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2017 IL App (3d) 150543-U

Order filed September 7, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

ROLLIE SPRINGER, as Executor of of the Estate of Cynthia L. Springer,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Tazewell County, Illinois.
Plaintiff-Appellant and Cross-Appellee,	)	
v.	)	Appeal No. 3-15-0543 Circuit No. 07-L-123
TREKON, INC., DON GUNTER, STEPHEN L. GUNTER, GREGORY L. GUNTER, AND JAMES LONERGAN,	)	Honorable Scott A. Shore and David J. Dubicki, Judges, presiding.
Defendants-Appellees and Cross-Appellants.	)	

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice Holdridge and Justice Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* (1) The trial court's valuation of plaintiff's stock was not against the manifest weight of the evidence; (2) the trial court did not err in its imposition of interest under the terms of the parties' agreement.
- ¶ 2 This appeal arises from a civil action filed by plaintiff, Cynthia Springer, who is now deceased. Her complaint was pursued by the executor of her estate, Rollie Springer, and alleged,

*inter alia*, that defendants, Don Gunter, Stephen L. Gunter, Gregory L. Gunter, and James Lonergan—the majority shareholders of Trekon, Inc. (Trekon)—acted in an illegal, oppressive, and fraudulent manner in regard to her as a minority shareholder and conspired to devalue the price of stock she held in Trekon. Defendants filed a counterclaim, arguing that Cynthia’s estate failed to sell Cynthia’s stock back to Trekon in violation of the company’s stock purchase agreement after her death. In response, the executor of Cynthia’s estate requested the trial court enter a declaratory judgment determining the value of Cynthia’s shares of stock. In a bifurcated trial on the issue of the value of Cynthia’s shares of Trekon, the trial court entered a declaratory judgment, valuing Cynthia’s stock at \$172,717.25. Subsequently, the trial court ruled that defendants were obligated to pay interest on the purchase amount of Cynthia’s stock pursuant to the parties’ stock purchase agreement. On appeal, the executor of Cynthia’s estate argues that the trial court’s valuation of Cynthia’s shares at \$172,717.25 was against the manifest weight of the evidence. On cross-appeal, defendants argue that the trial court erred by including interest in its judgment. We affirm the trial court’s judgment.

¶ 3

## FACTS

¶ 4

### A. Background

¶ 5

In 1998, the three children of Don Gunter (Stephen, Gregory, and Cynthia) agreed to purchase the shares of their father's company, Trekon. Stephen, Gregory, and Cynthia took out a loan for \$1,200,000, plus each of them put down \$75,000 toward the purchase of Trekon. As part of the sale, Don insisted that his long-time employee, James Lonergan, be given a 25% interest in the company in exchange for a \$75,000 down payment by James.

¶ 6

From 1998 to 2003, Don’s three children did not accept salaries. Instead, the net income from Trekon was used to repay the \$1,200,000 loan. During that same time, James continued to

receive his salary as an employee of the company. In December of 2003, the \$1,200,000 loan was paid off. On December 19, 2003, Trekon's four board members (Don's three children and James) passed a resolution that Don's three children would each begin taking a salary of \$60,000 per year. On January 15, 2004, they passed another resolution—the deferred compensation repayment plan—under which Don's three children would receive additional compensation that was considered to be deferred compensation for the five years they had gone without salaries. In 2007, Don threatened to institute legal proceedings on behalf of James if his three children did not pay James additional money as well.

¶ 7 On March 15, 2007, Stephen, Gregory, and James voted to pass a resolution rescinding the deferred compensation resolution of January 14, 2004. In the new resolution, Stephen, Gregory, and James indicated the deferred compensation resolution "created a fallacious debt and accrual of interest at six (6) percent, owed to them by Trekon Company, Inc." and had been "based on fictitious salaries not taken during the years 1998, 1999, 2000, 2001, 2002, and 2003." The new resolution also indicated that "the undersigned [Stephen, Gregory, and James] believe[d] that the resolution passed and/or action taken, at the January 2004 meeting by [Stephen, Gregory, and Cynthia] was inappropriate." Stephen and Gregory also agreed that \$274,637.16 was to be repaid to James for the overpayments that had been made to Stephen, Gregory, and Cynthia.

