DIVISION IV

CA07-182

November 7, 2007

FARM BUREAU MUTUAL INSURANCE COMPANY OF ARKANSAS, INC.
APPELLANT

v.

CEDRIC JACKSON and JOYCE JACKSON
APPELLEES

AN APPEAL FROM DREW COUNTY CIRCUIT COURT
[No. CIV2004-222-4]

HONORABLE DON EDWARD GLOVER, CIRCUIT JUDGE

AFFIRMED AS MODIFIED

This is an appeal from a judgment entered on a jury verdict in favor of the insureds, appellees Cedric Jackson and Joyce Jackson, against the insurer of their double-wide mobile home, Farm Bureau Mutual Insurance Company of Arkansas, Inc., for damage caused by a storm in April 2004. On appeal, Farm Bureau argues that the trial court erred in refusing to direct a verdict because there was no substantial evidence to establish the home's actual cash value or that the damages resulted from a covered event. It also argues that the trial court erred in refusing to reduce the verdict to the policy limits and to give it credit for the deductible, the value of the damaged home, and the amount paid in settlement by a codefendant before trial. We affirm with modifications.

In April 2001, the Jacksons purchased the mobile home, which was manufactured by Redman Homes, Inc., in 1999, from Betsy Thompson at Drew Plaza Mobile Homes, Inc.,

for $58,000. They paid $4,000 down and financed the balance by signing a promissory note to a bank on November 1, 2001. In May 2001, they moved the home to Lake Village. It took several weeks for the installer to put the home's two sides together. For a period of time after the installation, the Jacksons discovered problems with the dishwasher, the doors and floors, some wallboard and plumbing items, a chair rail, the ceiling, a furnace switch, a commode, the refrigerator, a bedroom light, and the front door latch. According to the Jacksons, Drew and Redman Homes fixed those problems by mid-2002.

Farm Bureau issued an insurance policy on the home with a limit on the dwelling of $54,000 and a $250 deductible. The policy covered damage to the interior of the home that was caused by windstorm if the building was first damaged by "the direct force of wind or hail, creating an opening through which the rain, snow, sand, sleet or dust enters." It set forth the following measure of damages if a covered loss occurred:

> Our limit of liability for loss will not exceed the least of the following amounts:
>
> > (1) the **actual cash value** of the property at the time of the loss; or
> >
> > (2) the amount necessary to repair the property to its condition immediately prior to the loss. Repairs using new materials will be subject to deduction for **depreciation**; or
> >
> > (3) the amount for which the damaged or destroyed property can be replaced with property of like kind quality and condition using common construction materials and methods where functionally equivalent to and less costly than obsolete, antique or custom construction materials and methods. At **our** option, **we** may make a cash settlement and take all or part of the damaged property at its appraised or agreed value.
> >
> > (4) The limits of liability under this policy.

The policy defined "actual cash value" as "replacement cost new less depreciation." "Depreciation" was stated to mean "reduction in value of property based on age, condition and obsolescence of the property at the time of loss."

In April 2004, a violent storm, with heavy wind and rain, occurred while Mrs. Jackson was at home and Mr. Jackson was driving home. The storm shook the mobile home and scared Mrs. Jackson so badly that she got into a closet. Mr. Jackson had to pull his car to the side of the road. During the storm, water began pouring from the cathedral ceiling and down the walls of the mobile home. Farm Bureau's adjuster, Keith Erwin, inspected the home on May 11, 2004, and told Mr. Jackson that the source of the problem was not the storm, but improper installation, and instructed him to contact the dealer. The Jacksons obtained no relief from the dealer, and the home continued to leak every time it rained. Mold grew all over the walls and ceiling, and the particle-board floors were ruined. Many other parts of the home were also damaged.

The Jacksons sued Betsy Thompson, Drew, and Redman Homes in the Drew County Circuit Court on December 9, 2004, alleging breach of warranties, breach of contract, products liability, and fraud. They later added Mary Thompson and Farm Bureau as defendants. The Jacksons asserted that, if the mobile home was not damaged as a result of the facts underlying the warranty, contract, products-liability, and fraud claims, the damage was caused by wind, rain, lightning, or other acts of God covered by the insurance contract issued by Farm Bureau. After the Jacksons settled their dispute with Redman Homes for $10,000, the court dismissed those claims with prejudice.

At trial, Keith Carpenter, a carpenter, testified that the home was ruined when he inspected it for the Jacksons in October 2004. He estimated that it would cost $58,000 to repair it. He believed that the water had come into the home because the galvanized sheeting was not properly placed on the roof's ridge line cap during setup. Calling it an installation issue, he said that the home's two halves were not tied together properly. He acknowledged that he had no information as to whether the house leaked before April 2004 and admitted that a windstorm could have caused the leak.

Mrs. Jackson testified that Drew made all of the repairs that the Jacksons requested right after they bought the home and that everything was fixed by June 2002. She said that, before the storm, the home did not leak. Now, she said, it was "worth nothing." Mr. Jackson also said that the house did not leak before the April 2004 storm. He stated: "Today the house is worth nothing to me. Probably $5,000.00." He said that he guessed that the storm had torn the ridge cap apart.

