

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD HAKANSON,

Plaintiff-Appellee/Cross-Appellant,

v

MICHIGAN BASIC PROPERTY INSURANCE
ASSOCIATION,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED

June 22, 1999

No. 200774

Mason Circuit Court

LC No. 95-010640 CK

Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Plaintiff commenced this action to recover insurance benefits under a homeowner's policy with defendant after plaintiff's home was completely destroyed by fire. Defendant denied liability under the policy, claiming that plaintiff was involved in deliberately setting the fire, committed fraud in reporting the loss, and failed to cooperate with the investigation of the insurance claim. The case was tried before a jury, which found in favor of plaintiff and awarded him \$26,000, representing the actual cash value of plaintiff's home at the time of the fire. The jury determined that the replacement cost of the house was \$70,000. The jury also awarded plaintiff \$35,000, representing the actual cash value of the personal property destroyed in the fire, and \$7,000 for additional living expenses. Defendant now appeals as of right and plaintiff cross-appeals. We affirm.

Defendant first argues that the trial court erred in failing to timely direct a verdict in its favor on plaintiff's independent tort claim. The court initially denied defendant's motions for directed verdict brought at the conclusion of plaintiff's case-in-chief, and at the conclusion of defendant's case, but ultimately granted the motion before the case was submitted to the jury. Defendant argues that the delay in the trial court's ruling prejudiced its right to a fair trial because the jury heard evidence that it would not have otherwise heard if the court had granted the motion earlier. However, we conclude that defendant has not shown an error requiring reversal where the tort claim was never submitted to the jury, and the trial court instructed the jury to disregard the evidence in question. Defendant has failed to show that the trial court's delayed ruling in directing a verdict prejudiced its right to a fair trial.

Defendant also argues that it was entitled to a directed verdict because plaintiff presented insufficient evidence of his damages. This Court reviews a trial court's ruling on a motion for directed verdict de novo. *Braun v York Properties, Inc.*, 230 Mich App 138, 141; 583 NW2d 503 (1998). In reviewing the trial court's decision, this Court is required to examine the evidence, including all legitimate inferences that may be drawn therefrom, in the light most favorable to the nonmoving party. *Kubczak v Chemical Bank & Trust Co.*, 456 Mich 653, 663; 575 NW2d 745 (1998).

The party asserting a claim has the burden of proving his damages with reasonable certainty. *Berrios v Miles, Inc.*, 226 Mich App 470, 478; 574 NW2d 677 (1997). In order to recover damages, the plaintiff is not required to prove the amount with mathematical precision, although damages may not be based upon speculation or conjecture. *Id.* Damages may be awarded where there is a reasonable basis for computing the amount, even if that amount is only an approximation. *Id.* See also *Hoffman v Auto Club Ins Ass'n*, 211 Mich App 55, 108; 535 NW2d 529 (1995).

Although the insurance policy required plaintiff to present evidence of the actual cash value of the home and its contents at the time of the fire, the policy did not define the term "actual cash value." Regarding the contents of the home, defendant's claims examiner admitted that the second inventory list that plaintiff completed had enough information to enable defendant to review plaintiff's claim and determine a depreciated value for each item lost in the fire or an actual cash value. From this and other evidence, a jury could reasonably infer that defendant was presented with sufficient information for it to determine the actual cash value or depreciated value of plaintiff's property. Thus, it was a question of fact for the jury to determine whether plaintiff satisfied the terms of the insurance policy when submitting his claim and whether he sufficiently proved his damages under the policy.

We likewise conclude that sufficient evidence was presented regarding the actual cash value of plaintiff's home at the time it was destroyed by the fire. The evidence presented included the purchase price of the home in 1986, a credit union appraisal in 1991, and the state equalized value at the time of the fire. The value determined by the jury was within this range of proofs. Accordingly, the trial court did not err in denying defendant's motion for a directed verdict on this issue.

Defendant next contends that the trial court abused its discretion in admitting plaintiff's expert witness' testimony regarding the circumstances of his firing, which involved the expert's participation in this case. Defendant contends that the testimony was inadmissible under MRE 401, 402 and 403. A trial court's decision to admit evidence is reviewed for an abuse of discretion. *Cole v Eckstein*, 202 Mich App 111, 113; 507 NW2d 792 (1993).

The trial court apparently allowed the testimony on the basis that it was relevant to the issue whether an independent tort was committed by defendant. However, when the trial court later directed a verdict in favor of defendant on plaintiff's tort claim, it also instructed the jury to disregard the testimony. Under these circumstances, we conclude that defendant was not prejudiced by any error in admitting this testimony. Further, even though the trial court ordered the jury to disregard the evidence, from our review we believe that the evidence was relevant to the issue of defendant's credibility. *People v Hooper*, 50 Mich App 186, 199; 212 NW2d 786 (1973). See also *People v Mock*, 108

Mich App 384, 389; 310 NW2d 390 (1981). Therefore, any error was harmless. *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 12; 527 NW2d 13 (1994).

In his cross-appeal, plaintiff claims that the trial court erred by not awarding him attorney fees pursuant to MCR 2.114(D) and (E), and MCL 600.2591; MSA 27A.2591, on the basis that defendant presented a frivolous defense. We review the trial court's decision for clear error. *Carpenter v Consumers Power Co*, 230 Mich App 547, 556; 584 NW2d 375 (1998); *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). Considering the conflicting evidence regarding the cause of the fire and the circumstantial evidence of plaintiff's connection to the fire, we conclude that the trial court did not clearly err in finding that defendant's defense was not frivolous.

Plaintiff also claims that the trial court erred when it refused to award him twelve percent penalty interest under MCL 500.2006; MSA 24.12006, on the basis that defendant delayed in paying plaintiff's claim. Penalty interest is not available under this statute when a claim is reasonably in dispute. *Arco Industries Corp v American Motorists Ins Co (On Second Remand, On Rehearing)*, 233 Mich App 143, 147-149; ___ NW2d ___ (1998). Here, we find no clear error in the trial court's decision to deny plaintiff penalty interest. The evidence at trial established that a reasonable dispute existed as to defendant's liability for plaintiff's claim. Thus, plaintiff was not entitled to penalty interest under MCL 500.2006; MSA 24.12006.

Finally, plaintiff claims that he was entitled to exemplary damages because defendant engaged in conduct amounting to obstruction of justice during this litigation. However, plaintiff does not explain what tort defendant committed or on what legal basis he is entitled to receive exemplary damages, nor does he cite any supporting authority for his claim. This Court will not search for authority to support a party's position. *Winiemko v Valenti*, 203 Mich App 411, 419; 513 NW2d 181 (1994). Accordingly, we decline to consider this issue. *Id.*

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage