IN THE COURT OF APPEALS OF IOWA

No. 9-858 / 09-0402
Filed December 30, 2009

PAUL VAN GELDER and LEESA VAN GELDER, RICHARD VAN GELDER and ANTIONETTE VAN GELDER,
Plaintiffs-Appellants,

vs.

ADAMS MUTUAL INSURANCE ASSOCIATION,
Defendant-Appellee.

Appeal from the Iowa District Court for Adams County, Dale B. Hagen (summary judgment) and Sherman W. Phipps (trial), Judges.

Plaintiffs appeal the jury's verdict in their action against their insurance company for damages sustained in a wind storm. **AFFIRMED.**

Richard O. McConville of Coppola, McConville, Coppola, Hockenberg & Scalise, P.C., West Des Moines, and Richard L. Wilson of Richard L. Wilson, P.C., Lenox, for appellants.

Steven J. Pace and Diane Kutzko of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellee.

Heard by Eisenhauer, P.J., and Potterfield, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

PER CURIAM

I. Background Facts & Proceedings

Paul and Leesa Van Gelder (Van Gelders) purchased a farm, including a house, on contract from Paul's parents, Richard and Antoinette Van Gelder. Paul or his parents have continually lived in this two-story home since 1975. The home was built in the 1920's. The home was moved to its current location in the 1960's, and placed on a new foundation. Richard had anchored the basement walls during the time he owned the home.

On April 15, 2006, there was a fierce windstorm. The Van Gelders had an insurance policy with Adams Mutual Insurance Association, which covered damages to insured property caused by windstorm or hail. Adam Grundman, an insurance adjuster for Adams Mutual, went to the farm on April 17, 2006, to observe the damage, and he made several subsequent visits to the farm. The Van Gelders submitted claims for damages to a machine shed, grain bin, cattle shed, farm equipment and personal property, and received $70,141.52 from Adams Mutual.

The Van Gelders also asserted they had damages to three other grain bins and their home caused by the windstorm, and these additional claims are the subject of this suit. They claimed damages of $36,000 to three grain bins. They also claimed substantial structural damage to the home, including cracks in the walls, that they believed was caused by the windstorm. The Van Gelders obtained an estimate of $123,350 from a contractor, Christopher Brown, for repairs to the home.

Grundman testified he did not see anything wrong with the grain bins, and he asked Dan Lusk, a repairman/salesman, to look at them. Lusk gave an estimate of $1973.54 to repair the grain bins. Also, Michael Grundman, secretary-manager for Adams Mutual, looked at the grain bins. Grundman and Michael Grundman put a two-by-four up to the side of the grain bins, and could not see any evidence of bending. Grundman concluded any damage to the grain bins could be repaired for $2973.54.

Grundman contacted an investigator with Grinnell Mutual Reinsurance Company, Larry Wyatt, to take a look at the damage to the home to determine if it was caused by the windstorm. Wyatt noted that if a building is damaged by wind usually shingles would be blown off "indicating that a severe wind event passed over the roof and was able to lift and remove the shingles." Wyatt found none of the shingles were blown off the Van Gelder home, and none of the windows were broken. Wyatt inspected the home and gave the opinion that the damage to the home was not caused by a windstorm.

Grundman gave a rough estimate to cosmetically repair the cracks in the walls. In January 2007, he offered $2094 for repairs to the cracks, plus the amount of $2973.54 for the grain bins, making a total of $5067.54. The Van Gelders refused the offer.

Grundman then contacted Jerry Wille, a licensed professional engineer, to examine the home. Wille examined the inside and outside of the home. Wille prepared a report stating that "man-made alterations to the framing system of the

house have made it structurally unsound."[1] Wille stated that because there was no chipped paint on the corner plates or siding the house had not been twisted or racked by the wind, and thus had no associated structural damage. Wille stated it was possible the house had been partially lifted off its foundation by the wind, but there was "no indication that any structural damage was done and the house went back to essentially its original location."

On June 5, 2007, the Van Gelders filed suit against Adams Mutual alleging breach of contract and bad faith failure to pay.[2] The Van Gelders had Dale Smith, a licensed professional engineer, inspect the home. Smith gave the opinion that the home was damaged by the windstorm, causing structural damage. Smith stated he saw cracks in structural elements in the home that were fresh, and he believed the damage was caused by the wind.

Adams Mutual filed a motion for partial summary judgment on the bad faith claim. The district court found:

> In reviewing the evidence, it is clear the Defendant had a reasonable basis in paying only to repair the cosmetic damage to the House and not any alleged structural damage. The Defendant determined the Storm caused no structural damage to the House, but did cause some cosmetic damage. This issue is fairly debatable, and therefore the objective element of the test for first-party bad faith can be determined as a matter of law.

The court granted the motion for summary judgment on the bad faith claim.

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[1] At the trial, Wille testified that moving the house from one location to another may have caused a gap between the wood framing and the foundation. He also testified a wall had been removed on the main floor, and a column was missing from the basement, and this caused significant problems with the structure of the home. Furthermore, Wille stated the main beam in the basement had been spliced or pieced together at some point.

[2] The suit also named as plaintiffs Richard and Antoinette Van Gelder. The petition stated that Paul and Leesa were purchasing the land from Richard and Antoinette.

The case proceeded to a jury trial on the issue of breach of contract. The jury found Adams Mutual breached the contract and the breach was the proximate cause of plaintiffs' damages. The jury awarded damages of $35,000 for damages to the house, and $8000 for damages to the grain bins.

The Van Gelders filed a conditional motion for new trial and for additur. They claimed the cost to repair the home would be $106,860 to $127,000, and the jury's award of damages was inadequate. In the alternative, plaintiffs asked the court to amend the verdict by additur to increase the damages to $127,000 for the house and $16,000 for the grain bins. Adams Mutual resisted the motion.

The district court ruled that a finding that damage to the Van Gelders' home was caused by the windstorm was not the same as a finding that all of the repairs were for damages resulting from the windstorm. The court noted, "[t]he evidence established that the home had preexisting need for repairs prior to the windstorm." The court concluded the jury was free to determine, based on the evidence, which repairs were necessitated by the windstorm. The court was unable to find the verdict bore no reasonable relationship to the loss suffered. The court denied the motion for conditional new trial and additur. The Van Gelders appeal the decisions of the district court.

II. Summary Judgment

The Van Gelders contend the district court erred by granting the partial motion for summary judgment filed by Adams Mutual. Plaintiffs assert the district court erred in denying their first-party bad faith claim against the insurer. They

claim it was not "fairly debatable" that their damages to the house were more than the $2094 offered by Adams Mutual.

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.907 (2009). Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the non-moving party. *Kern v. Palmer College of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008). In determining whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference the record will bear. *Id.*

In Iowa there is a common-law cause of action against an insurer for bad-faith denial of insurance benefits. *Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 483 (Iowa 2007). A plaintiff must show: (1) the insurer had no reasonable basis for denying the plaintiff's claim; and (2) the insurer knew or had reason to know that its denial was without a reasonable basis. *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005). In determining whether an insurer's actions had a reasonable basis, we consider whether the insured's claim is fairly debatable, either in law or fact. *City of Madrid v. Blasnitz*, 742 N.W.2d 77, 82 (Iowa 2007). "A claim is 'fairly debatable' when it is open to dispute on any logical basis." *Bellville*, 702 N.W.2d at 473. Whether a claim is fairly debatable may generally be determined by the court as a matter of law. *Rodda*, 734 N.W.2d at 483.

We conclude the question of whether the structural damage to the Van Gelders' home was caused by the windstorm was fairly debatable. At the time Adams Mutual offered $2094 for the repairs to the home, Wyatt, an insurance investigator had inspected the home and gave the opinion the structural damage to the home had not been caused by the windstorm, and this gave Adams Mutual a reasonable basis for its action. We conclude the district court did not err in determining that as a matter of law plaintiffs were unable to prove their bad faith claim against the insurer. We affirm the district court's grant of summary judgment on this issue.

