2012 IL App (5th) 110061-U

NO. 5-11-0061

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

LAWRENCE CRAWFORD ASSOCIATION FOR EXCEPTIONAL CITIZENS, INC.,	)	Appeal from the Circuit Court of Lawrence County.
Plaintiff-Appellee,	)	
v.	)	No. 04-L-10
CONVERSOURCE, INC.,	)	
Defendant-Appellant,	)	
and	)	
PHOENIX LEASING SYSTEMS, INC.,	)	Honorable Robert M. Hopkins,
Defendant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Donovan and Justice Spomer concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly found that a supplier under a finance lease failed to deliver the product within a reasonable time where delivery did not occur for more than seven months. Lessee's decision to cancel the order after a reasonable time had elapsed did not relieve the supplier of liability. Court's findings of lost profits were supported by the evidence.

¶ 2 The instant appeal involves a finance lease of a piece of equipment. The lessor, defendant Phoenix Leasing Systems, Inc. (Phoenix), purchased the equipment from defendant Conversource, Inc. (Conversource), a distributor of the product. The equipment was to be delivered to the lessee, plaintiff Lawrence Crawford Association for Exceptional Citizens, Inc. (LCA). Seven months later, the equipment had not been delivered. LCA

informed Phoenix and the manufacturer (Core Tech) that it wished to cancel the order, purchased the equipment from a different company, and then filed a lawsuit against Phoenix and Conversource. The suit alleged breach of contract for failure to deliver the equipment within a reasonable time, and sought damages for both lost income and the cost of purchasing replacement equipment. On appeal, Conversource argues that (1) the trial court erred in finding that the contract implicitly required delivery within a reasonable time, (2) Conversource was not liable for breach because LCA's cancellation of the order with Core Tech made it impossible for Conversource to deliver, and (3) the evidence related to lost income was too speculative and incomplete to support an award of damages for lost income. We affirm, but we remand for clarification.

¶ 3 LCA is a nonprofit corporation that provides services to developmentally disabled adults, including vocational training and support. As part of its vocational program, LCA maintains a "core-cutting" operation, which is staffed by its clients. Core-cutting is the process of cutting cardboard tubes used in packaging adhesive labels and tape. This operation gives LCA clients the opportunity to earn an income. It also provides an extra source of revenue to LCA.

¶ 4 Initially, LCA used a manual core cutter in its operation. Clients involved in the operation used the core cutter to produce one-inch-diameter cardboard cores for Datamax, a local label-manufacturing company. Early in 2003, Datamax informed LCA that it would be interested in ordering more cores from LCA if LCA could increase its production capacity to meet Datamax's needs. The additional business would also require LCA to be able to cut cores of different diameters, which was not possible with its manual core cutter. In order to take advantage of this opportunity, LCA needed to purchase an automatic core cutter. It was decided that LCA would purchase a Model CM/10/20 automatic core cutter manufactured by Core Tech, the manufacturer of the manual core cutter LCA already owned.

¶ 5 On April 8, 2003, Conversource, the nearest distributor of Core Tech products, sent LCA a written price quote for the core cutter. The document provided pricing information for various options. It further provided that delivery would be within 12 to 14 weeks "upon receipt of purchase order and 30% deposit," and that "this delivery schedule is firm for acceptance within 30 days." On April 21, Core Tech sent LCA a price quote, which contained identical language regarding the delivery schedule.

¶ 6 Rather than purchase the automatic core cutter directly, LCA entered into a finance lease with Phoenix. Under the terms of the lease, Phoenix would purchase the core cutter from Conversource and LCA would make monthly payments to Phoenix over a period of five years with an option to buy the machine at the end of that period. Any payments from Phoenix to Conversource had to be approved by LCA. The lease was executed by LCA on May 23, 2003, and by Phoenix on June 2.

¶ 7 The purchase agreement called for Phoenix to pay Conversource 30% of the purchase price up front, with the remainder due when the core cutter was delivered to LCA. On May 20, 2003, before the finance lease was executed, LCA sent a purchase order for the core cutter to Conversource. On June 2, Phoenix sent a letter to Conversource informing Conversource of the lease and requesting an invoice for the core cutter. Conversource sent the invoice to Phoenix the following day. Early in June, LCA authorized payment of $7,180 to Conversource. Phoenix sent payment in that amount to Conversource, and Conversource in turn sent payment in the same amount to Core Tech.