¶ 8 In written opposition to the resolution, Cynthia indicated that each officer of Trekon (Cynthia, James, Stephen, and Gregory) provided valuable services to the company and were fairly compensated via the deferred compensation resolution. Cynthia believed: (1) each officer provided valuable serviced to the company and were fairly compensated; and (2) each of the officers had fully performed their obligations to Trekon and to Don's other company, The

Library Store, which entitled them to compensation for their effort from each entity. Cynthia did not agree with the “faulty assumption that each of [them] [were] only worth one salary.” She described the new resolution as approving a “significant dilution of the value of both [her] contribution to the Company and the value of [her] ownership interest in the Company.”

¶ 9 On October 8, 2007, Cynthia brought a complaint against Trekon, Don, Stephen, Gregory, and James, alleging four counts against the defendants for: (1) shareholder oppression; (2) intentional interference with a contract; (3) intentional interference with a prospective business advantage; and (4) civil conspiracy. After Cynthia’s death on October 6, 2008, and pursuant to section 2-1008(b) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1008(b) (West 2008)), Rollie Springer, Cynthia’s husband and executor of Cynthia’s Estate, substituted for Cynthia as a party plaintiff.

¶ 10 B. Defendants’ Counterclaim

¶ 11 On April 3, 2009, the defendants—Trekon, Don, Stephen, Gregory, and James—filed a counterclaim against Cynthia's estate, claiming that the estate breached the company’s corporate stock purchase agreement (agreement) executed by the parties on January 1, 2003. Each of the four owners of Trekon owned 120 shares of stock of Trekon, and under the agreement, upon the death of one of the shareholders, the deceased shareholder’s shares of stock were to be sold back to Trekon, at the valuation of the stock set forth in section three of the agreement. Paragraph three provided a formula to determine the "Purchase Price" of the stock, as follows:

“Purchase Price:

The normalized pre-tax income for the preceding three years with the month of the death of the Shareholder not to be included, unless it was on the last day shall be determined. A weight of three shall be assigned to the most recent

twelve months, a weight of two to the next twelve months, and weight of one to the oldest twelve months. The weighted average pre-tax cash flow shall then be multiplied by four and from that value the sum of notes payable by the Shareholders shall be subtracted and the difference shall be the agreed upon company value. An individual Shareholder's interest shall be determined by multiplying the company value times a fraction the numerated of which shall be the number of shares owned by the Shareholder and the denominator of which shall be the total number of issued outstanding shares of common stock. The determination of the normalized pre-tax cash flow shall be made by the Company's accountant and shall be done in conformity with generally accepted accounting procedures. Attached to this agreement as Exhibit B is an example of how the Company value would be determined. The value of any insurance proceeds received by the Company on account of the death of a Shareholder shall not be used in determining the value."

¶ 12 The agreement also indicated that the closing on the purchase of stock from a deceased shareholder should not take place "later than six (6) months from the death of the Shareholder." The agreement further specified that "[i]nterest at the rate of [2½ %] over the local prime rate in effect at the company's bank, at the date of death to closing shall be paid at closing."

¶ 13 Defendants' counterclaim alleged that Cynthia's estate refused to sell Cynthia's shares of stock in violation of the agreement. On November 12, 2008, Trekon's attorney sent a letter to the attorney for Cynthia's estate indicating that defendants had calculated the value of Cynthia's shares of Trekon stock, as of the date of her death on October 6, 2008, at \$75,776.98. Cynthia's estate, through counsel, disputed defendants' valuation of the stock and requested \$300,000 to

settle the matter and \$750,000 in regard to certain insurance proceeds. In their counterclaim, the defendants requested the trial court to order Cynthia's estate to comply with the agreement and transfer her shares to the company in exchange for \$75,776.98.

¶ 14 In response to the counterclaim, the executor of Cynthia's estate denied that Cynthia's stock had been properly valued and admitted that he refused to sell Cynthia's stock for the price offered. In a counterclaim to defendant's counterclaim, the executor of Cynthia's estate filed a "declaratory judgment" count, requesting a declaratory judgment regarding the validity of the stock purchase agreement and the value Cynthia's stock.

