



¶ 3

## BACKGROUND

¶ 4 On January 13, 2006, the plaintiff filed a complaint alleging that the defendant intentionally damaged, destroyed, and removed from the Hick's 40 the plaintiff's property and equipment, which was used in conjunction with its oil and gas operations on the lands. The plaintiff alleged that the defendant destroyed the plaintiff's lease road by plowing, discing, and other means; that the defendant dug up, removed, damaged, and destroyed its flow lines, subsurface pipe, and appurtenant fixtures and equipment; and that the defendant cut down, removed, destroyed, and appropriated to his own use the plaintiff's electric distribution system, including but not limited to electric lines, poles, disconnects, panels, anchors, and related equipment. The plaintiff alleged that as a result of the defendant's acts, it had been unable to operate the oil and gas lease. The plaintiff requested judgment against the defendant in the sum of \$49,627.35.

¶ 5 The defendant answered the plaintiff's complaint, setting forth his position that the plaintiff's oil and gas equipment, and the property contained within the lease, had been abandoned.

¶ 6 At the trial on March 30, 2010, and March 31, 2010, Jeff Nelson, the plaintiff's owner, testified that in 1989 or 1990, the plaintiff acquired its interest in the Hick's 40 lease. Nelson testified that the lease included three oil wells and one water injection well, with one of them being cut off and buried. Nelson testified that at the time of purchase, oil and gas were being commercially produced on the lease, and the plaintiff operated the lease daily throughout the 1990s. Nelson testified that the plaintiff continued to produce commercial quantities of oil until the mid to late 1990s when ongoing vandalism, not at issue in this case, made it "irresponsible" to continue to produce oil commercially on a daily basis.

¶ 7 Nelson testified that the plaintiff thereafter maintained the oil production equipment. Nelson testified that in maintaining the equipment, he started the two wells every three or

four months, ran them for a few hours to circulate the chemicals down to the bottom of the hole, and put fluid into the tanks to keep the flow lines clear and to prevent corrosion. Nelson testified that despite the vandalism, the equipment was fully operational. Nelson acknowledged that he did not mow around the well site and the tank batteries. Nelson testified that he had never seen any holes in any of the plaintiff's Hick's 40 tanks. Nelson testified that the plaintiff had no intention of abandoning the Hick's 40 lease and that the Hick's 40 mineral owner at no time conveyed dissatisfaction with the operation of the lease.

¶ 8 Nelson testified that the defendant's tiling of the land "would have destroyed" the plaintiff's underground electrical service and water line. Nelson testified that the lease contract required the plaintiff's underground equipment to be located below plow depth. Nelson testified that a new line that the plaintiff installed to the injection well would have been approximately four feet deep. Nelson acknowledged that he was not present during the defendant's tiling of the property, did not see the aftermath of the tiling, and did not realize it had occurred. Nelson specifically testified as follows:

¶ 9 "We were unaware that there had been tiling done, and this tiling would have destroyed our underground electrical service that ran diagonally across this 40 acres that's in the complaint. It would have ruined it. So all electrical systems underground will be ruined. \*\*\* [O]n that 40 acres, you will not see an estimate to replace that because we were unaware of it."

With regard to the water line, Nelson testified as follows:

"If tiling was done across the service road, between the injection well and the tank battery—which I'm sure it was—that line, in addition, is ruined. And there is no estimate to replace that line either."

¶ 10 Nelson testified that the defendant plowed an "oil surfaced lease road that went from the tank battery down to the well," and he described the road as dirt, with a rock and oil

base. Nelson testified that the defendant also pulled from the ground a utility pole that had been in excellent condition and should have had a minimum of 15 to 20 more years of remaining use. Nelson identified exhibits in the record, estimating the cost to replace the electrical system, the road, and the flow line and to reconnect the well to the battery. Nelson estimated the electrical work replacements to cost \$30,000 and the flow line replacements to cost from \$5,000 to \$10,000, depending on the issues with the tiles. Nelson estimated the cost to restore the road as \$7,000 to \$10,000.

¶ 11 The defendant testified that, having farmed near the Hick's 40, he had been familiar with it since the early to mid 1970s. The defendant testified that he at no time witnessed the well on the property working and that the pumps had not functioned but had continued to deteriorate since the 1970s. The defendant described the tank battery as rusted, with brush growth around the firewall. The defendant testified that there had been a pump jack, two tanks, and a tank battery on the Hick's 40 but that two of the tanks and the tank battery had been removed shortly before trial.

¶ 12 The defendant testified that he purchased the Hick's 40 property in December 2002 or January 2003. The defendant testified that in December 2005, he directed Southern Indiana Drainage to lay tile under the Hick's 40 to improve drainage on the farm. The defendant testified that in tiling the property, a perforated, plastic line was buried anywhere from three to six feet underground. The defendant testified that he did not determine whether or not there were any underground pipes or wires that would be affected by the tiling. The defendant testified that before starting the tiling project, he requested the White County Coal Company, for which Alan Saunders is an engineer, to locate two underground abandoned wells. The defendant testified that Saunders used a metal detector to find and mark the two wells so that the tiling machine could avoid them. The defendant testified that there was no oil production on the Hick's 40 farm, and therefore, he assumed that any lines

would have been abandoned.

¶ 13 The defendant testified that he also removed a 12-foot wooden utility pole, which he considered to be "scrap," "rotted," and "dilapidated." The defendant testified that, using a backhoe, he pulled the pole from the ground and moved it to the top of the firewall (the soil positioned around the tank batteries to hold the oil in case of a rupture). The defendant testified that there were no wires on the pole and he found only dirt below the surface, no wires or concrete.

¶ 14 The defendant also acknowledged that he tilled across the lease road, which he described as a "fescue grass strip," on the Hick's 40. The defendant testified that in the fall or winter of 2005, after the Hick's 40 was tilled and then planted, the six-foot-wide strip was planted the next year in a crop. The defendant testified that he was present during the discing and did not witness any oil residue or rock brought to the surface by the discing.

¶ 15 Darrell Marshall testified that from 1986 through 2006, he lived approximately 200 yards from the Hick's 40. Marshall testified that in 1986, the well on the Hick's 40 was well-maintained and operating, and the two tanks and gun barrel were in good physical condition. Marshall testified that after 1986, he noticed that the oil field equipment began to deteriorate from lack of maintenance. Marshall testified that he did not see the well located on the Hick's 40 operate or pump from 1994 until 2006. Marshall testified that weeds grew around the tank battery, and in 1994, the top of the tank battery rusted and fell in. Marshall testified that he did not see any tankers come to the tank battery to take oil out of the tanks after 1994. Marshall testified that the lease road from the tank battery to the well was a dirt road, not an oil roadway or a rock-based roadway.

¶ 16 Richard Allison testified that he farmed the Hick's 40 property from 2000 until 2006. Allison testified that in that time, the tank batteries became rusty and holey, with five-foot weeds growing around them. Allison testified that from 2000 to 2006, he did not witness

the pump jack in operation, and he at no time observed anyone removing liquids from the tanks. Allison described the roadway from the tank batteries as fescue, with no rock base. Allison testified that he witnessed the old utility pole in the firewall, that the defendant had admitted to him that he had pulled the pole over to the firewall, and that it did not have electrical wires on it. Allison testified that two of the tanks had recently been removed from the Hick's 40, and only the one tall tank remained.

¶ 17 At the close of the plaintiff's presentation of evidence, it moved for judgment as a matter of law. In his argument, the plaintiff's attorney argued that the "tiling equipment would have destroyed what was—whatever was under the ground." The circuit court denied the plaintiff's motion. The defendant also moved for judgment in its favor, and the circuit court granted the defendant's motion as to all allegations except those regarding the utility pole and the lease road. In its March 30, 2010, docket entry granting the defendant's motion at the close of the plaintiff's case, the circuit court held that the plaintiff had presented insufficient evidence relating to damages to the electric service, flow lines, water lines, and other oil field equipment.

¶ 18 On October 26, 2010, the circuit court entered its final written order, noting that it had granted a directed verdict against the plaintiff as to the flow lines, subsurface pipe, appurtenances, fixtures, and equipment, and all the electric distribution system, except one utility pole. The circuit court held that the plaintiff "failed to show even a *prima facie* case as to these issues."

¶ 19 The circuit court rejected the defendant's argument that the plaintiff's oil and gas lease had been abandoned by lack of production and that he therefore had a right to remove the lease road and utility pole. The circuit held that even if the plaintiff had abandoned the leasehold estate, the defendant, as a surface owner and not a lessor of the mineral estate, would have had no right to remove the lease road or the utility pole. Noting that the

defendant had admitted at trial to removing the lease road and utility pole but that the plaintiff had failed to present evidence regarding the cost of replacing a dirt and fescue road and 40-year-old utility pole, the circuit court awarded nominal damages. The circuit court entered judgment in favor of the plaintiff for \$290, which represented \$100 for the roadway, \$100 for the utility pole, and \$90 taxable costs. On October 26, 2010, the plaintiff filed a timely notice of appeal. On November 22, 2010, the defendant filed a cross-appeal.

¶ 20

#### ANALYSIS

¶ 21 The plaintiff argues that it presented uncontradicted evidence that there was oil production equipment, the schematics for which were in the record; that the defendant tiled the property to a given depth in the ground; and that the tiling would have destroyed this equipment. The plaintiff argues that the circuit court improperly entered judgment in favor of the defendant at the close of the its evidence.

¶ 22 In a bench trial, where the trial court is the fact finder, a motion for a "directed verdict" is governed by section 2-1110 of the Code of Civil Procedure. 735 ILCS 5/2-1110 (West 2006); *Kokinis v. Kotrich*, 81 Ill. 2d 151, 154 (1980). Section 2-1110 provides that, in all cases tried without a jury, when ruling on a motion to find for the defendant at the close of the plaintiff's evidence, the trial court "shall weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence." 735 ILCS 5/2-1110 (West 2006).

¶ 23 Thus, the trial court does not view the evidence most favorably to the plaintiff, but rather (1) determines whether the plaintiff has made out a *prima facie* case, then (2) weighs the evidence, including that which favors the defendant. *Kokinis*, 81 Ill. 2d at 155. If in weighing the evidence, the circuit court finds that the evidence as to one or more of the elements is insufficient to qualify as proof to satisfy the standard, the court should grant the defendant's motion and enter judgment for the defendant. *Id.* "If the court already knows,

at the close of the plaintiff's case, that it will not find in the plaintiff's favor on the basis of the evidence the plaintiff has presented, because the quality and credibility of the evidence, in the court's view, fail to satisfy the ultimate burden of proof, there is no point in going on." *Barnes v. Michalski*, 399 Ill. App. 3d 254, 264 (2010).

¶ 24 We shall uphold the granting of a section 2-1110 motion unless the judgment is against the manifest weight of the evidence. *Kokinis*, 81 Ill. 2d at 154. A ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary, or not based on any evidence or only if the opposite conclusion is clearly evident from the evidence in the record. *In re Estate of Savio*, 388 Ill. App. 3d 242, 247 (2009).

¶ 25 In the plaintiff's complaint, it alleged a negligence action for damages to its personal property. The elements of a negligence action for damage to property include "a duty owed by defendant to plaintiff, a breach of that duty by defendant, and some compensable injury to plaintiff proximately caused by defendant's breach." *American National Bank & Trust Co. v. City of North Chicago*, 155 Ill. App. 3d 970, 975 (1987). To maintain its action, it was necessary for plaintiff to make out a *prima facie* case, *i.e.*, to present at least some evidence on each of these elements, relative to the personal property. *Id.* at 975; *Kokinis*, 81 Ill. 2d at 154. However, even assuming, *arguendo*, that the plaintiff presented a *prima facie* case against the defendant with regard to the underground equipment, section 2-1110 recognizes that where the judge is the trier of fact, it is illogical to require the defendant to put on its case when the circuit court would rule for defendant at the close of the plaintiff's case. See *People v. Tibbetts*, 351 Ill. App. 3d 921, 927 (2004).