¶ 8 By September 2003, the core cutter had not been shipped to LCA. Randall Burtch, LCA's production manager, complained about the delay to Core Tech, Conversource, and Phoenix. Jim Anders, the owner of Phoenix, discussed the situation with representatives of Core Tech, who told him that Core Tech was having cash flow problems and was unable to purchase some of the parts needed to complete the core cutter. On September 10, 2003,

Anders sent a memo to Mike McKenna at Core Tech. Anders noted that the core cutter should have been shipped by that time. He also noted, however, that LCA had agreed to authorize another partial payment before shipment in order to enable Core Tech to purchase the necessary parts. He asked how much would be necessary.

¶ 9 On September 24, 2003, Bill Tiery of Core Tech faxed a memo to Anders indicating that an $8,000 "progress payment" would be sufficient to ensure delivery of the core cutter within two weeks of receipt of that amount. The following day, Anders sent a letter to LCA with a revised payment schedule based on this representation. Enclosed was a copy of the "commitment from Core Tech representing completion of the machine two weeks after the receipt of the funds." A copy of this letter was sent to Conversource.

¶ 10 LCA authorized the necessary payment, and Phoenix paid Conversource, which made payment in the same amount to Core Tech. However, the core cutter was not delivered within two weeks. Between October and December 2003, Anders continued to discuss the matter with representatives of Core Tech. At one point, Core Tech vice president Craig Prescott told Anders that the machine would be shipped on November 10, 2003. When this did not occur, Anders was told that the machine could be shipped within three or four days after Core Tech received the necessary parts.

¶ 11 On January 9, 2004, LCA informed Phoenix that it was cancelling the order. On January 16, LCA cancelled the order with Core Tech. On January 28, 2004, LCA ordered an automatic core cutter from Appleton Manufacturing Division, which was delivered to LCA one month later, on February 27. Meanwhile, in January 2004, Randall Burtch, LCA's production manager, left LCA and started his own for-profit core-cutting business, Illiana Cores. During this time, while LCA did not have an automatic core cutter, Datamax began ordering its cores from Illiana.

¶ 12 In June 2004, LCA filed the instant action against Phoenix and Conversource. The

petition alleged breach of contract on the basis of failure to deliver the core cutter within a reasonable time. Conversource removed the action to federal court and filed a third-party complaint against Core Tech, but later voluntarily dismissed the complaint against Core Tech. In June 2008, the federal court found that it lacked jurisdiction over the matter and returned the cause to state court.

¶ 13 The trial court held a bench trial in the matter in May 2010 and issued its decision in a written order in January 2011. In its order, the court found that the lease between Phoenix and LCA was a finance lease within the meaning of the Uniform Commercial Code (UCC) (810 ILCS 5/1-101 to 13-103 (West 2002)). The court explained that Phoenix did not select, manufacture, or supply the core cutter (see 810 ILCS 5/2A-103(g)(I) (West 2002)) and acquired it in connection with the lease (see 810 ILCS 5/2A-103(g)(ii) (West 2002)). In addition, the court found that LCA's approval of the purchase was a precondition to the effectiveness of the lease (see 810 ILCS 5/2A-103(g)(iii)(B) (West 2002)). The court explained that because the transaction met the statutory definition of a finance lease, LCA (the lessee) was the beneficiary of any promises made by Conversource (the supplier) to Phoenix (the lessor). See 810 ILCS 5/2A-209(1) (West 2002)).

¶ 14 The court next found that Conversource breached the contract by failing to deliver the core cutter to LCA within a reasonable time. The court noted that at the time LCA terminated the lease and cancelled the order, seven months had elapsed since Conversource received the purchase order for the core cutter and six months had elapsed since it received the first payment. The court concluded that, under all the circumstances, this was not a reasonable time. We note that the court did not make any express statements regarding what a reasonable time for delivery would be under the circumstances. However, as we will discuss next, the court awarded damages for a period beginning early in September 2003, which was three months after the first payment was sent to Conversource. Thus, the court

implicitly found that this would be a reasonable time for delivery.