¶ 15 C. Bench Trial on the Counterclaim and Counter-Counterclaim

¶ 16 On March 5, 2012, a bench trial began on the bifurcated issue of the valuation of the Cynthia's 120 shares of Trekon stock pursuant to the terms of the corporate stock purchase agreement. Prior to presenting testimony from their expert valuation witnesses, each party indicated what they believed was the value of Cynthia's stock. Defendants indicated the stock was worth \$24,108.38. Plaintiff indicated his expert, Neil Gerber, valued Cynthia's stock at \$300,000 or \$375,000, depending on whether the promissory note given to James for reimbursement for the deferred compensation the other three shareholders had received was included in the calculation. The parties agreed the valuation date was the date of Cynthia's death on October 6, 2008.

¶ 17 During opening statements, the following colloquy took place:

[DEFENDANT'S ATTORNEY]: \*\*\* What I believe we're arguing about is the interpretation of [the example formula attached to the stock purchase agreement], so you won't hear anything about assets or any of that, and I don't think there's any quibbling about the figures.

[PLAINTIFF'S ATTORNEY]: I think we're probably getting into [how to] follow this formula \*\*\* the issue of what it actually means.

\* \* \*

THE COURT: \*\*\* The formula then with respect to the inclusion or exclusion of payment of deferred compensation would refer only to the current pay-out of deferred compensation for the accounting period, the three-year accounting period that's mentioned, right?

\*\*\* [The evidence of defendant's expert, Joseph Glawe] is going to be based upon the actual pay-out of deferred compensation over that three-year period?

[DEFENDANT'S ATTORNEY]: Yes, and it's going to be based upon the actual rent and the actual salaries paid. He's going to follow what Exhibit B says [the example formula attached to the agreement].

THE COURT: Where would Exhibit B list deferred compensation?

[DEFENDANT'S ATTORNEY]: Okay. You have to determine at the top [of] what the pre-tax net income is, and what our expert [Glawe] is going to say is that in determining that, you are to use generally accepted accounting principles, which is what the agreement states.

\*\*\* [S]o what Glawe is going to say, in determining the net income under generally accepted accounting procedures, the amount the company owes [James] \*\*\* is to be expensed in the year in which it's incurred, and therefore, that affects the determination of the net income.

\* \* \*

[PLAINTIFF'S ATTORNEY]: \*\*\* [I]f you look at the language, you know, the normalization, let me just read you the SSVS [Statements on Standards for Valuation Services] definition of normalization to put this in context.

Normalized earnings means economic benefits adjusted for non-recurring, non-economic or other unusual items to eliminate anomalies and/or facilitate comparisons, so what [our expert] Mr. Gerber did was to look at these extraordinary items that were incurred during that three-year period that normally skewed the calculation for the valuation of the company.

\* \* \*

THE COURT: The differences are that you're saying the amounts deducted by Glawe are aberrations that are not deducted when normalizing the valuation based on income for a three-year period.

[PLAINTIFF'S ATTORNEY]: That's correct, Your Honor.

THE COURT: Those aberrations then consist of deferred compensation, and how much does that come up to?"

¶ 18 The trial court then reviewed the report of plaintiff's expert, Neil Gerber, and asked, "Where is the deferred compensation?" Plaintiff's attorney directed the court to page four of Gerber's report.

¶ 19 Gerber's report, which was entered into evidence during the trial, indicated that on January 15, 2004, a resolution for a deferred compensation repayment plan was entered into by three of the company's shareholders (Gregory, Stephen, and Cynthia). Under the 2004 deferred compensation plan, Gregory, Stephen, and Cynthia were to be given compensation, plus interest, for wages they did not receive in 1998 through 2003 because the company's cash flow was being



used to make loan payments. The deferred compensation agreement was rescinded over three years later, on March 15, 2007. Around the same time in 2007, an agreement was reached with James to compensate him for payments he did not receive because he was not part of the deferred compensation resolution. During the relevant three-year period for valuing Cynthia's stock, 2006 through 2008, the payments made under the deferred compensation resolution and to James for reimbursement were included as an operating expense under the total calculation of "officer's compensation." Gerber commented in his report that the "officer's compensation" in the years 2006 through 2008 was significantly higher than what it would be under normal conditions due to the deferred compensation resolution payments and was actually considered "fictitious" under the resolution of March 15, 2007. The report indicated, "we believe all compensation paid under the [deferred compensation resolution] and the agreement with [James] are considered non-recurring expenses and have been normalized."

