

IN THE COURT OF APPEALS OF IOWA

No. 6-923 / 06-0328
Filed January 31, 2007

MIDAMERICAN ENERGY COMPANY,
Plaintiff-Appellee,

vs.

MCANINCH CORPORATION,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

The defendant, McAninch Corp., appeals from a jury verdict entered in
favor the plaintiff, MidAmerican Energy Co., on its negligence claim. **AFFIRMED.**

Megan M. Antenucci and Drew J. Gentsch of Whitfield & Eddy, P.L.C.,
Des Moines, for appellant.

Thomas A. McDonald, Jeremy F. Goldstein, and James K. Schultz of
McDonald & McCabe, L.L.C., Chicago, and William L. Dawe and Sarah M. Kouri
of Hopkins & Huebner, P.C., Des Moines, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

The defendant, McAninch Corp. (McAninch), appeals from a jury verdict entered in favor of the plaintiff, MidAmerican Energy Co. (MidAmerican Energy), on its negligence claim. McAninch contends the district court erred in denying its request for special interrogatories and verdict form. It also claims the verdict was excessive. MidAmerican Energy cross-appeals, contending the court erred in failing to award it prejudgment interest from the date of the negligence. We affirm.

I. Background Facts and Proceedings. The facts giving rise to this case are not in dispute. On September 8, 2000, a McAninch construction crew was digging a trench for sewer lines outside of the Wabash Street electrical substation in Des Moines when a crew member caused the bucket on an excavator to break a guy wire, which fell upon power transmission components, leading to four electrical faults. To repair the thirty-three-year-old transformer, which weighs 265,000 pounds, it was moved to ABB in St. Louis for repair. The cost of repairing the transformer and restoring the electrical system was approximately \$921,100.00.

On June 30, 2004, MidAmerican Energy filed a petition alleging McAninch's negligence damaged the transformer. Following trial, a jury returned a verdict in favor of MidAmerican Energy and awarded damages of \$776,526.63, plus interest from the date of the filing of the petition. McAninch's request for remittitur and new trial were denied.

II. Special Interrogatories and Verdict Form. McAninch contends the district court erred in denying its request for special interrogatories and verdict form.

The submission of special interrogatories is within the discretion of the trial court. *Netteland v. Farm Bureau Life Ins. Co.*, 510 N.W.2d 162, 168 (Iowa Ct. App. 1993). It is also within the trial court's discretion to employ a special verdict in lieu of a general verdict. *Franklin v. Sedore*, 450 N.W.2d 849, 853 (Iowa 1990). Therefore, our review is for an abuse of discretion. *Netteland*, 510 N.W.2d at 168. An abuse of discretion occurs when the court's decision is based on a ground or reason that is clearly untenable or when the court's discretion is exercised to a clearly unreasonable degree. *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000).

McAninch proposed the following special interrogatories be submitted to the jury:

Depreciation

Question 1 – What is the total life expectancy, in years, of the transformer at issue before the incident?

ANSWER: _____ Years

Question 2 – How many years had the transformer at issue been in service on the day of the incident?

ANSWER: _____ Years

Question 3 – How many years of service were remaining in the transformer at issue on the day of the incident?

ANSWER: _____ Years

Question 4 – How many years of service were expected on the transformer at issue of it was repaired?

ANSWER:_____ Years

In conjunction with these special interrogatories, McAninch requested the verdict form include the following:

Question 6: With regard to the following elements of damage, in each blank below please enter the dollar figure as found by you in this matter:

Do not take into consideration any reduction of damages due Plaintiff's fault. If the Plaintiff has failed to prove any item of damage was proximately caused by Defendant's fault, enter zero for that item.

- A. What was the total cost of repair of the transformer at issue, as a proximate result of this incident? \$_____
- B. What is the amount of the additional losses or expenses, if any, sustained by MidAmerican Energy Company as a proximate result of the incident at issue? \$_____
- C. What is the total amount of damages you find for MidAmerican, if any, taking into account your answers to the special interrogatories? To make this calculation, divide the number you found in answer to special interrogatory no. 3, by the number you found in answer to special interrogatory no. 1. Take the resulting number and multiply it by the answer to A, above. Then add the amount from column B, above, and enter that number in this blank. If you find that damage in this matter was not proximately caused by McAninch Corporation, enter "0."
\$_____

The court denied McAninch's proposed special interrogatories and verdict form.

