2018 IL App (1st) 170273-U

No. 1-17-0273

Order filed March 1, 2018

Fourth Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| ILLINOIS BELL TELEPHONE CO. d/b/a AT&T Illinois, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County |
| | ) | |
| v. | ) | No. 15 M4 872 |
| | ) | |
| VILLAGE OF OAK PARK, | ) | Honorable |
| | ) | James J. Gavin, |
| Defendant-Appellant. | ) | Judge presiding. |

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court did not err in finding that defendant proximately caused damage to plaintiff's equipment and awarding plaintiff $88,597.58 in damages, as the evidence at trial supported such a finding and an award.

¶ 2 Plaintiff Illinois Bell Telephone Co. d/b/a AT&T Illinois (Bell) sued the Village of Oak Park (Village), alleging that the Village violated the Illinois Underground Utility Facilities Damage Prevention Act (220 ILCS 50/1 *et seq.* (West 2014)) when the Village damaged an underground clay duct and cable while repairing a water main break. Following a bench trial, the

circuit court found the Village caused damage to Bell's equipment and awarded Bell damages in the amount of $88,597.58.

¶ 3 The Village now appeals that judgment, contending that the circuit court erred because Bell (1) did not present competent evidence of causation and (2) did not prove its damages were fair and reasonable. For the reasons that follow, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The JULIE Act

¶ 6 The Joint Utility Locating Information for Excavators (JULIE) is a non-profit corporation created to serve as a communications link between underground utility facility owners, such as Bell, and entities planning on performing excavations. *Commonwealth Edison Co. v. Munizzo*, 2013 IL App (3d) 120153, ¶ 5.

¶ 7 Under the Illinois Underground Utility Facilities Damage Prevention Act, commonly known as the JULIE Act (the Act), any person, including municipalities, intending to perform a non-emergency excavation generally must outline the planned excavation site using white paint, flags or stakes, and also provide at least 48 hours' notice through JULIE to the owner or operator of any underground utility facility in the area of the planned excavation. 220 ILCS 50/2.1, 4 (West 2014). These notices are called "locate" requests. See *JULIE Excavator Handbook*, JULIE, Inc., 5 (March 2013); see also 220 ILCS 50/2.1.9 (West 2014) (referencing the JULIE Excavator Handbook). Once the excavator submits a locate request, JULIE gives the request a unique identification number, and the request is processed through JULIE's system as a ticket. See *JULIE Excavator Handbook*, JULIE, Inc., 5, 18 (March 2013). That notice is then relayed to the relevant owners and operators of the utility facilities, who then must respond and mark the approximate location of their facilities with a combination of flags, stakes or paint using a color-

coded system to designate their identity. 220 ILCS 50/10 (West 2014). For example, telephone facilities are marked using orange while water facilities are marked using blue. *Id.*

¶ 8 Additionally, before, during and after non-emergency excavations, excavators must undertake certain required activities, including providing additional notice through JULIE and requesting the area be re-marked when weather has "caused the utility markings to become faded or indistinguishable." *Id.* § 4. Different protocols are required when emergency excavations occur. *Id.* § 6. In such cases, the excavator must give an emergency locate notification through JULIE and provide certain information, including when the excavation will begin, a contact person and his or her phone number. *Id.* The excavator must then wait at least two hours or the time requested on the notice, whichever is longer, before beginning its excavation unless an immediate safety hazard exists. *Id.*; 83 Ill. Adm. Code 265.50 (2014). If an excavator damages an underground utility facility during an emergency or non-emergency excavation, it must "immediately" notify the affected owner or operator and JULIE. 220 ILCS 50/7 (West 2014).

¶ 9 B. Pretrial Proceedings

¶ 10 In February 2015, Bell filed a two-count complaint against the Village, alleging that, on or about, February 25, 2014, while the Village was doing excavation work, it damaged a clay duct that held Bell's underground utilities. Bell asserted that the ground had been marked the week prior during "heavy rain" and the Village was informed that Bell's "utility was within 6 inches of the [Village's] water main." According to Bell, the Village had been informed that the rain might wash away the markings and a "refresh" might be required. Bell stated that it learned about the damage the following day when its customers began reporting outages. Bell claimed that it cost $88,597.58 to repair the damage, which consisted of $12,117.80 in labor costs, $356.44 in material costs, $76,112.94 in contractor costs and $10.40 in loss of use costs.

