STATE OF MICHIGAN

COURT OF APPEALS

CARL J. WOOD and LINDA WOOD,

Plaintiffs-Appellees,

v

CONSUMERS POWER COMPANY,

Defendant-Appellant.

UNPUBLISHED
May 29, 1998

No. 198233
Ionia Circuit Court
LC No. 93-015550 NZ

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Plaintiffs sued defendant for damages to their dairy herd which they alleged was caused by stray electrical voltage from defendant's distribution system. Defendant appeals as of right from a judgment in the amount of $1,165,725, entered pursuant to a jury verdict in favor of plaintiffs and following the trial court's denial of defendant's motion for judgment notwithstanding the verdict, a new trial, or remittitur. We affirm.

Defendant first argues that the trial court erred in allowing Francis Penterman to testify as an expert witness for plaintiffs. We disagree. The decision to permit a witness to testify as an expert is reviewed for an abuse of discretion. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 402; 443 NW2d 340 (1980).

Under MRE 702, the test for qualifying an expert witness is quite broad; qualification as an expert is not dependent upon licensing or education alone. *Mulholland, supra* at 403-407, 410. Rather, expert witness qualifications may be based solely upon the witness' practical experience in a given field. *Id*. "[T]he only safe rule is to ascertain with some specificity the range of the witness' qualifications and to permit testimony within that range." *Id*. at 406. Limitations to the witness' expertise are relevant to the *weight* of that witness' testimony rather than its admissibility. *Woodruff v USS Great Lakes Fleet, Inc*, 210 Mich App 255, 260; 533 NW2d 356 (1995).

Here, defendant's challenge to Penterman's expert qualifications goes to his lack of formal education and lack of formal training in the use of the Dranetz testing equipment. However, despite his lack of formal education, Penterman had extensive practical experience in working with both electricity

and stray voltage. Penterman had been trained to detect stray voltage on aircraft and weapons systems during his two-year enlistment in the Air Force. In the 1980s, he designed, manufactured, and installed electrical equipment for generating electricity on farms. Penterman was familiar with the requirements of the National Electric Code and kept abreast of changes to that code. Penterman learned how to do stray voltage investigations through his contacts with the Wisconsin Public Service Commission, and used the 658 Dranetz Power Quality Analyzer according to procedures adopted by the Wisconsin PSC. Moreover, Penterman had been performing stray voltage investigations since 1993 (on about four-hundred farms), and had testified as a stray voltage expert for Connecticut's Department of Public Utility Control. Penterman's practical experience made him sufficiently qualified to give expert testimony regarding the presence of stray voltage on plaintiffs' farm. We find no abuse of discretion in the trial court's decision.

Defendant next argues that the trial court abused its discretion in allowing Penterman and plaintiffs' other stray voltage experts to express various "novel" opinions about stray voltage. Again, we disagree.

Michigan follows the traditional *Davis-Frye*[1] rule, which provides that novel scientific evidence must be shown to have gained general acceptance in the scientific community in order to be admissible at trial. *People v McMillan*, 213 Mich App 134, 136; 539 NW2d 553 (1995). The purpose of the rule is to prevent the jury from relying upon unproven and potentially unsound scientific methods. *People v Davis*, 199 Mich App 502, 512; 503 NW2d 457 (1993). However, the *Davis-Frye* test applies only to novel scientific techniques or principles. *People v Haywood*, 209 Mich App 217, 221; 530 NW2d 497 (1995).

The admission of expert scientific testimony is also governed by MRE 702, which requires that an expert's testimony be based upon "recognized" scientific knowledge. In *Nelson v American Sterilizer Co (On Remand)*, 223 Mich App 485, 490-492; 566 NW2d 671 (1997), this Court explained that before an expert's testimony can be admitted

> the court must determine whether the proposed testimony is derived from "recognized scientific knowledge." To be derived from recognized scientific knowledge, the proposed testimony must contain inferences or assertions, the source of which rests in an application of scientific methods. Additionally, the inferences or assertions must be supported by appropriate objective and independent validation based on what is known, e.g., scientific and medical literature.

The techniques and principles which formed the basis for the testimony of Penterman, Luke Lillmars, and William English were not novel; consequently, *Davis-Frye* does not apply. *Haywood, supra*. Moreover, plaintiffs' experts' testimony easily passes muster under MRE 702. The opinions of plaintiffs' experts involved generally recognized, established principles of electrical conductivity and the flow of current through a circuit. Both plaintiffs' and defendant's experts testified that stray voltage could affect dairy cattle. Their disagreements were over the amount of current required to affect cattle, the severity of the symptoms that the cattle would suffer, and the proper way to measure current. In other words, defendant's objections go to the *weight* of plaintiffs' experts' testimony rather than its

admissibility. There is no indication that plaintiffs' experts relied upon unsound methods or principles in reaching their conclusions. Moreover, we reject as unfounded defendant's claim that the trial court erred in failing to hold a separate evidentiary hearing on this issue.

Finally, defendant argues that the jury's finding of proximate cause, as well as its determination of damages, was contrary to the great weight of the evidence. We disagree. Plaintiffs presented ample evidence from which the jury could conclude that stray voltage from defendant's distribution system adversely affected plaintiffs' cattle. Moreover, with respect to the damage award, defendant provides no basis for overturning the jury's verdict or otherwise reducing the amount of damages it awarded. When injury is proven, "recovery of damages is not precluded simply because proof of the amount of damages is not mathematically precise." *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995). Where reasonable minds could differ regarding the level of certainty to which damages have been proven, this Court should not invade the jury's role and substitute its own judgment. *Id*. The trial court did not abuse its discretion in denying defendant's request for a new trial or remittitur. *King v Taylor Chrysler-Plymouth, Inc*, 184 Mich App 204, 210; 457 NW2d 42 (1990); *Snell v UACC Midwest, Inc*, 194 Mich App 511, 517; 487 NW2d 772 (1992).

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P Hoekstra
/s/ Robert P. Young, Jr

[1] *People v Davis*, 343 Mich 348; 72 NW2d 269 (1955); *Frye v United States*, 54 US App DC 46; 293 F 1013 (1923).