NO. 4-10-0537 Filed 2/4/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JOHN A. STRINGFIELD and PATRICIA D. STRINGFIELD, as Debtors in Possession in Chapter 12 Bankruptcy, Plaintiffs-Appellees, v. HOMER J. LOGUE, JR., Defendant-Appellant.	)))))))	Appeal from Circuit Court of Logan County No. 04L3 Honorable Thomas M. Harris, Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Appleton and Myerscough concurred in the judgment.

ORDER

Held: As it was supported by evidence and resulted from using the correct measure of damages, the trial court's damages award was affirmed.

In 2004, plaintiffs, John A. and Patricia D. Stringfield, filed a complaint against defendant, Homer J. Logue, Jr. Plaintiffs alleged defendant improperly terminated a farm lease and sought damages for lost profits. Patricia was later voluntarily dismissed from the litigation. In July 2008, following a bench trial, the trial court found for plaintiff but found he had failed to prove damages. In June 2009, this court reversed and remanded for a new trial solely on the question of damages. In December 2009, the trial court awarded plaintiff $64,534.29 in damages.

On appeal, defendant argues the trial court's damages

calculation is erroneous. Defendant presents two arguments in favor of reversal. First, defendant argues the court erroneously overruled defense counsel's objection to certain testimony as untimely. Second, defendant argues the court's reliance on plaintiff's testimony, rather than plaintiff's income-tax forms, in calculating the damages award constituted error. We affirm as modified to correct for an apparent error in the court's arithmetic.

At the July 2008 bench trial, plaintiff testified he had been grain farming for 30 years. From 1982 to 2002, plaintiff and defendant agreed to a lease of defendant's farm property whereby plaintiff farmed the land and the parties split costs and revenue in even shares. In the summer or fall of 2002, defendant told plaintiff he wanted to farm the land himself and, in the spring of 2003, defendant planted that year's crop without plaintiff's assistance. In 2003, defendant's land would have made up approximately 42% of the acreage plaintiff farmed. The trial court found defendant had violated section 9-206 of the Code of Civil Procedure (735 ILCS 5/9-206 (West 2002)) in terminating the lease as defendant failed to give plaintiff timely, written notice of the termination but found plaintiff failed to prove damages because there was no evidence of defendant's actual yield from his 2003 crop, which the court intended to use to calculate plaintiff's lost profits. This court reversed and

remanded, holding the court should have awarded damages in the amount of plaintiff's lost profits using projected estimates of expenses plaintiff would have incurred and yields he would have attained if he had farmed defendant's land because defendant's farming method differed from plaintiff's (*Stringfield v. Logue*, No. 4-08-0657 (June 18, 2009) (unpublished order under Supreme Court Rule 23)). On remand, the court awarded plaintiff lost profits in the amount of $64,534.29 and court costs.

First, defendant argues the trial court erred by including in plaintiff's damages a one-half share of a $3,111.50 grain-elevator bonus. Specifically, defendant claims the court erroneously denied defense counsel's objection to certain testimony concerning the amount of the bonus as untimely. At the trial on damages, plaintiff was testifying to his damages on direct examination when the following exchange occurred:

> "Q. Is there anything else that you would have gotten?
>
> A. From grain sales at the elevator we get a patronage back or a bonus that would total $3111.56 that year [(2003)].
>
> MR. MONTALVO [(defendant's attorney)]: I object to that testimony, foundation.
>
> THE COURT: All right. Foundation objection sustained.

MR. TAYLOR [(plaintiff's attorney)]: Q. In the 2003 crop year you farmed your acreage. Who did you sell the grain to?

A. To Culver-Fancy Prairie Co-op.

Q. Is that all of it?

A. Yeah.

Q. And does Culver-Fancy Prairie pay you money for exclusive grain sales?

A. Yes, it's actually a patronage. It is a Co-op and they pay back patronage and dividends.

Q. And do you recall how much it is?

A. I believe it was seven cents a bushel that year.

Q. And you have already testified as to estimated yields and so forth so 44,450 bushel [*sic*] at seven cents a bushel had you sold all your projected crop to Mr. Logue or Mr. Logue's ground to Fancy Prairie?

A. Yes, it would have been a total of that $3111.

Q. Okay. So what is your estimate of the gross receipts from--

MR. MONTALVO: The objection still stand-

s, your Honor. I don't think proper foundation has been laid for the testimony of the bonus of the elevator.

THE COURT: In what way do you believe it is defective?

MR. MONTALVO: Again contrary--there is nothing other than him saying that. You may say that goes to weight. He says I believe it was seven cents. There is nothing from the elevator. There is no--he's testifying as an expert and he has nothing upon which he relies to make that.

THE COURT: Well, he had previously testified to seven cents a bushel. Are you objecting late to his testimony as to the [seven] cents a bushel based on foundation.