Mr. Erwin testified that, when he inspected the house, he saw shingles that had staple holes, which compromised their integrity, as well as gaps between the home's two halves and between the shingles and the flashing. He opined that the problems were not wind-related. He stated that Mr. Jackson told him that he had had problems with the home since he bought it. Mr. Erwin conceded, however, that he had not seen the roof before the storm.

At the conclusion of the trial, Farm Bureau moved for directed verdict on the ground that there was no evidence that wind created an opening for the rain to come into the home. The trial court denied that motion. Farm Bureau also objected to some of the Jacksons'

proposed instructions, including those addressing the home's actual cash value, arguing that there was no proof on that issue. The trial court agreed. The jury returned a verdict in the amount of $55,000 for the Jacksons.

Farm Bureau requested a reduction of the verdict by $10,000, the amount of the settlement between the Jacksons and Redman Homes. In an order filed on October 10, 2006, the circuit court denied this request and stated:

> Our Supreme Court has held that, where the jury is informed of the amount of the pre-trial settlement and subsequently awards damages against the remaining defendants in a general verdict, it is presumed that the damages assessed by the jury are in addition to the amount already paid by the settling tortfeasor. *Bingham v. City of Jonesboro*, 89 Ark. App. 120 (2005). . . .
>
> Further, the Court acknowledges that this is a case of multiple defendants but do [sic] not find this to be a joint tortfeasors situation. Whereas, it is clear that separate defendant, Farm Bureau Mutual Insurance Company's, liability is based upon contract for damages sustained for its breach, the circumstances for the settlement as to separate defendant, Redm[a]n Homes, Inc., are not known. However, the jury's verdict was very clear and the Court opine[s] that it is precluded from looking behind the motive of the jury unless there is some indication that extraneous information was considered which is not supported by evidence in this case.

The court entered a judgment of $55,000 on the verdict, plus a 12% penalty of $6,600, attorney's fees of $20,533.33, and costs of $320.17, making a total judgment of $82,453.50, on October 27, 2006.

On October 28, 2006, Farm Bureau moved for judgment notwithstanding the verdict on the grounds that there was no evidence from which a reasonable juror could conclude that wind caused the damage to the mobile home and that there was substantial evidence that defects in the manufacture or installation of the mobile home caused the harm. Farm Bureau also argued, in the alternative, that the amount of the judgment was excessive because its

policy limit was $54,000 and it was given no credit for the $250 deductible, its previous payment of $50, or the mobile home's $10,000 value after the loss. The trial court did not rule on this motion. On December 6, 2006, Farm Bureau filed a notice of appeal from the judgment and the denial of its motion for judgment notwithstanding the verdict.

I. Whether there was substantial evidence that the windstorm caused the damage

In its first point on appeal, Farm Bureau argues that the trial court erred in refusing to direct a verdict because there was no substantial evidence — only speculation — that the damage to the home was the result of a covered event. Farm Bureau contends that the Jacksons' testimony that the storm must have caused the leak because they experienced no noticeable leakage until afterward was inadequate to withstand a directed-verdict motion. We disagree.

A directed-verdict motion is a challenge to the sufficiency of the evidence. *King v. Powell*, 85 Ark. App. 212, 148 S.W.3d 792 (2004). When reviewing the denial of a motion for a directed verdict, we determine whether the jury's verdict is supported by substantial evidence. *Id*. Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without having to resort to speculation or conjecture. *Id*. When determining the sufficiency of the evidence, we review the evidence and all reasonable inferences arising therefrom in the light most favorable to the party on whose behalf judgment was entered. *Id*. A motion for a directed verdict should be denied when there is a conflict in the evidence or when the evidence is such that fair-minded people might reach different conclusions. *Id*. Under those

circumstances, a jury question is presented and a directed verdict is inappropriate. *Id*. It is not our province to try issues of fact; we simply examine the record to determine if there is substantial evidence to support the jury verdict. *Id*.

Mrs. Jackson testified that the mobile home did not leak until the storm in April 2004, which was strong enough to send her hiding in a closet. She said: "[W]e had a big rain storm and it rained real bad, the wind blew real badly and it shook the trailer a lot while it was raining and thundering and blowing real heavy. The mobile home started to leak at that time." She said that, since that storm, the mobile home leaks every time it rains. Mr. Jackson testified that the storm was so intense that it shook his car and that he had to stop on the side of the road because he could not see to drive. He stated that, when he arrived home, the mobile home was leaking; before that, it did not leak. Mr. Jackson also testified that there was no prior water damage to the roof or the walls and that they had had no problem with the roof's ridge cap before the storm.