¶ 26 At trial, the plaintiff presented insufficient evidence to prove that the underground equipment was damaged. The defendant testified that the tiling required a perforated, plastic line to be buried anywhere from three to six feet underground, and Nelson testified that the defendant's tiling "would have destroyed" the plaintiff's underground electrical service and

water line. Nelson acknowledged, however, that he was not present during the tiling, that he did not witness damage to the equipment, and that he had been unaware that tiling had occurred on the property. Nelson's testimony that the defendant's tiling "would have ruined" the plaintiff's underground electrical system and water line amounts to mere speculation. See generally *People v. Stanton*, 269 Ill. App. 3d 654, 658 (1995) (because "the party with the burden of proof cannot satisfy that burden through mere speculation or conjecture," the defendant failed to prove a *prima facie* case for rescission). Because the plaintiff failed to show damage to the subsurface equipment, we cannot conclude that the circuit court's ruling in favor of the defendant at the close of the plaintiff's case was against the manifest weight of the evidence.

¶ 27 On cross-appeal, the defendant argues that the circuit court erred in awarding damages for the destruction of the utility pole and roadway because the plaintiff had abandoned them.

¶ 28 "Abandonment is an intentional relinquishment of a known right." *Pieszchalski v. Oslager*, 128 Ill. App. 3d 437, 447 (1984). "In general, property is considered to be abandoned when the owner, intending to relinquish all rights to the property, leaves it free to be appropriated by any other person." *Bell Leasing Brokerage, LLC v. Roger Auto Service, Inc.*, 372 Ill. App. 3d 461, 467 (2007). An oil and gas lease may be abandoned by cessation of operations for an unreasonable length of time. *Pieszchalski*, 128 Ill. App. 3d at 448. "A party seeking to declare an abandonment of an oil and gas lease must prove that the abandoning party intended to do so." *Id.* at 447-48. Equipment abandoned with an oil and gas lease becomes the lessor's property. *Spies v. DeMayo*, 396 Ill. 255, 274 (1947); *Shannon v. Stookey*, 59 Ill. App. 3d 573, 576 (1978).

¶ 29 A finding regarding abandonment of property is a factual determination that will not be disturbed on appeal unless it is against the manifest weight of the evidence. *People ex*

*rel. Illinois Historic Preservation Agency v. Zych*, 186 Ill. 2d 267, 278 (1999). "Where there are different ways to view the evidence, or alternative inferences to be drawn from it, we accept the view of the trier of fact as long as it is reasonable." *Id.* It is not the function of a reviewing court to reweigh evidence. *Id.*

¶ 30 In the present case, the defendant was neither the owner of the Hick's 40 mineral rights nor the party who entered into the oil and gas lease with the plaintiff. See *Pawnee Oil & Gas, Inc. v. County of Wayne*, 323 Ill. App. 3d 426, 428 (2001) ("In Illinois, mineral rights may be severed from surface rights and conveyed separately, thereby creating two estates in the land, each of which is distinct \*\*\*."); see also *Spies v. DeMayo*, 396 Ill. 255, 274 (1947); *Shannon v. Stookey*, 59 Ill. App. 3d 573, 576 (1978) (equipment abandoned with oil and gas lease becomes lessor's property). Further, Nelson testified that the mineral owner of the Hick's 40 at no time conveyed dissatisfaction with the plaintiff's operation of the lease and that the plaintiff had no intention of abandoning the lease. See *Pieszchalski*, 128 Ill. App. 3d at 447-48 ("A party seeking to declare an abandonment of an oil and gas lease must prove that the abandoning party intended to do so."). Accordingly, the defendant failed to present sufficient evidence to the circuit court or to this court to prove that the plaintiff had abandoned the oil and gas lease and that he, as the surface owner of the Hick's 40, was thereby entitled to destroy the plaintiff's property. Therefore, we conclude that the circuit court's ruling on the issue of abandonment was not against the manifest weight of the evidence.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of White County.

¶ 33 Affirmed.