¶ 20 Gerber set forth a summary of the company's earnings, which indicated the pre-tax income of the company for 2006 through 2008 and included normalization adjustments to that figure. Based on the job duties of Stephen, Gregory, and Cynthia in relation to their performance of administrative functions, Gerber opined that their actual total salary should have been \$100,000 for each year as opposed to \$182,934, \$218,308, and \$449,753 for the years 2008, 2007 and 2006, respectively. Gerber did not include a breakdown of which portion of the listed "officer's compensation" figures was attributable to deferred compensation payments. He simply "normalized" the officers' compensation down to \$100,000 for each of those years. Gerber also indicated that Trekon was overpaying rent in 2006 through 2008, opined \$100,000 would have been a more appropriate rental expense, and "normalized" the overpayment of rent down to \$100,000 for each of the three relevant valuation years.

¶ 21 After the trial court reviewed Gerber’s report, the trial judge asked, “[w]here is the deferred compensation in this bracket?” Plaintiff’s attorney explained that it was included under “officers’ compensation.” He argued that the deferred compensation should have been “booked” in the years 1998 through 2003 and not in the years 2006, 2007, and 2008. The following colloquy took place:

“THE COURT: They voted themselves deferred compensation?”

[PLAINTIFF’S ATTORNEY]: Right, but it was for obligations that were incurred during ’98 through 2003, so to book it properly, it should have been accrued in those years rather than in the years that so, you know, dramatically affect the valuation of the company.

THE COURT: That indebtedness that the deferred compensation was intended to compensate was incurred for what reason, to run the corporation or—

[PLAINTIFF’S ATTORNEY]: Well, our position is that during those years, because they were paying a million too low, they didn’t take any salaries in those early years, and they decided that after they had repaid that loan, they could afford to compensate themselves for the work that they done during those years.

THE COURT: Okay.

[PLAINTIFF’S ATTORNEY]: And Mr. Gerber’s point is that because non-recurring expenses—in other words, compensation long since earned [is] non-recurring, and therefore, it should be normalized.

THE COURT: All right.”

¶ 22 Defendant’s expert—Trekon’s accountant, Joseph Glawe—testified that he calculated the purchase price of Cynthia’s stock in accordance with the terms of the stock purchase agreement.

Glawe examined the company's tax returns and books to determine the normalized pre-tax cash flow. Glawe testified the agreement indicated that he, as the company account, was to determine the "normalized" pre-tax cash flow in conformity with "generally accepted accounting principles," but the reference to "normalized" was not a term within generally accepted accounting principles. Glawe testified that an example of the agreement's valuation formula was attached to the agreement to show how to normalize the company's earnings. In the example, "depreciation," "interest expense," "excess life insure expense" (annual premiums that exceed \$5000), "gain on sale of assets," and "moving expense" was added to Trekon's "pretax net income" to determine the company's "normalized pre-tax cash flow."

¶ 23           Glawe testified that the company's financial statements did not reflect proper accounting for the deferred compensation paid to James under generally accepted accounting principles. As a result, Glawe adjusted the company's net income to conform to generally accepted accounting principles by deducting the extra amount to be paid to James as an expense from the company's earnings in 2007. Glawe testified that the proper accounting procedure for a deferred compensation, or any kind of an agreement to pay someone in the future, was to determine the present value of the future payments and expense the entire present value as an expense in the year the agreement was made. In this case, the agreement to pay James in the future was made in 2007 and the present value of those future payments was \$360,098.13. Glawe attributed an expense of \$360,098.13 to the year 2007 so that year "became a loss due to the deferred compensation liability [to James]."

¶ 24           Glawe testified that in keeping with the example attached to the agreement, he computed the "normalized earnings." In normalizing Trekon's earnings, he started with the pre-tax net income (or loss) and then added or subtracted items—depreciation, income, and income taxes.