¶ 11 In Count I, Bell alleged that the Village was negligent because it violated the non-emergency provisions of the Act by failing to: (1) take reasonable action to inform itself of the location of Bell's facilities near the excavation site; (2) plan the excavation in order to avoid interference with Bell's facilities by using hand or vacuum excavation; (3) exercise due care at all times to protect underground utility facilities; and (4) provide additional notice to JULIE when factors, such as weather, at the excavation site caused the utility markings to become faded. Bell asserted that the Village's failure to comply with one or more of the aforementioned statutory duties resulted in damage to Bell's facilities and accordingly sought damages of $88,597.58. In Count II, Bell alleged conversion, but did not proceed to trial on the count.

¶ 12 The Village answered, denying any liability and also asserting that the non-emergency provisions of the Act did not apply under the circumstances. The case proceeded to a bench trial.

¶ 13 C. Bell's Case-in-Chief

¶ 14 At trial, Bell presented three of its own employees, Dave Aulakh, Francisco Prado and Joe Terrell, as well as Darrell Mills and Paul Mastropieri, employees of USIC, Bell's underground facilities marking contractor.

¶ 15 The evidence showed that, on February 20, 2014, Darrell Mills, an underground utility facility locator for USIC, responded to an emergency JULIE locate request from the Village in connection with a water main break near the intersection of North Boulevard and North Oak Park Avenue in Oak Park, Illinois. Bell used USIC to mark its facilities in response to locate requests. Generally, Mills used a combination of paint and flags to mark nearby utility facilities, but because the area around the water main break was asphalt and concrete, he could only use paint. After he located Bell's facilities, which were two "duct packages," he noticed they were inches away from blue markings on the ground, indicating the location of the Village's water

main. As Mills applied orange paint, which indicated telephone facilities, to the approximate location of Bell's equipment, it was raining "heavily" and the paint began to wash away.

¶ 16 After marking the area as best as he could, Mills called the person listed on the Village's JULIE ticket, who he believed was Howard Stokes, to inform him about the rain washing away the markings. Mills also told Stokes that Bell's facilities were "in close proximity" to the water main and that he could come out again and re-mark the area. Stokes responded that he was not the one doing the excavation work. When Mills offered to give his contact information to the person who was, Stokes dismissed Mills and did not accept his information.

¶ 17 On February 26, 2014, Dave Aulakh, a cable repair technician for Bell, reported to the vicinity of North Boulevard and North Oak Park Avenue based on customers reporting service outages and an air pressure alarm. Bell's equipment was pressurized to keep water out, meaning air pressure would constantly run through the cables. When its equipment became compromised, Bell would receive an alarm. Once Aulakh arrived, he did not know the exact area causing the issue because the alarm only pinpointed a general 1,000-foot area. Using equipment, he determined the exact location was in front of the Irish Gift Shop near the intersection of North Boulevard and North Oak Park Avenue. In that area, Aulakh observed a "fresh patch," which was evidence of recent digging, and learned that the Village had been digging in the area the previous day.

¶ 18 Because Bell's facilities were approximately 10 feet below the concrete and asphalt, P.T. Ferro Construction Co. (P.T. Ferro), a contractor for Bell, had to come out and excavate the area so that Aulakh could investigate the issue. Initially, P.T. Ferro's workers dug up the area using a backhoe, but began using shovels as they got closer to Bell's facilities. After P.T. Ferro completed its task to excavate the area, Aulakh observed damage to a clay duct that held Bell's

cables and that the duct was "six" or "seven inches" away from the Village's water main. Upon further inspection, he noticed that there was a hole in the sleeve of one of Bell's cables. Based on the heaviness of the clay duct, Aulakh did not believe the damage could have been caused by a shovel and instead believed it was caused by a backhoe or some other "heavy force." Aulakh testified to working approximately 23 hours over the course of February 26 and 27 while his partner, Anthony Bruzan, worked approximately 31 hours those two days.

¶ 19 Paul Mastropieri, an operations supervisor for USIC, also arrived at the scene on February 26. While there, he observed damage to Bell's facilities, which had been dug up and noticed that "the water main [was] very close to the [Bell] duct package," approximately six inches away. Mastropieri could tell that the water main had been repaired recently based on a visible clamp and "fresh gravel" in the area. Based on his observations, he believed that a backhoe had been used to excavate the area in question because of a visible "tooth mark," a description of the marking a backhoe leaves behind. After investigating the scene, Mastropieri determined that USIC had accurately marked the area for utility facilities. At trial, Mastropieri stated that, if an excavator sought a locate request and observed no markings in the area before a dig, the excavator could not just begin digging, but instead was required to contact JULIE.