¶ 15 The court next determined damages. The court awarded $27,634.96 for the cost of the replacement core cutter. The court also found that LCA was entitled to consequential damages for income it lost because it was unable to produce the additional cores for Datamax. In calculating the amount of damages to award, the court accepted the estimate of Arnold Herman, an accountant for LCA. Herman testified at trial that he estimated the lost income from the Datamax business to be $41,576.69 for the one-year period beginning in September 2003. The court found that LCA was entitled to damages for only part of this one-year period, however. The court found that LCA was entitled to consequential damages for its lost income from September 3, 2003, through March 1, 2004, when the new core cutter was delivered. The court awarded $24,253, but did not explain the precise method it used to calculate this amount. This appeal followed.

¶ 16 Conversource first argues that the court erred in finding it liable to LCA for failure to deliver the automatic core cutter within a reasonable time. Conversource acknowledges that, where a contract does not specify a delivery date, the UCC imposes an implicit requirement that delivery be within a "reasonable time." See 810 ILCS 5/2-309(1) (West 2002). Conversource argues, however, that its express promise to deliver the core cutter when it was "ready to ship" left "no blank space in Conversource's promises into which the phrase 'a reasonable time' could be inserted by the trial court." We find this argument unpersuasive. If we were to hold that a vague promise to deliver a product whenever it is ready to ship is sufficiently specific to avoid application of the reasonable time provision, our holding would render that provision meaningless.

¶ 17 Conversource further contends, however, that the "reasonable time" provision was inapplicable due to the fact that Core Tech made four specific promises regarding the time for delivery. It contends that these four delivery promises were specific enough to make the

"reasonable time" provision inapplicable, but argues that Conversource was not bound by the promises because it was not aware of them. We are not convinced.

¶ 18 As Conversource points out, Core Tech made four different representations to Phoenix and LCA about the time of delivery for the core cutter. Initially, Core Tech sent LCA a price quote which provided that delivery would be within 12 to 14 weeks after Core Tech received payment. As discussed previously, Conversource sent LCA a price quote with an identical representation as to the time of delivery. Later, Core Tech told Jim Anders of Phoenix that delivery would occur within two weeks after receipt of an additional payment. When this did not occur, Core Tech provided a delivery date of November 10, 2003. When this date passed and the core cutter was still not delivered, Core Tech informed Phoenix that it would be delivered within three or four days after Core Tech received some component parts that it needed.

¶ 19 These four representations are obviously inconsistent with one another, and three of them were made only after what the court found to be a reasonable time had already elapsed. We do not believe the court erred in applying the statutory "reasonable time" provision. Moreover, Conversource provides no support for its contention that *neither* these express representations nor the statutory default provision applies to it.

¶ 20 Conversource contends that the trial court erred in finding it liable for failure to deliver the core cutter within a reasonable time for two additional reasons. First, it argues that LCA could not cancel the contract without first providing it with notice of its intent to do so. See 810 ILCS Ann. 5/2-309(3), Uniform Commercial Code Comment 5, at 215 (Smith-Hurd 2009). Under the UCC, a party must give reasonable notice in order to terminate a contract. 810 ILCS 5/2-309(3) (West 2002). This requirement is generally not applicable where termination of the contract is a remedy for breach. See 810 ILCS Ann. 5/2-309, Uniform Commercial Code Comment 9, at 216 (Smith-Hurd 2009). However, notice

is necessary if a party intends to treat a contract as breached for failure to deliver within a reasonable time. See 810 ILCS Ann. 5/2-309, Uniform Commercial Code Comment 5, at 215 (Smith-Hurd 2009). Conversource argues here that because LCA did not provide this notice, as required by section 2-309 of the UCC, it cannot rely on the same statute for relief.

¶ 21 We find this argument unavailing. We first note that a reasonable time for delivery passed four months before LCA cancelled the order. We further note that, although LCA did not inform Conversource that it intended to treat the delay in delivery as a breach of the contract, LCA did make Conversource aware of its concerns about the delay.

¶ 22 In a related argument, Conversource contends that by remaining silent, LCA in essence agreed to "extend what was once deemed a reasonable time." However, the record shows that LCA did not remain silent. Indeed, LCA complained to all three other parties as early as September 2003. Thus, this argument is refuted by the record.

