *Usselmann* for the proposition that consideration of the relationship of the opposing parties is inappropriate. In *Usselmann*, the relationship was an in-law relationship. In the instant case, the parties are brothers. Plaintiff also cites *Kern v. Uregas Service of West Frankfort, Inc.*, 90 Ill. App. 3d 182, 412 N.E.2d 1037 (1980), as to the appropriateness of a new trial on damages only.

¶ 12 Defendant cites *Maple v. Gustafson*, 151 Ill. 2d 445, 603 N.E.2d 508 (1992), for the standard to be applied in considering a motion for new trial. That standard, as noted by the *Maple* court, is that a verdict is against the manifest weight of the evidence in those instances where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary, and not based upon any of the evidence. *Maple*, 151 Ill. 2d at 454, 603 N.E.2d at 512-13. The motion for a new trial may be granted and the verdict set aside if it is contrary to the manifest weight of the evidence, and that question is addressed to the sound discretion of the trial court. *Maple*, 151 Ill. 2d at 454-55, 603 N.E.2d at 513. The court must also consider whether the parties received a fair trial. *Maple*, 151 Ill. 2d at 455, 603 N.E.2d at 513; see also *Kamp v. Preis*, 332 Ill. App. 3d 1115, 774 N.E.2d 865 (2002). Defendant argues that the standard has not been met and, upon review of the record, we agree.

¶ 13 Defendant notes in his argument that the jury awarded \$70,000 for the wood, tools, and equipment, which is approximately 10 times what plaintiff had paid for the real estate and its contents. Defendant also argues, and our review of the record confirms, that plaintiff's testimony as to valuation was, in fact, challenged and the jury, as trier of fact, was free to consider its credibility based on valuation testimony by the appraiser, income tax records as to activity, and all general elements that jurors are allowed to use to determine questions of credibility. See *Branum v. Slezak Construction Co.*, 289 Ill. App. 3d 948, 952, 682 N.E.2d 1165, 1168-69 (1997). Defendant further argues that, in fact, plaintiff's efforts to increase and improve the wood inventory were recognized by the verdict's valuation of that inventory.

¶ 14 We conclude, accordingly, based on the reasons stated above, that the jury did not ignore proven, uncontroverted elements of damages, as did the jury in *Usselmann*, and that the circuit court, in reviewing and ruling upon plaintiff's motion for new trial on damages,

did not abuse its discretion in denying said motion.

¶ 15 Accordingly, the judgment of the circuit court of Bond County is affirmed.

¶ 16 Affirmed.