¶ 20 On February 27, 2014, Francisco Prado, another cable repair technician for Bell, arrived at the scene. While attempting to repair the duct and cable, he observed that the nearby water main was leaking in his face and later mentioned to a P.T. Ferro worker that, before they backfilled the excavation site, they needed to alert someone about the leak. Prado also talked to someone from the Village at the scene who told him that its backhoe operator was "new at that job." Prado testified that he and his partner, Anthony Catalano, worked 32 hours over the course of February 27 and 28 to repair Bell's facilities.

¶ 21 Darrell Mills, of USIC, returned to the scene on February 27, where he observed Bell's "duct package exposed" with a cable hanging from the duct "with the water main beside it," which was exactly how he marked the area the week prior. Mills determined that Bell's facilities were about six inches away from the Village's water main, and he did not believe that the damage to the duct could have been caused by a shovel. Instead, he believed the damage was likely caused by a backhoe or mini-backhoe. Mills also reviewed the JULIE tickets for the area in question and observed that the only parties digging in the area between February 20 and 26 were the Village and P.T. Ferro, which, as Bell's contractor, would not "dig until after damage occurs."

¶ 22 Joe Terrell, a senior risk specialist for Bell, was responsible for investigating damage to Bell's property, ensuring accurate cost reporting and ultimately pursuing claims. After his investigation of the damage to Bell's facilities, he determined that, because Bell learned about the damage on February 26, the damage must have occurred either earlier that day or the day before. Had there been any damage earlier than that, Bell would have received customer outage reports and an air pressure alarm. Although Terrell did not measure the distance from the Village's water main to Bell's duct, he said it was in "close proximity" and "inches away." Terrell further determined that, based on JULIE tickets and the area being marked by USIC on February 20, the Village had been working in the area to repair a water main break. According to Terrell, the only two JULIE tickets issued between February 20 and 26 for that area were for the Village and P.T. Ferro. However, P.T. Ferro's dig time was for after 7:06 p.m. on February 26, and it only began digging after the damage to Bell's duct had been discovered. Terrell also did not find any evidence that the Village requested a re-marking of the area.

¶ 23 At trial, Terrell identified a photograph showing that a water line had been marked and USIC had marked the area for a nearby "communication duct package," which he explained was multiple ducts carrying cables. The photograph was admitted into evidence, but is not included in the record on appeal. Terrell also identified two "screen shots" that showed the Village digging in the area on both February 20 and February 26. No other information was elicited about these "screen shots," which were admitted into evidence but are not included in the record on appeal.

¶ 24 Additionally, Terrell identified a "Claim for Damages" document that Bell sent to the Village, which detailed the various costs incurred by Bell to repair the damaged duct and cable. The document was admitted into evidence as a business record over the Village's objection to a narrative contained in the document about "how damage occurred." In the document, Bell listed a summary of its charges to the Village: $12,117.80 in labor costs, $76,112.94 in contractor costs, $356.44 in material costs and $10.40 in loss of service costs, totaling $88,597.58. Terrell explained that the labor costs were Bell's expenses to send its technicians to the scene, and that, because Bell was a utility, its rates were "regulated." He calculated the labor costs by using the "standard rate" multiplied by the number of hours each technician worked, which he verified. Terrell also noted that its contractor costs were based on P.T. Ferro's work and subsequent invoice to Bell, and its material costs were simply the materials "used on site for the repairs." Terrell detailed some of those materials. Lastly, he explained the loss of service costs were "what it would have cost if we had to rent light facilities to keep our customers in service."

¶ 25 Terrell next discussed the invoice from P.T. Ferro for the work it performed for Bell. He explained that Bell, as a public utility, had "certain contractors" who performed emergency work on its behalf. The invoice Bell received was not the original one sent by P.T. Ferro, but rather one that had been produced from Bell's own system. The invoice was admitted into evidence as

a business record without objection and showed $76,112.94 in costs. The invoice contained a recitation of the work P.T. Ferro performed over the course of four days from February 26 through March 3, 2014. The recitation included a timeline of work performed, including the type, equipment used, hours expended and associated costs. For example, the invoice stated that initially P.T. Ferro used a "4 man backhoe crew" to dig a pit "18 x 6 x 7 deep" which took 23.5 hours. The invoice indicated the rate for such work was $1,044.49 per hour, resulting in the total costs for that work being $24,545.52. Additionally, the invoice indicated that P.T. Ferro performed other excavation work to expose Bell's duct and the Village's water main. The invoice shows that P.T. Ferro used another "4 man backhoe crew" as well as "1 man w/truck" to "pull sheeting, furnish CA-7 and cold patch, backfill and tamp pit, pick barrier wall and traffic control," which took 10.75 hours. The invoice indicated the rate for the backhoe crew and truck worker was $837.60 and $189.69 per hour, respectively, resulting in the total costs for this work being $11,043.37. Terrell stated that, according to the invoice, P.T. Ferro was paid in full on May 28, 2014. On the invoice, it states the invoice was "Sent For Payment" on March 28, 2014. The invoice further states that the "Payment Type" was "PARTIAL."

¶ 26 Following Bell's case-in-chief, the Village moved unsuccessfully for a directed finding based on Bell's evidence being "surmise and conjecture."

¶ 27 D. The Village's Case-in-Chief

¶ 28 On February 25, 2014, Hank Rozhon and Quinn Hargrove, both public works employees of the Village, arrived near the intersection of North Boulevard and North Oak Park Avenue to help repair a water main break. As they approached the scene, both observed water coming out of the Bell "vault" at a high rate of speed. In order to pinpoint the location of the break, Rozhon used a backhoe, with which he had extensive experience operating, to remove the concrete from

the street. After the concrete was removed, Hargrove carefully probed down into the ground every three feet because he knew Bell's duct was in close proximity. At one point, his probe "actually hit the duct" so he and the other workers began hand shoveling away from that area. Although both Rozhon and Hargrove acknowledged at trial that the backhoe was used within 18 inches of Bell's orange mark, both agreed that the backhoe never was close to Bell's duct because they hand dug in close proximity to the water main. Hargrove stated that, because the distance from the water main to Bell's duct was "probably 12 inches or so" and the "bucket" of a backhoe was 24 inches, it was impossible for a backhoe to dig in between the two facilities. Although Rozhon stated that Bell's duct was 6 inches away from the water main, he similarly asserted that his 24-inch bucket could not fit between the two facilities. Both asserted that the backhoe never damaged Bell's duct.

¶ 29 After they finished digging the area, they could see Bell's duct, but did not observe any damage to it. Hargrove only noticed that concrete had eroded away from the duct but its clay tile "was still connected." Rozhon likewise observed that "the concrete was off" but that the "whole tile was intact." Rozhon acknowledged that he did not report the issue to JULIE because he did not consider concrete erosion to be "damage." Three or four days later, Rozhon and Hargrove came back out to the scene based on a report of another water main break, which they both asserted was due to P.T. Ferro hitting the water main during its excavation on behalf of Bell. They could tell the damage was caused from a backhoe due to visible teeth marks.

¶ 30 At trial, Rozhon identified a photograph, Village Exhibit A, that he said was taken on the night of February 25, which showed the water main and Bell's duct. He stated that there was "no possible way" the duct was damaged at that point. Rozhon, however, agreed that the photograph did not have a time-stamp. Hargrove also identified this photograph and similarly noted there

was no damage to the duct besides the "concrete missing." Rozhon and Hargrove identified another photograph, Village Exhibit B, which they said showed Bell's "vault" and that water had already seeped into Bell's duct before they had begun digging. Neither exhibit is included in the record on appeal.

¶ 31 E. Bell's Rebuttal Case

¶ 32 In rebuttal, Francisco Prado testified that Village Exhibit A showed an undamaged clay duct, but added that it was the top duct and there were more ducts underneath. According to Prado, Bell would have up to eight total ducts stacked up in one package. Based on his recollection, he believed the damaged duct was beneath the one visible in Village Exhibit A.

¶ 33 F. The Circuit Court's Ruling

¶ 34 Following closing argument, the circuit court took the matter under advisement. A month later, it found in favor of Bell in the amount of $88,597.58 as well as additional costs. The court observed that the Village had requested a JULIE ticket for its water main break on February 20, 2014 and had dug in the area on February 25 and 26, while P.T. Ferro requested a JULIE ticket the night of February 26, after the damage to Bell's duct had already been discovered. Based on this timeline, the court determined that only the Village had dug before the reported "outage." The court further highlighted Bell's evidence that a "fresh patch" had been located at the location in question after the reported outage as well as evidence that a backhoe had been used there. The court acknowledged that the Village had presented some evidence that it "exercised reasonable care" in repairing its water main break and that Bell's evidence was purely "circumstantial." But it noted that the circumstantial evidence was "too great." The court concluded that it was "more likely than not that the negligence of [the Village] caused damage to [Bell's] equipment."