Although the Jacksons did not testify that they actually saw the windstorm tear up the roof, their testimony was sufficient to reasonably infer that it did. The law makes no distinction between direct evidence of a fact and circumstances from which a fact can be inferred. *Reed v. Smith Steel, Inc.*, 77 Ark. App. 110, 78 S.W.3d 118 (2002). Circumstantial evidence does not directly prove the existence of a fact, but gives rise to a logical inference that it exists. *Id*. A fact is established by circumstantial evidence when its existence can be fairly and reasonably inferred from other facts proved in the case. *Id.* A well-connected train of circumstances is as cogent of the existence of a fact as an array of direct evidence and

frequently outweighs opposing direct testimony; any issue of fact in controversy can be established by circumstantial evidence when the circumstances adduced are such that reasonable minds might draw different conclusions. *Id*.

II. Whether the verdict was excessive

Farm Bureau also argues that the trial court erred in refusing to reduce the verdict to the amount of the policy limits, less the deductible, and in refusing to give credit for the value of the mobile home after the loss. It points out that its policy had a limit of $54,000, subject to a $250 deductible, and that it paid $50 for the damages in 2004. It also states that there is "no dispute" that the home was valued at $5,000 after the loss. It argues that, if the Jacksons are entitled to recover for the loss under the policy, the maximum amount recoverable would be $48,700.

The Jacksons acknowledge that the policy had a limit of $54,000 and concede that the judgment should be reduced to reflect that. We agree. We also believe that the jury verdict must be reduced by $50 that Farm Bureau paid. We do not, however, agree that the judgment should be further reduced by the $250 deductible nor $5000. Farm Bureau has failed to establish that the Jackson's total damages were less than $54,250 and so are not entitled to a reduction of the verdict by the $250 deductible. Likewise, Farm Bureau is wrong in stating that there was no dispute that the mobile home had a value of $5000 after the storm — Mrs. Jackson stated at trial that the house was worth nothing to her. While damages must not be left to speculation and conjecture, *Dawson v. Temps Plus, Inc.,* 337 Ark. 247, 987 S.W.2d 722 (1999), they may be approximated. *Morton v. Park View Apartments*, 315 Ark. 400, 868

S.W.2d 448 (1993). A damage figure will be upheld if an amount approximating that figure can be ascertained from the evidence. *See Taylor v. Green Mem'l Baptist Church*, 5 Ark. App. 101, 633 S.W.2d 48 (1982). Accordingly, we reduce the judgment to $53,950.

III. Whether there was sufficient evidence of the mobile home's actual cash value

In its third point, Farm Bureau argues that the trial court erred in refusing to direct a verdict or grant a new trial because there was no substantial evidence of the actual cash value of the mobile home immediately before the loss. Farm Bureau's limit of liability was stated in the contract to be the least of the cost of repairs, the cost of replacement, the actual cash value of the property at the time of the loss, or the limits of liability under the policy. It argues that one could not assume that the home did not depreciate after it was purchased.

Farm Bureau did not, however, include this argument in its motion for directed verdict or otherwise develop it at trial. Rule 50(a) requires that a party moving for a directed verdict state specific grounds in order to bring the issue to the trial court's attention. *See Thomas v. Olson*, 364 Ark. 444, 220 S.W.3d 627 (2005). Failure to comply with the requirements enumerated in Rule 50(a) is a sufficient basis for denial of a motion for directed verdict and for affirmance on appeal. *Id*. Requiring specific grounds in a motion for directed verdict is especially necessary when a case involves multiple issues. *Id*. Also, an appellant may not change the grounds for objection on appeal but is limited by the scope and nature of the objections and arguments presented at trial. *McCoy v. Montgomery*, __ Ark. __, __ S.W.3d __ (June 21, 2007). Because this issue was not preserved for appeal, we do not address it.

IV. Whether Farm Bureau should be credited with the $10,000 paid by Redman Homes

Farm Bureau argues in its fourth point that the trial court erred in failing to give it credit for the $10,000 paid in settlement by Redman Homes. The jury was advised that the Jacksons had received $10,000 in settlement from the mobile home's manufacturer. The Jacksons' attorney informed the jury of this fact in his opening statement, and the court also told the jury about the settlement. In tort cases, when a jury is informed of the amount of a pretrial settlement and subsequently awards damages against the remaining defendants in a general verdict, it is presumed that the damages assessed by the jury are in addition to the amount already paid by the settling tortfeasor. *Bingham v. City of Jonesboro*, 89 Ark. App. 120, 201 S.W.3d 1 (2005). If the jury's verdict is rendered on a general verdict form, it is an indivisible entity or, in other words, a finding upon the whole case. *Hyden v. Highcouch, Inc*., 353 Ark. 609, 110 S.W.3d 760 (2003). Where a general jury verdict is used, the court will not speculate on what the jury found. *Id*.

The Jacksons sued Farm Bureau for breach of contract. They sued Drew and Redman Homes for breach of contract, breach of warranty, various products-liability statutes, and fraud. There is no way to know whether the jury considered Redman Homes' $10,000 payment to the Jacksons as compensation for the contract or tort claims. In light of the information given to the jury, it is logical to presume that the jury took the prior payment into account in making its award. *See Bingham v. City of Jonesboro*, *supra*.

Affirmed as modified.

ROBBINS and VAUGHT, JJ., agree.