MR. MONTALVO: Yes, sir.

THE COURT: Would you read back the last question please.

(The court reporter read back the last question.)

THE COURT: I think the objection was late in coming from the prior question.

MR. MONTALVO: And the reason I wanted

> him to finish before I made my objection is because I didn't know what else he was going to say. Once he stopped and answered the question and the next question came that is when I raised my objection to what he was saying, the seven cents, and I had initially objected on the foundation to any testimony on that bonus.
>
> THE COURT: Well, I'm going to allow you on cross to delve into foundation. It is a little passed [*sic*] the time for a foundation objection on this I believe."

The court found plaintiff proved he would have received a $3,111.50 grain-elevator bonus in 2003 absent defendant's breach.

Defendant maintains his objection to plaintiff's testimony for lack of foundation was timely and, since it lacked a proper evidentiary basis, the court's inclusion of the bonus in its damages calculation was unsupported by the record. We review the court's ruling on an evidentiary objection for an abuse of discretion. *In re Estate of Doyle*, 362 Ill. App. 3d 293, 302-03, 838 N.E.2d 355, 363-64 (2005).

The trial court overruled defendant's objection because it found the objection was not timely. In general, an objection to evidence must be timely and based on specific grounds. *Hunter*

v. Chicago & North Western Transportation Co., 200 Ill. App. 3d 458, 472, 558 N.E.2d 216, 225 (1990). In turn, to be timely, an objection to evidence must be made at the time of its admission. *Id.*

In this case, the trial court found defendant's objection to plaintiff's testimony came one question too late. The court did not abuse its discretion.

We note defendant's contention that the trial court had already sustained an objection to plaintiff's testimony regarding the amount of the bonus. According to defendant, he should not have been required to renew his objection immediately when plaintiff testified to the amount of the bonus the second time as, under his understanding of the intervening questioning and testimony, plaintiff failed to lay a sufficient foundation for the contested testimony even after the court sustained defendant's initial objection.

To the contrary, had defendant renewed his objection immediately when plaintiff resumed testifying to the amount of the bonus, the trial court may have found a sufficient foundation had been laid. Significantly, after the court sustained defendant's initial objection, plaintiff's counsel pursued a line of questioning that suggests plaintiff had firsthand knowledge of the amount of the bonus and was, thus, not testifying as an expert to that information. Defendant's failure to object

immediately deprived the trial court of an opportunity to rule on the issue and give specific findings that we could evaluate on review. Once the testimony was received without objection, defendant's challenges were properly relegated to impeachment on cross-examination and the testimony could serve as the basis of a portion of the damages awarded.

Second, defendant argues the trial court's method of calculating damages was erroneous. Specifically, defendant contends the court erroneously calculated plaintiff's projected cost savings that resulted from defendant's breach of the lease. According to defendant, the court erred by relying on plaintiff's testimony regarding his projected costs rather than employing defendant's proposed method of determining plaintiff's projected costs per acre by reference to plaintiff's income-tax return and multiplying this figure by the number of acres plaintiff would have farmed on defendant's land had he not terminated the lease. Plaintiff's response brief does not specifically address this argument. However, we disagree with defendant's argument because we find the court's damages award was supported by evidence.

"The reviewing court will not disturb the damages assessed by a trial court sitting without a jury unless its judgment is against the manifest weight of the evidence." *Royal's Reconditioning Corp. v. Royal*, 293 Ill. App. 3d 1019, 1022, 689 N.E.2d 237, 239 (1997); see also *Stein v. Spainhour*,

167 Ill. App. 3d 555, 561, 521 N.E.2d 641, 644 (1988) ("The fixing of damages is a function of the trier of fact and should not be disturbed upon review unless there is no evidence in support of the verdict or it is obviously the result of passion or prejudice"). "A trial court's damages assessment is against the manifest weight of the evidence when [the court] ignored the evidence or used an incorrect measure of damages." *Royal*, 293 Ill. App. 3d at 1022, 689 N.E.2d at 239.

When this court remanded this cause to the trial court for a new trial on the issue of damages, we instructed the court to estimate damages using the method employed to calculate lost farming profits when crops are partially or completely destroyed. In such a case, the damages are equal to the probable crop yield multiplied by the crop's market price per unit, measured at the time the crop would have been sold, less "the necessary cost of cultivating, harvesting, and taking the same to market" (internal quotation marks omitted). *People ex rel. Peters v. O'Connor*, 311 Ill. App. 3d 753, 758, 725 N.E.2d 391, 395 (2000). Where lost profits are being calculated to measure damages for breach of contract, only those costs that are avoided by the defendant's breach are subtracted from the plaintiff's projected revenue to determine lost profits. See *Sterling Freight Lines, Inc. v. Prairie Material Sales, Inc.*, 285 Ill. App. 3d 914, 918, 674 N.E.2d 948, 951 (1996) ("Those costs that are avoided as a result

of the defendant's breach are deducted from the contract price").

