STATE OF MICHIGAN

COURT OF APPEALS

CHAPPELLE DEVELOPMENT COMPANY,

Plaintiff/Counter-Defendant-Appellant,

V

HOWARD J. SHOOLTZ,

Defendant/Counter-Plaintiff-Appellee,

and

MRS. HOWARD J. SHOOLTZ,

Defendant,

and

SCOTT A. CHAPPELLE, P.C.,

Counter-Defendant.

UNPUBLISHED
July 23, 2002

No. 225920
Clinton Circuit Court
LC No. 98-008834-CK

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment awarding defendant $5,840 for a breach of contract. This case arose out of a claim and counterclaim alleging breach of a contract pursuant to which plaintiff was to purchase and remove five hundred trees from defendant's property. Within two months after the contract had been signed, defendant had denied plaintiff access to the trees, and plaintiff had failed to pay for those trees that had been removed. After a jury found that both parties had breached the contract but awarded damages only to defendant, plaintiff filed a motion for a new trial or additur, which was denied. Plaintiff appeals the denial of this motion as well as the imposition of certain attorney fees and costs. We affirm.

We review a trial court's decision regarding the denial of a new trial or additur for an abuse of discretion. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 172; 568 NW2d 365 (1997). In determining whether additur is appropriate, the proper consideration is whether

the jury award was supported by the evidence. *Setterington v Pontiac General Hospital*, 223 Mich App 594, 608; 568 NW2d 93 (1997). The grounds for granting a new trial are codified at MCR 2.611(A)(1), which provides the only bases on which a jury verdict may be set aside. *Kelly v Builders Square, Inc*, 465 Mich 29, 38; 632 NW2d 912 (2001).

Plaintiff argues that three of these grounds for granting a new trial are applicable: (1) excessive or inadequate damages appearing to have been influenced by passion or prejudice; (2) a verdict clearly or grossly inadequate or excessive; and (3) a verdict or decision against the great weight of the evidence or contrary to law. MCR 2.611(A)(1)(c)-(e). The party asserting a breach of contract has the burden to prove its damages with reasonable certainty, and may recover only those damages which are the direct, natural and proximate result of the breach. *In re F Yeager Bridge & Culvert Co*, 150 Mich App 386, 401; 389 NW2d 99 (1986). Generally, the adequacy of the amount of the damages is a matter for the jury. *Hill v Henderson*, 107 Mich App 551, 554; 309 NW2d 663 (1981).

Plaintiff argues that it proved damages by showing that he purchased trees from another supplier at greater cost after defendant's initial refusal to allow plaintiff access to the property. However, plaintiff also had the burden of showing that this expense was proximately caused by defendant's breach. *F Yeager*, *supra*. The contract specified that the trees could only be removed at a time that was mutually agreeable, and expressly allowed defendant flexibility in determining the timing of tree removal. Although the jury found that defendant's denial of access at some point constituted a breach of contract, it did not specify when the breach had occurred. Furthermore, testimony indicated that plaintiff used many of defendant's trees on a site near Detroit, raising the question whether plaintiff's purchase of trees from a third party was necessary. As a result, it is not clear whether plaintiff incurred these expenses as a proximate result of the breach.

Plaintiff also argues that at least nominal damages should have been awarded for defendant's breach of the agreement. See *Litvin v Joyce*, 329 Mich 56, 59-60; 44 NW2d 867 (1950). However, "[t]here is no legal requirement that a jury award damages simply because liability was found." *Joerger*, *supra* at 173. Because a reasonable juror could have found that plaintiff failed to prove damages that were proximately caused by defendant's breach, the trial court did not abuse its discretion in refusing to grant a new trial or additur.

Finally, plaintiff contests the trial court's mediation sanction award of attorney fees and costs to defendant. We review this award for an abuse of discretion. *Id*. at 177-178. Having examined the record and the reasoning employed by the trial court, we do not conclude that the contested order is so "grossly violative of fact and logic" as to constitute an abuse of discretion. See *Spalding v Spalding*, 355 Mich 382, 384; 94 NW2d 810 (1959).

We affirm.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell