

STATE OF MICHIGAN  
COURT OF APPEALS

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STEPHEN VARGO,

Plaintiff-Appellant,

v

WILLIAM D. GILLESPIE and CERTIFIED  
ALARM, INC.,

Defendants-Appellees.

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UNPUBLISHED

February 1, 2002

No. 225460

Wayne Circuit Court

LC No. 97-735244-CZ

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment awarding him \$30,000 following a bench trial. Pursuant to the parties' stipulation, the trial was "limited to the issue of the amount of compensation and/or commissions Plaintiff may be entitled to receive as a result of his employment with Certified Alarm from December 1, 1990 to November 24, 1995." Plaintiff argues on appeal that the trial court's award of damages was not supported by the record and the court did not apply the correct measure of damages as established by law.

We review a trial court's award of damages in a bench trial under the clearly erroneous standard. *Meek v Dep't of Transportation*, 240 Mich App 105, 121; 610 NW2d 250 (2000).

The court found that plaintiff's employment status changed from a fifty-fifty split to a "commissioned" salesperson once defendant started leaving him off as a partner on the minutes and notes and other filings, which entailed a period of thirty months before his termination. This determination is supported by evidence that plaintiff had been listed as a partner or officer of the corporation on all pertinent documents in 1990, 1991, and 1992 and on the 1994 application for licensing, but not in the 1993 report, which was filed on August 31, 1995. The court awarded plaintiff commissions of \$2,000 a month for the thirty-month period, resulting in a total of \$60,000, which the court then offset by the \$30,000 amount that defendant had paid to plaintiff pursuant to the stipulation. We find that the trial court did not clearly err in its award of damages.

Although plaintiff asserts that he was entitled to a larger amount, his demand for a twenty percent commission rate was not representative of the industry standard, which was ten percent according to his own witness and was what plaintiff had been paid when he was on commission with Wyandotte Alarm Company. Second, plaintiff could not substantiate the amount he was

requesting because he admittedly did not have many of the contracts on which he asserted a right to compensation.

We further find no merit to plaintiff's claim that the court applied the wrong measure of damages. Plaintiff claims he and defendant Gillespie had agreed that plaintiff would be a fifty-fifty partner and that, under standard principles of contract law, he was therefore entitled to an award of damages that would compensate him as an equal partner. See *Farm Credit Services v Weldon*, 232 Mich App 662, 678-679; 591 NW2d 438 (1998), citing *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401, 414; 295 NW2d 50 (1980). We disagree.

Pursuant to the parties' pretrial stipulation, the only issue to be decided at trial was "the amount of compensation and/or commissions Plaintiff may be entitled to receive as a result of his employment with Certified Alarm from December 1, 1990 to November 24, 1995." All other claims were dismissed with prejudice. Plaintiff's request for damages based on an alleged partnership arrangement between himself and Gillespie exceeds the scope of the stipulation. Accordingly, we reject plaintiff's claim that the trial court applied an erroneous measure of damages.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Richard Allen Griffin  
/s/ Henry William Saad