¶ 23 We conclude that the court correctly applied the statutory provision requiring delivery within a reasonable time. We note that while Conversource challenges the applicability of the default "reasonable time" provision, Conversource does not challenge the court's finding that three months was a reasonable time for delivery. We find no error in the court's application of this deadline or finding of a breach for failure to deliver the core cutter within a reasonable time.

¶ 24 Conversource next contends that the court erred in finding it liable for breach of the contract because by cancelling the order with the manufacturer, Core Tech, LCA made delivery impossible. We disagree.

¶ 25 In support of this argument, Conversource relies on section 2-615 of the UCC. That statute provides that a delay in delivery will be excused "if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made." 810 ILCS 5/2-615(a) (West 2002).

Conversource points out that cancellation of the order with Core Tech was not contemplated by the parties at the time they entered into the lease and purchase contracts. Conversource argues that its performance should be excused under section 2-615 because LCA's cancellation of the order with Core Tech made it impossible for Conversource to deliver the core cutter.

¶ 26 There are two flaws in this argument. First, a reasonable time for delivery elapsed four months before the order was cancelled. A breach cannot be excused by a contingency that occurs after it happens. Moreover, a supplier must comply with certain statutory requirements in order for its breach to be excused. In relevant part, a supplier must "notify the buyer seasonably" of the delay. 810 ILCS 5/2-615(c) (West 2002). Conversource, which had a contractual relationship with Core Tech as a distributor of Core Tech products, failed to do so.

¶ 27 Conversource next challenges the court's award of consequential damages for the income LCA lost as a result of being unable to provide the additional cores to Datamax. Conversource argues that (1) consequential damages were not within the contemplation of the parties at the time they made the contract, (2) the evidence that LCA lost income was speculative, (3) LCA failed to negate other causes for its loss of the Datamax business, (4) the evidence of the amount of income LCA lost was incomplete, and (5) the court found that LCA was entitled to damages for a six-month period but awarded damages for a seven-month period. We will consider each argument in turn.

¶ 28 Conversource first argues that damages for lost income were not within the contemplation of the parties when they formed the contract. Conversource points out that there was no evidence of any discussions between it and LCA about the issue of potential liability for lost profits or LCA's need to use the core cutter to secure additional business from Datamax. See *Flug v. Craft Manufacturing Co.*, 3 Ill. App. 2d 56, 66-67, 120 N.E.2d

666, 671 (1954) (explaining that "[b]efore loss of profits can be used as a measure of damages, the contract should expressly *or by implication* from its terms contemplate such damages" (emphasis added)). We believe this argument misstates the law.

¶ 29 Lost income or profits are a proper element of consequential damages. *Burrus v. Itek Corp.*, 46 Ill. App. 3d 350, 358, 360 N.E.2d 1168, 1173 (1977). Consequential damages–including lost profits–can be recovered if the seller "had reason to know" they were likely at the time the contract was formed. 810 ILCS 5/2-715(2)(a) (West 2002). The UCC specifically rejected the " 'tacit agreement' test for the recovery of consequential damages." 810 ILCS Ann. 5/2-715, Uniform Commercial Code Comment 2, at 587-88 (Smith-Hurd 2009). Thus, all that is required is that the damages be foreseeable at the time the contract is formed. See *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 318, 515 N.E.2d 61, 67 (1987) (describing "the general rule of foreseeability in contract actions").

¶ 30 Damages that "naturally and generally result from a breach" are foreseeable. Such damages may therefore be deemed to be within the contemplation of the parties without any additional evidence that the parties considered such damages at the time they formed the contract. *Midland Hotel Corp.*, 118 Ill. 2d at 318, 515 N.E.2d at 67. Here, as LCA points out, the foreseeability of damages for lost income is inherent in the nature of the item sold. The automatic core cutter at issue in this case is a piece of industrial equipment used in production. It follows from this that a failure to deliver the core cutter in a timely fashion would necessarily deprive LCA of income that could be derived from its use. This is sufficient to make damages for lost income foreseeable. See *Midland Hotel Corp.*, 118 Ill. 2d at 318, 515 N.E.2d at 67 (explaining that profits lost as a result of a breached contract involving a Yellow Pages ad were foreseeable as a direct result of the breach because the purpose of the ads was to increase business and profits).