III. New Trial/Additur

The Van Gelders claim the district court abused its discretion by denying their motion for conditional new trial and for additur. They claim the damages awarded by the jury were obviously inadequate. The Van Gelders assert all the damages to the home and grain bins were caused by the windstorm, and the jury's award of $35,000 for the home and $8000 for the grain bins is not adequate.

On a motion for new trial our review depends upon the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). A new trial may be granted if excessive or inadequate damages appear to have been awarded. *See* Iowa R. Civ. P. 1.1004(1), (4), (5). The district court's ruling on a motion for new trial based on a claim the damages are inadequate is reviewed for an abuse of discretion. *Fisher v. Davis*, 601 N.W.2d 54, 57 (Iowa 1999). We review a motion for additur in the

same manner. *See Ostrem v. State Farm Mut. Auto. Ins. Co.*, 666 N.W.2d 544, 547 (Iowa 2003).

Generally, the issue of whether damages are so inadequate a new trial is warranted is an issue for the district court to decide. *Id.* Whether damages are inadequate depends upon the facts of the case. *Id.* If uncontroverted evidence shows a jury's verdict bears no reasonable relationship to the loss suffered, the verdict is inadequate. *Pexa v. Auto Owner's Ins. Co.*, 686 N.W.2d 150, 163 (Iowa 2004). Where evidence of the cause or extent of injury is disputed, however, a motion for new trial based on inadequate damages may be denied. *See Cowan v. Flannery*, 461 N.W.2d 155, 159 (Iowa 1990).

The jury's verdict did not find all of the structural damage to the house or the damage to the grain bins was caused by the windstorm. The jury verdict found plaintiffs had proven by a preponderance of the evidence that defendant breached the contract, and that the breach of contract was the proximate cause of the damages claimed. The jurors were directed to award damages based on "the cost of repair of the damages caused by the windstorm."

The question of causation was contested during the trial. The jury was certainly not required to find that all of the damages claimed by plaintiffs were caused by the windstorm. Wille, the defendant's expert, testified the house had many structural problems that were not caused by the windstorm. He testified an abnormal framing method had been used in the home, and this caused overloading of the beams in some areas, causing them to crack. As the district court found, "[t]he jury was free to make its own decision, based on the evidence

presented by all the parties and their witnesses, as to which parts of the items reflected in [the exhibits] were repairs necessitated by the windstorm." We determine the district court did not abuse its discretion in denying the motion for new trial and for additur based on the claim the damages were inadequate.

B. The Van Gelders also claim the district court should have granted their motion for new trial because the jury's verdict is not supported by substantial evidence. A motion for new trial may be granted based upon a finding that the verdict is not sustained by sufficient evidence. *See* Iowa R. Civ. P. 1.1004(1), (6). We review the district court's ruling on a motion for new trial on this ground for an abuse of discretion. *See Gore v. Smith*, 464 N.W.2d 865, 868 (Iowa 1991); *Collier v. General Inns Corp*. 431 N.W.2d 189, 190 (Iowa Ct. App. 1988).

The court considers whether the jury's verdict is supported by substantial evidence. Evidence is substantial when reasonable minds would accept the evidence as adequate to reach the same findings. *Deboom v. Raining Rose, Inc.*, 772 N.W.2d 1, 5 (Iowa 2009). Evidence is not insubstantial merely because it would have supported contrary inferences. *Hendricks v. Great Plains Supply Co.*, 609 N.W.2d 486, 490 (Iowa 2000).

We determine there is substantial evidence to support the jury's verdict. Because there was evidence the house had structural damage prior to the windstorm, the evidence supported a finding that not all of the damages claimed by plaintiffs were caused by the windstorm. We conclude the district court did

not abuse its discretion by denying the motion for new trial based on a claim the jury's verdict was not supported by sufficient evidence.

We affirm the decision of the district court.

AFFIRMED.