He did not use other factors, such as rent or employee salaries, in normalizing the company cash flow because the agreement was "pretty specific" by way of the attached example. Glawe opined that if other factors were intended to be considered then "chances are" they would have been included in the exhibit. Glawe testified that the formula in the example was a formula commonly referred to as "EBITDA," which stood for earnings before interest, depreciation, and taxes. Glawe adjusted the company's gross yearly income for 2007 to account for the deferred compensation to be paid to James in the future. In keeping with the agreement formula, Glawe multiplied each of the three applicable years by their respective multiples (one, two, or three), totaled the three numbers, divided that sum by six (the total of the weighted multiples), and arrived at a weighted average gross income of \$102,173. Glawe multiplied \$102,173 by four, in accordance with the agreement formula, to yield the total value of the company as \$408,346. Glawe testified that under the agreement formula any shareholder debt should be subtracted from the value of the company, so Glawe subtracted a company debt of \$35,351 and the remaining unpaid balance owed to James of \$267,907.12. He arrived at a company value of \$96,433, making Cynthia's 25% share in the company worth \$24,180.38.

¶ 25 On March 6, 2012, in a written order, the trial court found the value of Cynthia's stock on the date of her death, October 6, 2008, was \$172,717.25. (The trial court did not rule on the issue of whether interest was owed under the contract at that time). On March 7, 2012, the company tendered a check to Cynthia's estate for \$172,717.25.

¶ 26 E. Motion to Reconsider

¶ 27 Plaintiff (the executor of Cynthia's estate) filed a motion to reconsider, arguing the calculation of \$172,717.25 did not accurately reflect the court's findings. Plaintiff argued that the trial judge had based his valuation of Trekon on defendant's exhibit that had "derived most of

its content from [plaintiff's expert] Gerber's report," and the trial court did not consider the other "major item" adjusted by Gerber of deferred compensation paid out to Stephen, Gregory, and Cynthia during the relevant time period of 2006 through 2008 for wages that had actually been earned from 1998 through 2003. As an exhibit to the motion to reconsider, plaintiff attached a document titled "Recalculation of Gerber Report" that included an adjustment for payments made under the deferred compensation resolution in 2006 and 2007. Plaintiff requested the trial court to reconsider its valuation of Cynthia's stock to reflect "this more accurate calculation."

¶ 28 Plaintiff also attached a copy of the transcript of the trial court's valuation ruling to the motion to reconsider. The transcript indicated that the trial judge had rejected Gerber's adjustments for the alleged overpayment of the officers' salaries and for the alleged overpayment of rent, finding there was not a proper foundation for Gerber's opinions regarding those adjustments or his recalculation of those amounts. The trial court also found that the unpaid balance of \$276,907.12 payable to James should not have been deducted as an expense from the corporate earnings because it "clearly [was] an anomalous payment out and pertain[ed] to the years prior to the calculation period" and, instead, it should have been normalized as required by the agreement. The trial court determined that the company's net earnings for the relevant three period was \$726,220, "as indicated by [defendants'] demonstrative Exhibit Number 17." (The \$726,220 net earnings figure included a deduction for "officers' compensation," which appears to have been comprised of both current compensation and the monies paid out to Gregory, Stephen, and Cynthia as part of the deferred compensation agreement, meaning the deferred compensation was not "normalized"). The trial court reduced the company's \$726,220 net earning value by an outstanding corporate debt of \$35,351 down to \$690,869, of which Cynthia's 25% share was \$172,717.25.

¶ 29 The trial court denied the motion to reconsider.

¶ 30 E. Interest

¶ 31 On August 3, 2012, the trial court entered an order indicating the defendants owed Cynthia's estate interest on the purchase of the Cynthia's stock "per contract and parties' intent." The court ordered defendants to pay interest for the stock purchase from the date of Cynthia's death on October 6, 2008, until the time defendants made the payment on March 7, 2012. The amount of interest was determined by the trial court to be \$34,295.02.

¶ 32 F. Judgment

¶ 33 On July 2, 2015, pursuant to plaintiff's request, the complaint was dismissed with prejudice, and a judgment was entered against defendants for the value of Cynthia's stock in the amount of \$172,717.25, plus interest in the amount of \$34,295.02, for a total judgment amount of \$207,012.27. The trial court found there was no just reason for delaying enforcement or appeal pursuant to Supreme Court Rule 304(a).

¶ 34 Plaintiff appealed. Defendants cross-appealed.

