

IN THE COURT OF APPEALS OF IOWA

No. 6-320 / 05-1208

Filed July 12, 2006

JOSEPH MEIRICK,
Plaintiff-Appellee,

vs.

LEONARD DUNN,
Defendant-Appellant.

Appeal from the Iowa District Court for Chickasaw County, Margaret L. Lingreen, Judge.

A defendant appeals following judgment in favor of the plaintiff in a conversion action. **AFFIRMED.**

Michael Kennedy of Kennedy & Kennedy Law Office, New Hampton, for appellee.

Christopher F. O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, New Hampton, for appellant.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

Defendant Leonard Dunn appeals following entry of a district court judgment in favor of plaintiff Joseph Meirick. Dunn contends the district court erred in the measure and calculation of Meirick's damages, in awarding Meirick damages that were neither necessary nor reasonable, and in failing to award Dunn damages on his counterclaim. We affirm the district court.

Dunn and Meirick are neighboring landowners. Each owned one-half of the portion of an abandoned roadway that separated their properties. In 1996 Dunn graded his half of the roadway and installed culverts under the roadway. In 2001 Dunn leveled Meirick's half of the roadway and removed the dirt from Meirick's land. Dunn spread some of the removed dirt on his own cropland. Meirick filed a petition seeking damages, in relevant part, for the wrongful removal of the dirt. Dunn filed a counterclaim alleging a pile of trees and debris on Meirick's land had blocked the flow of water through the culverts, which had allegedly caused ponding on Dunn's land, resulting in crop loss.

The matter was tried to the district court. The court determined Meirick had established his conversion claim, and awarded him \$8859.38 in damages: \$3459.38 for the value of the dirt removed by Dunn and \$5400 for the costs of an engineering survey performed to calculate the amount of dirt taken.¹ The court dismissed Dunn's counterclaim. Upon Dunn's post-judgment motion the court specifically determined that given the nature of the evidence, including the expertise of the individual who performed the engineering survey and "the nature

¹ Meirick also alleged that (1) the culverts under the abandoned roadway had resulted in damage to his property, and (2) he was entitled to punitive damages. Both requests were denied by the court for failure of proof. Neither is at issue on appeal.

and extent of the work performed in calculating the amount of earth taken,” the survey charge was “reasonable and fair.” Dunn appeals.

We review this matter for the correction of errors at law. Iowa R. App. P. 6.4. As fact finder, the district court weighs the evidence and determines the credibility of witnesses. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). We are bound by the court’s findings of fact, provided they are supported by substantial evidence. *Land O’Lakes, Inc. v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000). We view the record in the light most favorable to Meirick, “indulging in all legitimate inferences that may fairly and reasonably be deduced from the evidence.” *Pollmann v. Belle Plaine Livestock Auction, Inc.*, 567 N.W.2d 405, 409 (Iowa 1997). When we apply these standards to the claims before us, we conclude the district court’s judgment should be affirmed.

Dunn first asserts that Meirick’s damages should be measured by the diminution in value of Meirick’s land. However, the district court correctly found that, in this action for conversion, the proper measure of damages is the fair and reasonable market value of the dirt at the time and place of taking. See *F.S. Credit Corp. v. Shear Elevator, Inc.*, 377 N.W.2d 227, 235 (Iowa 1985); *Criswell v. Criswell*, 230 Iowa 27, 33, 296 N.W. 735, 740 (1941), *vacated in part on other grounds by Criswell v. Criswell*, 230 Iowa 27, 300 N.W. 533 (1941); 18 Am. Jur. 2d *Conversion* § 18, at 168-69, §151, at 269 (2004).

We also reject Dunn’s second claim, that the district court improperly calculated the value of the converted dirt. Dunn challenges the court’s determinations that the converted dirt “included a combination of both fill dirt and black dirt,” and that the value of such mixed dirt would be the average of the

costs for fill dirt and black dirt, as established by the evidence. Dunn asserts there was “no evidence the roadway contained any black dirt,” much less a ratio of fill and black dirt that would justify averaging the costs of the two. Dunn relies on his own testimony the converted dirt was “basically clay and mixed dirt.”

Although Meirick does not point to any evidence that directly contradicts Dunn’s testimony, as the fact finder the district court was free to reject Dunn’s self-serving assertion and reasonably infer the presence of black dirt from the fact Dunn spread a portion of the converted dirt onto his cropland. Moreover, contrary to Dunn’s assertions, the record, which included evidence of the value of black dirt and fill dirt, provided a reasonable basis from which the district court, in its discretion, could approximate Meirick’s damages. See *Sun Valley Iowa Lake Ass’n v. Anderson*, 551 N.W.2d 621, 641 (Iowa 1996); *Hawkeye Motors, Inc. v. McDowell*, 541 N.W.2d 914, 917 (Iowa Ct. App. 1995).

We also reject Dunn’s third claim, that the district court erred in awarding Meirick \$5400 in damages for the cost of the engineering survey. Dunn concedes that, in a conversion case, the reasonable and necessary expenses incurred in recovering the value of the misappropriated property are themselves a proper element of damage. See *State v. Bonstetter*, 637 N.W.2d 161, 168 (Iowa 2001). He further concedes that some sort of study was necessary to establish the amount of dirt removed, and does not appear to question, as he did in his post-judgment motion, whether the charge was fair and reasonable for the work performed. Rather, he asserts the value of the converted dirt could have been ascertained without such an extensive study, posits the value could have

been established by simply multiplying the length of the road bed by the depth of the dirt removed, and contends such a survey would cost as little as \$250.

In addition to the fact the foregoing is no more than unsupported supposition on the part of Dunn, we find it significant that Meirick was seeking damages for dirt removed from his portion of an abandoned and leveled roadway. The engineer who conducted the survey explained that it involved both establishing the exact property boundary and accurately calculating the amount of dirt removed by Dunn, the latter of which required a theoretical reconstruction of the roadway. Under the circumstances, the district court's determination that the survey charge was fair and reasonable and its decision to award damages in the amount of that charge are substantially supported by the record.

Finally, we turn to Dunn's assertion that the court erred when it failed to award him damages for his crop loss, which we presume to be an assertion that the court erred in dismissing his counterclaim. As with his previous claims of error, we find it to be without merit. The dismissal of Dunn's counterclaim turned upon a factual determination that the pile of trees and debris on Meirick's land did not block the flow of water through the culverts. This determination finds substantial factual support in the record, including the testimony of an independent witness whom the court specifically found to be credible, as well as photographs of the culverts. The court accordingly did not err in dismissing Dunn's counterclaim.

The district court's factual findings are supported by substantial evidence, and its conclusions are free of legal error. Its judgment is accordingly affirmed.

AFFIRMED.