McAninch contends the district court abused its discretion in denying the proposed special interrogatories and verdict form because the jury failed to consider betterment to the transformer in determining its value at the time of the injury. However, the jury was instructed as follows:

In considering the amount of damages in this case, the measure of damages under Iowa law is that a party who causes the damage is liable for either the difference in the market price of the article before and after the injury or if no market price is discernible, then the cost of repairs to bring the article back to the condition it was at

the time of the loss. A party who has sustained loss or injury may receive no more than just compensation for the loss or injury sustained. A party is not entitled to be made more than whole, or to be put in a better condition that they would have been had the wrong not been committed.

This instruction is an accurate statement of the law and therefore the district court was not required to give the special interrogatories or verdict form requested by McAninch. See *Jordon v. Sinclair Refining Co.*, 257 Iowa 813, 823, 135 N.W.2d 120, 126 (1965) (holding it is not error to refuse to submit a special interrogatory on a fact covered in the general instructions). The defendant was still able to present to the jury the method it set forth in the requested instruction for calculating damages. Because the court did not abuse its discretion, we affirm.

III. Excessive Verdict. McAninch also contends the verdict was excessive and therefore the district court erred in failing to grant remittitur or a new trial.

The trial court has broad discretion in granting a new trial conditioned upon a remittitur to a set amount. *Hurtig v. Bjork*, 258 Iowa 155, 160, 138 N.W.2d 62, 65 (1965). We will not interfere with its ruling on a motion for new trial unless there appears to have been an abuse of discretion. *Id.* This discretion extends to the amount of the remittitur as well as the decision to grant or refuse a new trial. *Id.* The trial court has greater powers in granting a new trial or ordering a remittitur because of the size of the verdict than we do. *Id.* at 161; 138 N.W.2d at 65.

We will not set aside or alter a judgment regarding damages unless it is (1) flagrantly excessive or inadequate, or (2) shocks the

conscience or sense of justice, or (3) raises a presumption it is the result of passion, prejudice or other ulterior motive, or (4) lacks evidential support. In reviewing damage awards, we consider the evidence in the light most favorable to the plaintiff. We thus will uphold an award of damages so long as the record discloses a reasonable basis from which the award can be inferred or approximated, and will not disturb an award of damages on appeal that is within the range of evidence presented.

Revere Transducers, Inc. v. Deere & Co., 595 N.W.2d 751, 769 (Iowa 1999)

(citations omitted).

The evidence presented at trial showed the cost to repair the transformer was approximately \$921,000.00. One of McAninch's expert witnesses testified by deposition that estimates of the damage to the transformer in the range of \$750,000.00 to \$1.2 million were not inconsistent with the loss. Another stated reasonable cost of repair was \$780,000.00. Accordingly, there is a reasonable basis from which the jury's assessment of damages at \$776,526.63 can be inferred, and the damage award is within the range of evidence presented. Accordingly, the district court did not abuse its discretion in denying McAninch's motions for remittitur and new trial.

IV. Prejudgment Interest. On cross-appeal, MidAmerican Energy contends the district court erred in failing to award it prejudgment interest from September 8, 2000 forward. Our review is for correction of errors at law. *Mermigis v. Servicemaster Indus., Inc.*, 437 N.W.2d 242, 245 (Iowa 1989).

Judgment was entered on September 19, 2005. MidAmerican Energy had ten days in which to make its motion to modify the judgment. See Iowa R. Civ. P. 1.1007. It did not make its motion until November 11, 2005. Accordingly, its motion was untimely. Although MidAmerican Energy argues the one-year

time period set forth under rule 1.1012 applies, none of the grounds set forth under that rule are applicable here. Accordingly, we will not consider the motion on appeal.

AFFIRMED.