¶ 35 ANALYSIS

¶ 36 On appeal, the executor of Cynthia's estate argues that the trial court erred in valuing Cynthia's stock. In their cross-appeal, defendants argue the trial court erred in assessing interest in the amount of \$34,295.02.

¶ 37 I. Value of Cynthia's Shares

¶ 38 The executor of Cynthia's estate argues that the trial court's finding that Cynthia's shares were valued at \$172,717.25 does not accurately reflect the trial court's specific findings and, instead, the shares should have been valued at \$270,000. The executor of Cynthia's estate argues that the trial court based its calculations on defendant's demonstrative exhibit 17 and concedes

that the exhibit “derived most of its content from [their own expert] Gerber’s report,” which did not include a calculation normalizing the deferred compensation sums paid to Stephen, Gregory, and Cynthia during the relevant three-year valuation period. The executor of Cynthia’s estate contends that the trial court “inadvertently” accepted Gerber’s improper calculation of the company’s value. In response, defendants contend plaintiff’s argument that Cynthia’s stock should have been valued at \$270,000 was new a theory or factual argument that cannot be made in a motion to reconsider or on appeal. Defendants have no objection to the portion of the trial court’s order finding the value of Cynthia’s stock to be \$172,711.25.

¶ 39 In a bench trial, it is the function of the trial judge to weigh the evidence and make findings of fact, and a court of review will not reverse those finding unless the findings are against the manifest weight of the evidence. *Kalata v. Anheuser-Busch Cos.*, 144 Ill. 2d 425, 433 (1991); *Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent or the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Eychaner*, 202 Ill. 2d at 251.

¶ 40 We reject plaintiff’s argument that the trial court “inadvertently” accepted an improper calculation of the company’s value. The record shows that the trial court was well aware that expert testimony would consist of a valuation of the company that had been reduced by the expense of the 2004 deferred compensation agreement payments. Prior to hearing the evidence, the trial court and the parties’ attorneys had an extensive dialogue regarding the deferred compensation payouts, with the trial court specifically asking whether the testimony of defendant’s expert, Glawe, would be “based upon the actual pay-out of deferred compensation over [the relevant] three-year period.” Defendant’s attorney confirmed that Glawe’s valuation of the company would be based on the deferred compensation payments. The trial court

specifically asked defendant's counsel where the deferred compensation was referenced in the valuation formula example attached to the stock purchase agreement. Defendant's attorney indicated that deferred compensation would be an included expense in Glawe's calculation of the company's pre-tax net income.

¶ 41 In discussing deferred compensation evidence in opening statements, plaintiff's attorney indicated that their expert, Gerber, would eliminate anomalies incurred during the three-year valuation period, such as the deferred compensation payments. The trial court asked plaintiff's attorney where in Gerber's report the deferred compensation amount was specified. Gerber's report did not specify the actual amount of deferred compensation to be "normalized," but instead showed a total amount of the officers' compensation paid in each year for 2006, 2007, and 2008, which included both current and deferred compensation paid each year. Gerber "normalized" (reduced) the expense of officers' compensation for each year downward to \$100,000—the amount that Gerber opined was reasonable compensation for the officers to perform their administrative duties. However, the trial court specifically rejected Gerber's opinion that the amount of reasonable compensation and reasonable rent would have been \$100,000. Therefore, the record shows that the trial court had rejected plaintiff's higher valuation of the company where it was based on an adjustment of officers' compensation downward to \$100,000 and an adjustment of rent downward to \$100,000.

¶ 42 As plaintiff acknowledges, Gerber's report failed to provide a valuation of Cynthia's stock specifically based on the normalization of the deferred compensation payments during the relevant three-year period. It was plaintiff that requested the trial court's valuation of the stock by way of a declaratory judgment action. The plaintiff in a declaratory judgment action bears the burden of proof. *Teppar v. County of Lake*, 233 Ill. App. 3d 80, 82 (1992). While Gerber opined



that the officers' compensation should not have exceeded \$100,000 per year and normalized officers' compensation downward based on that figure, he did not specifically normalize the deferred compensation payouts. Therefore, based on the record before this court, we conclude that the trial court's valuation of Cynthia's shares of Trekon stock at \$172,717.25 was not against the manifest weight of the evidence.