¶ 35 The Village subsequently filed a motion to reconsider, arguing that Bell's evidence was purely speculation and conjecture, and Bell's bills were not fair and reasonable in particular because Terrell did not have firsthand knowledge as to how P.T. Ferro calculated its costs. The circuit court denied the Village's motion, and the Village appealed. In addition, the Village moved for a stay of judgment without bond pending appeal, which the court allowed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, the Village contends that the circuit court erred in granting judgment against it because Bell failed to present any competent evidence showing that the Village caused damage to Bell's facilities and that Bell failed to prove that its damages were fair and reasonable.

¶ 38 A. Causation

¶ 39 The Village first argues Bell's theory that, because the Village was the last entity to excavate at the location in question, it necessarily caused the damage amounts to nothing more than conjecture and speculation, which is insufficient to support a judgment in Bell's favor.

¶ 40 Under the JULIE Act, "[w]hen it is shown by competent evidence in any action for damages to underground utility facilities *** that such damages resulted from excavation *** and that the person engaged in such excavation *** failed to comply with the provisions of this Act, that person shall be deemed *prima facie* guilty of negligence." 220 ILCS 50/9 (West 2014). Proximate causation is an essential element in a claim for negligence. *Foreman v. Gunite Corp.*, 2012 IL App (1st) 091644, ¶ 14. Proximate causation cannot be predicated on speculation or conjecture, but rather is established only when it is reasonably certain that the defendant's acts or omissions caused the injury. *Strutz v. Vicere*, 389 Ill. App. 3d 676, 679 (2009). Proximate causation is generally a question of fact (*Foreman*, 2012 IL App (1st) 091644, ¶ 14), and it can be established using circumstantial evidence as long as "the circumstances are so related to each

other that it is the only probable, and not merely possible, conclusion that may be drawn." *Keating v. 68th & Paxton, L.L.C.*, 401 Ill. App. 3d 456, 473 (2010). "There is no question but that circumstantial evidence is competent evidence." *Ladd v. Ruck*, 108 Ill. App. 2d 379, 383 (1969); see also *Ajax Buff Co. v. Industrial Comm'n*, 56 Ill. 2d 575, 580 (1974) (describing competent evidence as encompassing both direct and circumstantial evidence). The plaintiff has the burden of proving proximate causation by a preponderance of the evidence. *Dunning v. Dynegy Midwest Generation, Inc.*, 2015 IL App (5th) 140168, ¶ 36.

¶ 41 As pointed out by Bell, the Village has neglected to include the applicable standard of review for this issue in its opening brief in violation of Illinois Supreme Court Rule 341(h)(3) (eff. Nov. 1, 2017). However, as correctly observed by Bell, our standard of review is the manifest-weight standard. See *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47 (finding that, after a bench trial, the circuit court's findings of fact are reviewed under the manifest-weight standard). Under this standard, we give "great deference to the [circuit] court's findings because, as the trier of fact, the [circuit] court is in a superior position to observe the witnesses while testifying, to judge their credibility and to determine the weight their testimony and other evidence should receive." *International Capital Corp. v. Moyer*, 347 Ill. App. 3d 116, 121 (2004). "A judgment is against the manifest weight of the evidence only when the findings appear to be unreasonable, arbitrary, or not based on evidence, or when an opposite conclusion is apparent." *Vaughn v. City of Carbondale*, 2016 IL 119181, ¶ 23. If there is "any evidence" in the record to support the circuit court's finding, we must affirm. *In re Estate of Wilson*, 238 Ill. 2d 519, 570 (2010).

¶ 42 In this case, the evidence revealed that, on February 20, 2014, the Village sought a JULIE locate request for a water main break near the intersection of North Boulevard and North Oak

Park Avenue in Oak Park. Darrell Mills, of USIC, responded to the request and marked the area as best he could given the heavy rain. He also tried to inform the person listed on the Village's JULIE ticket about the conditions but was dismissed. Six days later, Bell received an air pressure alarm and customers reported outages in the vicinity of North Boulevard and North Oak Park Avenue, prompting Dave Aulakh, of Bell, to respond. After he determined the precise location of the issue, P.T. Ferro excavated the area to reveal Bell's damaged clay duct and cable.

