IN THE UTAH COURT OF APPEALS

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Thomas E. Mower, Plaintiff and Appellee, v. Neil Jorgensen dba Skyline Sheep Company, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050235-CA F I L E D (August 10, 2006) 2006 UT App 329

Sixth District, Manti Department, 980600364
The Honorable David L. Mower

Attorneys: Douglas L. Neeley, Manti, for Appellant
Douglas B. Thayer and J. Bryan Quesenberry, Provo, for Appellee

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Before Judges Bench, Greenwood, and Thorne.

THORNE, Judge:

Defendant Neil Jorgensen, doing business as Skyline Sheep Company, appeals from the trial court's February 4, 2005 order partially denying Jorgensen's Rule 59 Motion to Alter or Amend Judgment. See Utah R. Civ. P. 59. We affirm.

Jorgensen sought rule 59 relief on two grounds, insufficiency of evidence to support the judgment and error by the trial court in applying the law of the case doctrine. See id. 59(a)(6)-(7). The trial court granted Jorgensen's motion in part, reducing the judgment against him by $13,400 due to insufficient evidence. The trial court rejected Jorgensen's error of law argument, stating that it was unwilling to reconsider its previous finding of a twenty-five dollar fee per sheep, per day, as agreed to between Jorgensen and Plaintiff Thomas E. Mower. The court stated that the fee decision was long established, the time to contest it had passed, and it had become the law of the case. "'Consideration of a motion to grant a new trial or open a judgment for additional evidence under [r]ule 59 is a matter left to the discretion of the trial judge, and that decision will be reversed only if the judge has abused that discretion by acting unreasonably.'" A.K. & R. Whipple Plumbing

& Heating v. Aspen Constr., 1999 UT App 87,¶10, 977 P.2d 518 (alterations omitted) (quoting Paryzek v. Paryzek, 776 P.2d 78, 81 (Utah Ct. App. 1989)).

Jorgensen has failed to identify any abuse of discretion here. Mower sued Jorgensen for trespass and injunctive relief in 1998. The trial court enjoined Jorgensen from allowing his sheep to trespass on Mower's property, but the trespasses continued, prompting Mower to file a Motion for Order to Show Cause in July 1999. The parties reached a settlement agreement (the Agreement), memorialized by court order dated November 22, 2000, providing in part that Jorgensen "shall be responsible for paying a Twenty-Five Dollar ($25.00) per day fee for sheep that are penned after being found on [Mower's] property."

In July 2001, Mower filed another Motion for Order to Show Cause, alleging further trespasses by Jorgensen's sheep. The motion clearly asserted a per sheep, per day, fee. At a motion hearing in October 2001, Jorgensen's counsel did not contest the per sheep, per day, fee, and in fact expressly agreed that the Agreement contemplated such a fee.[1] In December 2001, pursuant to the Agreement, the trial court entered a stipulated judgment against Jorgensen in the amount of $3675, applying a fee of twenty-five dollars per sheep, per day. Jorgensen failed to appeal from this judgment.

The trial court acted within the bounds of its discretion when it declined to revisit this issue three years after the December 2001 judgment. Under the law of the case doctrine, "a court is justified in refusing to reconsider matters it resolved in a prior ruling in the same case for reasons of efficiency and consistency." Thurston v. Box Elder County, 892 P.2d 1034, 1038 (Utah 1995). When applied in this manner, "[t]he doctrine is not a limit on power but . . . 'merely expresses the practice of courts generally to refuse to reopen what has been decided.'" Id. at 1038-39 (quoting Messenger v. Anderson, 225 U.S. 436, 444 (1912)). The court properly considered the length of time that had passed since the ruling and Jorgensen's failure to contest the ruling in a timely fashion before deciding that it was "not willing" to reconsider the issue.

Jorgensen argues that, despite the law of the case doctrine, "courts have reopened issues previously decided . . . when the court is convinced that its prior decision was clearly erroneous

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[1]Counsel's argument at the October 2001 hearing focused on determining the number of sheep that trespassed on Mower's property--a factor that is entirely irrelevant to the fee amount issue now raised by Jorgensen.

and would work a manifest injustice." Id. at 1039. We see neither clear error nor manifest injustice here. The language of the Agreement, imposing a "Twenty-Five Dollar ($25.00) per day fee for sheep that are penned after being found on [Mower's] property," is arguably ambiguous. However, one reasonable interpretation is that Jorgensen was liable to Mower for twenty-five dollars per day for each head of trespassing sheep that Mower penned. The trial court originally adopted this interpretation with the implied and express assent of Jorgensen's counsel, and we cannot say that the trial court's decision in this regard is clearly erroneous.

We also disagree with Jorgensen's characterization of the trial court's decision as working a manifest injustice. Jorgensen argues that the twenty-five dollar per day fee is disproportional to the few cents a day that a sheep consumes in food, and to the estimated $100 per head value of the sheep themselves. This argument is unavailing. On its face, the Agreement's fee provision is not limited to compensating Mower for the minimal cost of feeding Jorgensen's sheep. Rather, the fee provides both a deterrent effect to induce Jorgensen to comply with the trespassing injunction, and liquidated damages[2] to compensate Mower for damages to his property and the cost of capturing, penning, and caring for Jorgensen's sheep. We see nothing improper with either of these goals in the context of this case.[3]

The trial court's December 2001 decision interpreting the Agreement was not clearly erroneous and did not create manifest injustice to Jorgensen. Accordingly, the trial court properly

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[2]"Under the basic principles of freedom of contract, a stipulation to liquidated damages for breach of contract is generally enforceable." Woodhaven Apts. v. Washington, 942 P.2d 918, 921 (Utah 1997) (quoting Allen v. Kingdon, 723 P.2d 394, 397 (Utah 1986)). Although there are circumstances where liquidated damages will not be enforced, Jorgensen has not argued that the twenty-five dollar fee in this case falls within those circumstances.

[3]Jorgensen also attempts to show manifest injustice by arguing that, under the November 2000 Order, Mower could retain Jorgensen's sheep for three days and then sell them, reaping a windfall of seventy-five dollars per head in fees plus the money obtained by selling the sheep. There is no indication that Mower has attempted to employ the Agreement in this manner.

declined to revisit the fee issue under the law of the case doctrine, and did not act unreasonably or exceed the bounds of its discretion when it denied Jorgensen's 2004 motion on that issue.[4] Affirmed.

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William A. Thorne Jr., Judge

WE CONCUR:

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Russell W. Bench,
Presiding Judge

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Pamela T. Greenwood,
Associate Presiding Judge

[4]The record suggests, and the parties represented at oral argument, that the Agreement has not resolved the trespassing issues between the parties and that future trespassing is perhaps inevitable given the nature of the properties. We strongly encourage the parties to consider their settlement options, including the option of negotiating a reasonable license fee for grazing rights to Mower's property. We do not intend our decision today to foreclose the possible renegotiation or other revisitation of the Agreement's fee as it might be applied to future trespasses or trespasses not yet resulting in a judgment.