¶ 43            Additionally, the trial court had the opportunity to determine whether it had "inadvertently" miscalculated its valuation when considering the plaintiff's motion to reconsider. The fact that the trial court did not change its valuation figure upon reconsideration of its ruling indicates that the trial court did not "inadvertently" value Cynthia's stocks at \$172,717.25. Furthermore, to the extent that plaintiff argued for the trial court to consider its "recalculation of Gerber's report" attached to the motion to reconsider, the recalculation could not have been considered by the trial court because it was not newly discovered evidence and could have been presented at the hearing in support of plaintiff's request for a declaratory judgment. See *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 54 (the purpose of a motion to reconsider is to bring the trial court's attention to newly discovered evidence that was not available at the time of the first hearing, changes in law, or the misapplication of existing law to the facts at hand).

¶ 44

## II. Interest

¶ 45            In their cross-appeal, defendants argue the trial court erred in its determination of the amount of interest defendants were contractually obligated to pay under the terms of the stock purchase agreement. Defendants claim that no interest is due or, at most, six months of interest was due in the amount of \$5,961.60. Defendants contend the trial court erred in imposing interest from the date of Cynthia's death on October 6, 2008, until the company paid the court-ordered stock purchase value amount on March 7, 2012.

¶ 46 In construing a contract, a court' primary objective is to give effect to the intentions of the parties. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). A court will look first to the contract language, construing the contract as a whole, and viewing each provision in context of the other provisions. *Id.* at 233. When the terms of an agreement are clear and unambiguous, the construction of a contract is a question of law for the court. *Jay v. United Defense Industries, Inc.*, 162 Ill. App. 3d 1071 (1987). The initial determination of whether a contract is ambiguous is a question of law and is subject to a *de novo* review. *Dowling v. Chicago Options Associates*, 226 Ill. 2d 277, 286 (2007).

¶ 47 In this case, section 2 of the agreement is entitled "Purchase upon Death of a Shareholder" and provides as follows:

"2.1 Upon the death of any of the Shareholders, all of the shares of stock in the Company owned by him and to which he or his personal representative shall be entitled shall be sold to and purchased by the Company \*\*\* as hereinafter provided. The Company shall purchase such shares at the price provided in Paragraph 3.

\* \* \*

2.3 The closing of such purchase and sale shall take place \*\*\* on the date designated by the Company which shall not be more than one hundred twenty (120) days following the date of qualification of the deceased Shareholder's personal representative and not less than sixty (60) days following such date, but in no event later than six (6) months from the death of the Shareholder. Interest at the rate of two and one-half percent (2½ %) over the local prime rate in effect at the company's bank, at the date of death to closing shall be paid at closing."

¶ 48 Section 4.1 of the agreement provided that if there was an outstanding amount due for the stock, “then any remaining amount shall be payable in not more than three (3) equal annual installments under the terms of a negotiable promissory note dated as of the closing, bearing interest at \*\*\* two and one-half percent (2½ %) over the local prime rate charged by the Company’s bank in effect on the closing date” and the rate was to be adjusted annually thereafter based on the local prime rate in effect plus two and one-half percent.

¶ 49 According to the terms of the agreement, “in no event” should the closing take place later than six months after the death of the shareholder. However, the agreement did not specifically address the factual scenario presented in this case where the purchase price of the stock was in dispute. Instead, the agreement specifically provided that interest on the purchase of stock from a deceased shareholder shall be paid “from the date of death to closing,” with the company designating the date of the closing. The “closing” did not take place in this case until March 7, 2012, when the company paid for the stock. Under the unambiguous language of the contract, the company was to pay interest from the date of Cynthia’s death until the closing. Furthermore, looking to section 4.1 of the agreement, the company was to pay interest on any outstanding amount due for the stock purchase after closing, indicating it was the intent of the parties that interest be paid until the total payment for the stock was complete. Therefore, the trial court did not err in assessing interest on the purchase price of the stock, from the date of Cynthia’s death on October 6, 2008, until the date of the closing on March 7, 2012, in the amount of \$34,295.02.

¶ 50 CONCLUSION

¶ 51 The judgment of the circuit court of Tazewell County is affirmed.

¶ 52 Affirmed.