¶ 43 Joe Terrell, of Bell, testified that a "screen shot[]" showed the Village digging in the area on February 26. Multiple witnesses also reviewed the JULIE tickets issued in the area between February 20 and 26 and observed that the only two were for the Village and P.T. Ferro, the latter the evidence consistently showed only became involved after the damage to Bell's facilities was discovered. Multiple witnesses further observed that the damaged facilities were mere inches away from the Village's water main and noticed there was evidence that the area had been recently excavated. There was additional evidence that, due to the thickness of the clay duct, a shovel could not have been the cause of the damage and instead must have been caused by something with more force, such as a backhoe, a machine the Village's witnesses, Hank Rozhon and Quinn Hargrove, acknowledged using on February 25 within 18 inches of Bell's markings.

¶ 44 While it is undisputed that there was no direct evidence presented that the Village's employees caused the damage to Bell's facilities, the aforementioned circumstances are so related to each other that the only probable conclusion that may be drawn from them is that the Village damaged Bell's facilities while performing work related to the water main break. See *Keating*, 401 Ill. App. 3d at 473. Though circumstantial, Bell's evidence was clearly competent (see *Ajax Buff*, 56 Ill. 2d at 580; *Ladd*, 108 Ill. App. 2d at 383) and established that it was reasonably certain that the Village's acts caused the damage, thus resulting in this case not being

premised purely upon speculation and conjecture, as the Village's argues. See *Strutz*, 389 Ill. App. 3d at 679.

¶ 45 Moreover, while the Village's employees testified to the pre-existing concrete damage and asserted they could not have caused the damage to Bell's facilities with a backhoe, it was for the circuit court to decide which narrative to believe. It ostensibly believed Bell's, a finding that we cannot simply disregard on a whim given the great deference we give to the court on factual findings. See *Moyer*, 347 Ill. App. 3d at 121. But this is especially true here, where 18 exhibits were admitted into evidence during trial, many of which were photographs, yet only 2 were included in the record on appeal, both relating to the issue of damages. The Village, as the appellant, has the burden to produce a sufficiently complete record on appeal to support its claims of error. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Based on the witnesses' testimony, the photographs contained critical evidence on the issue of causation and without having the ability to review them, we have no basis to reverse the court's finding on proximate causation. As the record on appeal undoubtedly contains evidence supporting the court's finding that the Village proximately caused damage to Bell's facilities, its finding was neither unreasonable nor arbitrary and therefore, was not against the manifest weight of the evidence.

¶ 46 B. Damages

¶ 47 The Village next argues that Bell did not prove that the costs of its damages were fair and reasonable. Specifically, the Village asserts that Terrell's testimony was insufficient to prove the reasonableness of P.T. Ferro's costs because he did not have firsthand knowledge as to how P.T. Ferro calculated its costs. Additionally, the Village posits that, because the P.T. Ferro invoice was not the original one from P.T. Ferro, but rather produced from Bell's own computer system, it could not be used as proof of the reasonableness of P.T. Ferro's costs.

¶ 48 Under the Act, when an entity has provided notice through JULIE, "but otherwise, while acting reasonably, damages any underground utility facilities," it "shall be liable for the damage caused to the owners or operators of the facility provided the underground utility facility is properly marked." 220 ILCS 50/11(c) (West 2014). To prove the extent of the damages claimed, a party must establish a monetary value. *Vandermyde v. Chicago Transit Authority*, 73 Ill. App. 3d 984, 994 (1979). Generally, the computation for damage to repairable property is the reasonable cost of repairs, and it is the plaintiff's burden to present evidence supporting the costs. *Beasley v. Pelmore*, 259 Ill. App. 3d 513, 523 (1994). The reasonableness of damages is a question of fact, reserved to be decided by the trier of fact. *Calloway v. Bovis Lend Lease, Inc.*, 2013 IL App (1st) 112746, ¶ 111. "Where an award of damages is made after a bench trial, the standard of review is whether the [circuit] court's judgment is against the manifest weight of the evidence." *1472 North Milwaukee, Ltd. v. Feinerman*, 2013 IL App (1st) 121191, ¶ 13.

