IN THE COURT OF APPEALS OF IOWA

No. 6-546 / 05-1541
Filed October 11, 2006

FRANK E. WICKHAM and PHYLLIS J. WICKHAM,
Plaintiffs-Appellants,

vs.

DALE LAUBE,
Defendant-Appellee.

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

The plaintiffs appeal following the denial of their motion for new trial. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

Richard D. Stochl of Elwood, O'Donohoe, Stochl, Braun & Churbuck, New Hampton, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

The plaintiffs appeal following the denial of their motion for new trial. We affirm.

Background Facts and Proceedings.

Frank and Phyllis Wickham owned an antique store until it closed in 2002. After closing the store, they moved their remaining inventory from their store location to an older home in which they had previously lived. On January 8, 2003, Dale Laube, a neighboring farmer, was burning weeds in a ditch adjacent to the home. Believing the fire to be extinguished, he left the scene; however, the fire later reignited, spread, and caught the Wickham's home on fire, destroying it and all of its contents.

Based on this incident, the Wickhams brought suit against Laube seeking compensation for the loss of their building and the antiques stored therein. At trial, the Wickhams presented a list of the individual antiques allegedly lost in the fire and the price they would have placed on each item. They further claimed the home had a fair market value of between $55,000 and $65,000. Following the trial, the jury found Laube liable for the damages, and awarded the Wickhams, among other things, $28,628 for the loss of the real estate and $59,400 for the antiques. The court subsequently denied the Wickhams' motion for new trial. The Wickhams appeal from this ruling.

Scope and Standards of Review.

We review the actions of the district court for corrections of errors at law. Iowa R. App. P. 6.4. Our standard of review of a trial court's action on a motion

for new trial is for abuse of discretion. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1996).

New Trial.

On appeal, the Wickhams urge that because the damages were inadequate, and thus not sustained by sufficient evidence, the court should have granted their motion for new trial. More particularly, they contend that the only reasonable evidence introduced indicated that the home had a fair market value of no less than $55,000 and that the antiques should have been valued at no less than $100,000.

The trial court may grant an aggrieved party a new trial when the jury awards excessive or inadequate damages, or when the verdict is not sustained by sufficient evidence, or is contrary to law. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). "Damages awarded should be sufficient to right the wrong done to the injured party." *Yoch v. City of Cedar Rapids*, 353 N.W.2d 95, 99 (Iowa Ct. App. 1984). The test for adequacy is "what will fairly and reasonably compensate an injured party for the injury sustained." *Householder v. Town of Clayton*, 221 N.W.2d 488, 493 (Iowa 1974). The verdict is adequate if it bears a reasonable relationship to the loss suffered. *Id.*

We conclude the jury's award of $28,628 for the destroyed home was within the reasonable range of the evidence and thus does substantial justice. We believe the following evidence supports the jury's determination of damages. At the time of trial, the Chickasaw County Assessor's office had placed a depreciation value of $28,628 for tax purposes on the house, the exact amount awarded by the jury. Furthermore the house was old, having been built in 1920,

and was not in great condition, as it had such problems as water in the basement, slanted floors, and badly worn interior finish. In fact, the assessor described the condition of the house as being "poor." On October 11, 2002, the Wickhams changed their insurance policy on the home, insuring it for a replacement value of $30,000. Based on this evidence, we conclude it was not unreasonable for the jury to fix a value somewhere below the $55,000 figure urged by the Wickhams.

Regarding the value of the antiques, we also conclude the court did not abuse its discretion in concluding a new trial was not warranted based on the jury's finding that the replacement value of the antiques was $59,400. The court instructed the jury that the Wickhams were entitled to the replacement costs of the destroyed antiques, and that it may, but was not required to, "consider the retail prices of the merchandise reduced by the average markup with reasonable sales expenses added."[1]

The Wickhams claimed the value of the antiques in the house totaled $122,494, a figure they arrived at by tallying the sticker prices placed on them in their antiques store. However, Phyllis Wickham testified that these sticker prices were only "potentially what I could get out of them," and admitted those prices were not what they paid for the antiques. Frank Wickham testified that many of the items in their store had been there for several years and that in the antiques sales business there may be bartering, resulting in a downward departure from the sticker price. In addition, the Wickham's tax returns supported the premise

[1] The Wickhams did not object to this instruction, and it thus is the law of the case on appeal. *Hoskinson v. City of Iowa City,* 621 N.W.2d 425, 430 (Iowa 2001).

that they sold their antiques for about a fifty percent mark-up in value. Finally, in 2002 the Wickhams purchased an insurance policy covering the antiques for a replacement value of $15,000. Based on this evidence, it was not unreasonable for the jury to conclude that the antiques were worth significantly less than the $122,494 figure urged by the Wickhams. The court therefore did not abuse its discretion in denying the motion for new trial.

AFFIRMED.