

IN THE COURT OF APPEALS OF IOWA

No. 0-100 / 09-1325
Filed April 8, 2010

JOE DANIEL,
Plaintiff-Appellant,

vs.

NEW COOPERATIVE, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Carroll County, Joel E. Swanson,
Judge.

A plaintiff appeals a district court order entering summary judgment in favor of a defendant and denying his motion for summary judgment, contending that the court improperly calculated damages. **AFFIRMED.**

Warren L. Bush, Wall Lake, for appellant.

Scott A. Hindman of Bikakis, Mayne, Arneson, Hindman & Hisey, Sioux
City, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

Joe Daniel sued New Cooperative, Inc. for spraying the wrong herbicide on twenty-five acres of his corn crop, resulting in the destruction of that crop. New Cooperative conceded negligence and agreed that, by virtue of its negligence, the replanted field yielded 2834.75 fewer bushels of corn than it otherwise would have.¹ The only issue before the court was the per-bushel price of the lost corn.

New Cooperative filed a motion for summary judgment, asserting that Daniel was entitled to \$3.83 per bushel, which was the market price of corn at the time of harvest in the fall of 2008. Daniel filed a cross-motion for summary judgment, arguing he was entitled to \$7.18 per bushel, which he characterized as “the contract price of the lost bushels.” Daniel presented evidence that on the same day in June 2008 when he replanted his crop, he also entered into a contract to sell 5000 bushels of corn for \$7.18 per bushel.

The district court granted New Cooperative’s motion and denied Daniel’s motion. The court concluded that the appropriate price per bushel was \$3.83. The court calculated the damages for the lost corn as \$10,827.41 plus a stipulated sum of \$1175.43 for other damages. The court entered judgment in favor of New Cooperative for \$12,002.84. Daniel moved to reconsider this ruling. The district court made a minor adjustment to the fact findings, but otherwise left the judgment intact. Daniel appealed.

¹ The parties made reference to several figures in their summary judgment materials but agree on appeal that the correct figure is 2834.75. The district court used 2827 bushels as the figure in calculating the damages, which resulted in approximately \$30 less being awarded to Daniel than would have been had the court used the 2834.75 figure. However, the parties have not contested this portion of the court’s ruling.

The standards for review of summary judgment rulings are well established:

Summary judgment is appropriate only if the record shows there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981. The appellate court's review is therefore limited to whether a genuine issue of material fact exists and whether the district court correctly applied the law.

Pillsbury Co. v. Wells Dairy, Inc., 752 N.W.2d 430, 434 (Iowa 2008).

We begin with the following law on crop damages, which is undisputed: "The proper method of measuring crop damage is the difference between the value the crop should have had and the value actually obtained, less any expenses." *Manning v. Int'l Harvester Co.*, 381 N.W.2d 376, 379 (Iowa Ct. App 1985); accord *Eppling v. Seuntjens*, 254 Iowa 396, 402, 117 N.W.2d 820, 824 (1962).² Daniel contends that the district court did not correctly apply this law to the facts. He asserts that

there simply is no evidence that the corn which [he] expected to harvest from the 25 acre field had a value other than \$7.18 which he contracted it for, and the trial court erred in fixing the per bushel value of the yield loss at \$3.83 per bushel when [he] never delivered any corn for that price nor did he ever have any plans to deliver corn for that price.

² In *Eppling*, the court stated, "The proper measure of damage for loss of growing crops is their value in the field at the time of injury or their value in matured condition less the reasonable expense of maturing and marketing." *Eppling*, 254 Iowa at 402, 117 N.W.2d at 824. The court noted that the first alternative is often difficult to ascertain because there is rarely a market for crops still in the field. *Id.* The court wrote,

Hence by far the most widely accepted method of arriving at their value at the time of destruction is to estimate the probable yield if the crop had not been destroyed, calculate the value of that yield and deduct the value and amount of labor and expense that would have been required, but for their destruction, to mature, care for and market the crop.

Id.

The parties agreed that the damage issue could be resolved on summary judgment. Therefore, the only question is whether the district court correctly calculated damages using the \$3.83 per bushel price as opposed to the \$7.18 per bushel price. It is undisputed that the June 2008 contract providing for delivery of 5000 bushels of corn at \$7.18 per bushel was fulfilled and that the June contract did not specify that the bushels would come from any particular field. Thus, the record does not support Daniel's argument that he lost \$7.18 per bushel as a result of the negligent spraying. While Daniel submitted documents showing that he delivered some corn in the fall of 2008 at prices of \$5.19 per bushel, \$5.34 per bushel, and \$6.51 per bushel, he does not argue that he could have delivered additional corn at those prices or that the district court should have selected one of these prices to calculate damages. This leaves us with the \$3.83 price per bushel. Based on Daniel's argument that the only alternatives were \$7.18 or \$3.83 and based on our conclusion that the contract with the \$7.18 price was fulfilled, we agree the appropriate price was \$3.83 per bushel. We affirm the district court's summary judgment ruling.

AFFIRMED.