¶ 49 In this case, Bell's evidence of the costs to perform the repairs to its damaged duct and cable were its "Claim of Damages" document, the P.T. Ferro invoice, which had been produced from Bell's system, and the accompanying testimony from Terrell, who was responsible for ensuring accurate cost reporting for Bell on the claim. Terrell explained that the $12,117.80 in labor costs reflected the amount of time Bell's technicians worked, and he discussed how he calculated the costs using a standard rate multiplied by the hours each technician worked, which he had verified. He further explained that the $356.44 in material costs reflected the materials Bell's technicians used to make the repairs and the $10.40 in loss of service costs reflected the expenses Bell would have had if it had "to rent light facilities to keep our customers in service." Additionally, Terrell noted the $76,112.94 in contractor costs and then discussed the P.T. Ferro

invoice, which itself included a detailed narrative of P.T. Ferro's work and the associated costs. According to Terrell, Bell paid the full invoice on May 28, 2014.

¶ 50 Although the Village argues this evidence was insufficient, namely because the invoice was not the original one from P.T. Ferro and Bell did not present a witness with firsthand knowledge as to how P.T. Ferro's costs were calculated, the Village did not challenge the P.T. Ferro invoice for a lack of a foundational or factual basis, did not object to its admission as a business record and did not cross-examine Terrell regarding the invoice or any aspect of his damages testimony. Evidence admitted at trial without objection "is given its natural probative effect and force, even if the evidence is improper or generally incompetent." *Miller v. Rokita*, 131 Ill. App. 3d 774, 779 (1985). Thus, the circuit court could consider the invoice in awarding damages. Furthermore, when a party fails to object to the admission of evidence, including that admitted under the business records exception to the hearsay rule, that party forfeits the ability to challenge the admitted evidence on appeal. *Krengiel v. Lissner Corp., Inc.*, 250 Ill. App. 3d 288, 295 (1993). Although harsh, this rule allows " 'the party offering the testimony an opportunity to confront the objection' " and promotes the resolution of evidentiary issues at trial. *Hulman v. Evanston Hospital Corp.*, 259 Ill. App. 3d 133, 145 (1994) (quoting *Svenson v. Miller Builders, Inc.*, 74 Ill. App. 3d 75, 87 (1979)). Had the Village raised these issues at trial, Bell could have proffered additional evidence on the matter and perhaps explained the alleged inadequacies. Challenging the evidence after trial deprives Bell of this opportunity.

¶ 51 In light of the P.T. Ferro invoice being admitted into evidence without an objection and properly under consideration of the circuit court, whose role it was to determine whether P.T. Ferro's costs were reasonable and fair (see *Calloway*, 2013 IL App (1st) 112746, ¶ 111), we have no basis to reverse the court's measure of damages. Notably, at trial, Terrell testified that P.T.

Ferro was a pre-approved contractor who performed emergency work for Bell, and the P.T. Ferro invoice detailed in depth all of the work, including time and labor costs, P.T. Ferro performed. Based on the evidence admitted relating to the damages, we cannot find the court's overall award of $88,597.58, the exact amount stated in Bell's "Claim for Damages" document, was unreasonable, arbitrary, or not based on evidence. See *Vaughn*, 2016 IL 119181, ¶ 23. The Village further posits that the invoice created by Bell's system shows that P.T. Ferro was "at best" partially paid by Bell, referring to where the invoice states: "Payment Type: PARTIAL." However, we cannot undertake a fact-finding inquiry on appeal of the meaning of this language in the invoice, especially where Terrell testified at trial that P.T. Ferro was paid in full.

¶ 52 Lastly, we find *Northern Illinois Gas Co. v. Vincent DiVito Construction*, 214 Ill. App. 3d 203 (1991), relied upon extensively by the Village to support its argument that Bell failed to prove that the costs of its damages were fair and reasonable, unpersuasive. There, although this court ultimately found that there was no evidence presented as to the fair and reasonable costs of the damages sustained by the plaintiff because "[t]he only evidence presented was the amount [the plaintiff] charged for the repairs, and there was no testimony explaining how the hourly rates used in calculating those charges were set" (*id.* at 215), the evidentiary circumstances were far different than in this case. There, the defendant made various objections to documents purporting to show the costs of the repairs (see *id.* at 206-213), which, as mentioned above, is unlike how the Village proceeded in this case. Accordingly, the circuit court did not err in its determination of damages, and we affirm its award of $88,597.58 in favor of Bell.

¶ 53 III. CONCLUSION

¶ 54 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 55 Affirmed.