The trial court aptly described the variables involved in the case at hand. The court found calculation of the projected revenue requires determining (1) the number of acres of corn and beans (the two crops plaintiff farmed on defendant's land) that plaintiff would have farmed in 2003; (2) the likely yield of corn and beans in 2003 on that acreage; and (3) the price per bushel of corn and beans in 2003. These figures would be multiplied to find the projected revenue from grain, to which any other expected earnings should be added. "Then to be deducted would be the cost associated with the production on that acreage to arrive at the amount of the net profit," which would then be divided in half to determine plaintiff's share under the lease.

Both parties agree with the trial court's estimate of the projected revenues. The court determined plaintiff would have planted 200 acres of corn and 161 acres of beans on defendant's land. The court found plaintiff would yield 182 bushels per acre of corn and 50 bushels per acre of beans. The court found the price of corn was $2.53 per bushel and the price of beans $7.43. Multiplying 200 acres of corn times 182 bushels per acre times the price of $2.53 per bushel, the court found plaintiff would have generated $92,092 in revenue from corn; multiplying 161 acres of beans times 50 bushels per acre times the price

of $7.43 per bushel, the court found plaintiff would have generated $59,811.50 in revenue from beans. The court found the projected revenue from the grain yielded on defendant's land to be $151,903.50. In addition, the court found plaintiff's farming on defendant's land would have generated a $3,111.50 grain-elevator bonus and $9,852 in "CCC payments," both of which would have been split between plaintiff and defendant.

The parties' major disagreement at trial and on appeal involves the trial court's calculation of plaintiff's projected costs that were avoided by defendant's termination of the lease. The court separated costs into two categories: inputs (consisting of chemicals, fertilizer, lime, and seed) and other expenses. Based on plaintiff's testimony, which was supported by receipts from the supply store where plaintiff purchased his inputs, plaintiff spent $37,726.68 on the inputs he used to farm 495 acres in 2003. The cost per acre of these inputs was $76.22. By multiplying the $76.22 cost per acre of inputs by the 361 acres plaintiff would have farmed on defendant's land, the court arrived at a total cost of inputs of $27,515.42.

The trial court then considered the other expenses plaintiff avoided by defendant's breach. Plaintiff testified he would have spent $2,500 on fuel, $1,141.50 on crop insurance, and $500 on utilities in farming defendant's 361 acres, for a total of $4,141.50 in other expenses. The court found no other credi-

ble evidence of plaintiff's expenses.

Defendant argues the trial court erred in its calculation of plaintiff's cost savings resulting from defendant's breach because the court rejected defendant's assertion that plaintiff's expenses should be calculated by reference to plaintiff's 2003 income-tax return. Specifically, referring to plaintiff's Schedule F, in which plaintiff reported his revenues and expenses from farming, defendant argued the court should have calculated plaintiff's expenses per acre by dividing plaintiff's 2003 farm-related expenses by the 495 acres plaintiff farmed in 2003 to determine plaintiff's costs per acre. Defendant argued this figure should be multiplied by defendant's 361 acres to determine the expenses plaintiff avoided by defendant's breach. Using defendant's method, the costs, including inputs, avoided by defendant's breach were $132,638. Using this cost figure, defendant calculates plaintiff's damages to be $14,424 not including plaintiff's share of the $3,111.50 grain-elevator bonus, which defendant contests.

We conclude the trial court did not err in rejecting defendant's proposal for estimating costs. The court rejected defendant's proposed figure because plaintiff did not itemize the expenses on his Schedule F and, as a result, the court could not determine which costs were variable and which were fixed, *i.e.*, which costs were avoided by defendant's breach and which were

not. We agree with the court it is impossible from looking at plaintiff's Schedule F to distill what costs should be included in the calculation of lost profits.

Defendant asserts plaintiff's testimony was not the "best" available evidence of costs. Defendant claims plaintiff's Schedule F is the best evidence because it was reported to the government under penalty of perjury. However, plaintiff's trial testimony was likewise reported under penalty of perjury. This assertion is, therefore, unconvincing. Defendant also points to the farming profits reported in plaintiff's tax returns from 1999 through 2002 and asserts the court's award was disproportionately high as it exceeded even the highest profit plaintiff had previously reported for his entire farming operation. However, defendant failed to present any reliable evidence of specific expenses plaintiff was likely to have avoided by defendant's breach in excess of those estimated by plaintiff in his testimony. Without this evidence, the court had no basis for adjusting its estimation of projected costs.

In sum, we conclude the trial court's raw figures of expected revenue and costs were supported by evidence and the court employed the correct measure of damages.

For the foregoing reasons, we affirm the trial court's judgment of $64,534.29 in damages plus court costs.

Affirmed.