¶ 31 Conversource further contends that the evidence that LCA lost income as a result of

the failure to deliver the core cutter in a timely manner was speculative and that LCA failed to negate other causes for the lost business. More precisely, Conversource contends that competition for Illiana Cores was the cause of LCA's lost income. We find neither argument persuasive.

¶ 32 Datamax's plant manager, Keith Jones, testified at trial that Datamax, which is located approximately seven miles away from LCA, had a relationship with LCA even before LCA began supplying Datamax with cores. He explained that LCA clients packaged rolls of labels into cartons for shipping. He further testified that when Datamax began buying cores from LCA, it was satisfied with the quality, price, and lead time.

¶ 33 Jones testified that he approached LCA production manager Randy Burtch to discuss the possibility of shifting more business to LCA because both the cost and lead time of LCA were better than those of Datamax's other main supplier, a company located in Wisconsin. Burtch informed Jones that LCA was considering purchasing an automatic core cutter to increase its production capacity. Jones provided him with Datamax's core buying guide. The core buying guide was based on Datamax's actual usage. Although Jones admitted that the core buying guide could not be used to predict future orders with certainty, he explained that he gave it to prospective suppliers because it gave them a good enough idea of Datamax's future need to enable them to determine whether they could meet those needs and how to increase production capacity in order to do so. Jones was specifically asked why the additional business went to Illiana Cores instead of to LCA. He replied, "They couldn't keep up with the demand nor price because they didn't have the type of machine they needed."

¶ 34 Jones testified on cross-examination that Illiana Cores was located 10 miles from Datamax. Thus, it was as capable as LCA of providing the benefits of having a local core supplier (lower shipping costs and quicker lead time). He further testified that Datamax was under no obligation to continue to give business to LCA, but he stated that he had no reason

not to do so because he was satisfied with the cores he purchased from them. Jones testified, however, that once Illiana Cores began supplying Datamax's cores, there was no reason to shift the business back to LCA. He testified that at some point after Illiana Cores began supplying cores to Datamax, LCA provided a price quote which was not competitive with Illiana Cores' prices.

¶ 35 Conversource argues that the evidence that LCA would have received any business at all from Datamax is speculative. See *Oakleaf of Illinois v. Oakleaf & Associates, Inc.*, 173 Ill. App. 3d 637, 648, 527 N.E.2d 926, 933 (1988) (noting that evidence of lost income "cannot merely depend upon conjecture or speculation"). Conversource further argues that the real reason LCA lost the Datamax business was that it could not compete with Illiana Cores' better offer. We disagree. First, as previously noted, Jones specifically testified that the reason he gave the additional business to Illiana Cores rather than LCA was that LCA could not meet Datamax's requirements because it did not have the necessary equipment. The trial court was entitled to find this testimony credible, particularly in light of the uncontroverted testimony that LCA and Datamax had an ongoing relationship prior to that time.

¶ 36 It is true, as Conversource points out, that there was no written contract between LCA and Datamax and that Datamax was not under any legal obligation to order any specific volume of cores from LCA. However, these factors were inherent in the nature of the business. According to Jones, it was typical for Datamax not to have written contracts for its less expensive supplies, such as cores. He explained that sometimes Datamax needed to place an order for cores with a different supplier in order to accommodate the need for unusually quick lead time. In addition, while it is possible that LCA would have been undercut by a more competitive offer from Illiana Cores in January 2004, there is no evidence to contradict Jones's testimony that he fully intended to order the cores from LCA

and would have done so if the core cutter had been timely delivered in September 2003. In light of the nature of the business, lost income would be impossible to establish with absolute certainty. If more detailed, direct, or certain proof were required of a party in LCA's position, "the result would be to immunize a defendant from the consequences of [its] wrongful acts." *Vendo Co. v. Stoner*, 58 Ill. 2d 289, 310, 321 N.E.2d 1, 13 (1974). Here, the evidence showed reasonable certainty that Datamax would have given the business to LCA had the core cutter been delivered in September 2003. This is sufficient to support the court's finding.

¶ 37 We are also not convinced that the *amount* of damages was speculative because Jones testified that the core buying guide could not be used to predict the exact amount of future orders. If lost income can be estimated or approximated with "reasonable certainty," it is sufficient to allow recovery. *Oakleaf of Illinois*, 173 Ill. App. 3d at 648, 527 N.E.2d at 933.

¶ 38 Conversource next argues that the evidence of the amount of income lost as a result of its failure to deliver the core cutter was incomplete. Conversource acknowledges that this court will reverse the court's damage award only if it is manifestly erroneous (*Vendo Co.*, 58 Ill. 2d at 311, 321 N.E.2d at 13) or its factual findings are against the manifest weight of the evidence (*Farm Credit Bank of St. Louis v. Dorr*, 250 Ill. App. 3d 1, 12, 620 N.E.2d 549, 556 (1993)).

¶ 39 The court stated in its order that it relied primarily on the testimony of Arnold Herman in determining the amount of damages to award for LCA's lost income. Herman was hired as LCA's accountant after the events at issue in this appeal took place. In making his estimation of the income LCA lost as a result of not having the core cutter in time to secure the additional business from Datamax, Herman considered Datamax's core ordering guide, which provided data on its actual usage of cores for all of fiscal year 2002 and the first three months of fiscal year 2003. Herman prepared three different spreadsheets calculating his

estimates of lost income from three different sets of figures. The first was based on Datamax's first quarter 2003 core usage guide. The second was based on the 2002 figures. The third was based on a combination of the 2002 and 2003 figures. In each calculation, Herman considered the amount LCA would invoice for the total number of cores Datamax used. From that amount, he deducted the costs of purchasing tubes to be cut into cores and the direct labor cost (the salary of the clients employed in the core-cutting operation). Based on the 2003 figures and these calculations, Herman estimated that one year's worth of lost income from sales of the cores to Datamax would total approximately $41,576.69. The court accepted this estimate in determining the damages it awarded for a six-month period.

¶ 40 Conversource argues that the court erred in accepting Herman's $41,576.69 figure because Herman failed to take into account several other costs ordinarily associated with doing business. Specifically, it argues that he did not take into account the cost of storage, depreciation, machine maintenance, the salaries of administrative and management employees, and the costs of shipping the cores across town to Datamax's facility.

¶ 41 At trial, Herman was cross-examined about these various costs and he explained why he did not take most of them into account. He did not consider storage costs because LCA had enough space in its facility to store the cores. He did not consider depreciation because he considered it to be a theoretical cost. He did not take into account maintenance of the core cutter because he did not anticipate repairs being needed in the first year. He testified that he did not take into account the salaries of LCA's management and administrative staff for two reasons. First, LCA did not have to hire additional employees to provide these services. Second, these employees were paid through grants from the state. Thus, we do not accept Conversource's contention that LCA's evidence of lost income was "incomplete" because these costs were not deducted from Herman's estimate.

¶ 42 We note, however, that Herman acknowledged at trial that LCA would have incurred

shipping costs in supplying the cores to Datamax. LCA used its own truck to deliver cores produced on the manual core cutter to Datamax. Thus, the only costs associated with shipping were the cost of buying cartons and fuel costs. Herman prepared a new spreadsheet taking into account these costs. Deducting these costs along with the cost of the tubes and direct labor from the 2003 core usage guide yielded an estimated income of $25,638.71. In its trial brief, LCA requested damages based on this estimate, rather than the earlier estimates which did not take into account the shipping costs. There may have been a reason that the court found the earlier estimate to be more accurate. For example, Herman testified that in preparing his second estimate taking into account the shipping costs, he assumed that each box would be used only once. He later learned, however, that the boxes could be used multiple times. However, we believe that it would be appropriate to remand this matter to the trial court to allow the court to clarify the basis for its ruling and make any amendments that are necessary.

¶ 43 Conversource raises one final argument with respect to the court's damage award. Conversource notes that the court expressly found that LCA was entitled to be compensated for lost income from September 3, 2003, until March 1, 2004, a period of six months. However, Conversource argues that the damages awarded appear to be based on a seven-month period. That is $41,576.69 (the one-year estimate accepted by the court) divided by 12 months is $3,464.72 per month, multiplied by 7 is $24,253.04 for 7 months. As previously noted, the court did not explain how it arrived at this figure. Thus, on remand, the trial court should clarify the basis for this calculation and amend the order if necessary.

¶ 44 For the foregoing reasons, we affirm the judgment of the trial court. However, we remand the matter for clarification

¶ 45 Affirmed; remanded for clarification.