2011 IL App (5th) 090531-U

NO. 5-09-0531

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DANNY L. MARONIE and LINDA E. MARONIE,	)	Appeal from the Circuit Court of Madison County.
Plaintiffs-Appellees and Cross-Appellants,	)	
v.	)	No. 02-L-1522
WILLIAM J. KILLION and NANCY A. KILLION,	)	
Defendants-Appellants and Cross-Appellees.	)	Honorable Barbara L. Crowder, Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Spomer concurred in the judgment.

O R D E R

¶ 1 *Held*: In light of the evidence heard at the trial, the trial court's conclusion that the defendants violated the Residential Real Property Disclosure Act was proper. The allowance of testimony from the plaintiffs' expert witness was appropriate in light of his qualifications and the assistance his testimony would provide the jury. Where the parties stipulated to have the case decided by the presiding trial judge after the jury was unable to reach a verdict, the court's conclusions on the issues and the judgment in favor of the plaintiffs in consideration of the court's credibility determinations were not contrary to the manifest weight of the evidence. The attorney fee award was adequate and appropriate.

¶ 2 FACTS

¶ 3 This case involves structural and electrical problems with a home located in Jerseyville. The problems were discovered by the buyers after its sale. The buyers claim that the sellers provided false written and verbal statements about these issues as a part of the real estate sales process. The home was originally built in 1984.

¶ 4 Defendant William Killion oversaw the construction of the home and functioned as the project's general contractor. According to William Killion, he performed some of the electrical work, including installing electrical outlets, wiring receptacles, and running an extension cord through the floor of the living room.

¶ 5 The Killions lived in the home upon its completion in 1986 until the Killions separated in 1998. Nancy Killion continued to live in the home. Thereafter, she noticed water leaking in the basement and requested that William make repairs to fix the leak before they put the home on the real estate market.

¶ 6 William Killion made various repairs to the exterior of the home in the fall of 1999. He removed the back deck as well as an exterior faucet, poured concrete for a patio, and "sprinkled" concrete along the foundation underneath a bathroom window in an effort to stop any water from getting into the basement. He believed that the water leak in the basement was the result of the exterior faucet, which had developed a leak. Nancy Killion testified that in 1998, she experienced water in the basement in one corner near the wet bar. This water came in a distance of about 12 inches from the wall on several occasions that year. Nancy testified that upon the removal of the wood deck and the pouring of a concrete patio, all the leaks stopped.

¶ 7 The home was listed for sale in 2000. The Killions completed and signed a residential real property disclosure report on June 20, 2001. In response to the following statements, the Killions answered in the negative:

> "I am aware of flooding or recurring leakage problems in the crawlspace or basement, and
>
> I am aware of material defects in the electrical system."

The Killions testified that because the leaking was rectified by the repairs William made in 1999, they felt that the answers were truthful when they stated that there was no "recurring

leakage problems" with the home.

¶ 8 During one of the walk-throughs of the home with the buyers, William Killion was present. Linda Maronie testified that during this walk-through, she specifically asked William Killion about whether they had experienced water problems in the basement. This question was prompted by Linda Maronie's observation of a water stain on the wall near exposed pipes. William Killion said that there had been no water problems. This conversation was overheard by a real estate agent. William remembers the question and his negative response but contends that Linda Maronie was concerned with a stain on the carpeting, which was due to a soda spill rather than water leakage.

¶ 9 The Maronies agreed to purchase the home and signed a contract on September 17, 2001. The purchase price was $300,000. The contract for sale was subject to a whole house inspection.

¶ 10 The home inspection company listed the status of several items checked in the home as being "common for age." Specifically, the roof was noted as being common for its age of somewhere between 14 and 20 years, with a life span of 15 to 25 years, and needed to be cleaned and sealed. Both fireplaces in the house (basement and living room) were listed as operational but without fans. The report referenced areas of grading and drainage problems outside of the home that needed to be improved in order to drain water away from the home. Downspouts were noted to only drain to the surface, and the inspector indicated that extensions to the downspouts were needed. The downspouts along the north foundation needed to be repaired. The inspector suggested that all trees and shrubbery on the northeast and northwest corners of the home should be trimmed to two to three feet from the house. The company found past water intrusion in the basement, but the intrusion was characterized as light and common with no present water intrusion noted. With respect to electrical issues, the inspection company noted that numerous light bulbs needed to be replaced, that a pipe

connected to the meter needed to be replaced, and that a service wire check was needed.

¶ 11 The closing on the property took place on November 9, 2001. Shortly thereafter, the Maronies moved into the home. Within a couple of weeks after moving into their new home, the Maronies began experiencing water leakage into the basement. The leak was not just in one area. Documentary evidence in the form of a video shown at the trial revealed standing water and water damage in various portions of the basement with one to two inches of standing water. Linda Maronie testified that during one event, water came out of an electrical outlet in the basement.

¶ 12 The Maronies began making modifications to the home beginning in the spring of 2002. The modifications included a new roof, the removal of shrubs, ground cover, and two large trees, the removal and replacement of all the gutters and downspouts, the removal and replacement of the concrete patio, and the installation of vinyl siding on the home. The last major repair occurred in May 2005, when the Maronies removed and replaced the concrete retaining wall. After the retaining wall was replaced, the water intrusion into the basement ceased. In addition to the repairs and modifications to the home, the Maronies also hired a company in October 2002 to clean the basement of mold growth. Danny Maronie testified about the variety of ways he tried to correct the water intrusion into the lower level of the home, but he did not immediately retain a contractor or consultant about necessary repairs. He testified that the water in the basement was unrelated to the condition of the roof. He also testified that they used the fireplace, without problem, but due to concern of Linda Maronie, they contacted an inspector and ultimately had the fireplace fixed in August 2006.

¶ 13 The Maronies filed a complaint against the Killions on November 7, 2002, alleging violations of the Residential Real Property Disclosure Act (765 ILCS 77/25 (West 2000)). The Maronies' third-amended complaint contained counts for a violation of the Residential Real Property Disclosure Act, fraud, and negligent misrepresentation. The Maronies hired

an architect/home inspector to make a detailed inspection of the home and to prepare a report of his findings and opinions. This individual, Leroy Dawson, inspected the home in April 2006 and in August 2006–4.5 years after the Maronies purchased the home. Three reports prepared by Dawson estimated the repair costs to this home in amounts totaling $32,342 (first report), $40,912 (second report), and $108,699 (third and final report). The court allowed Dawson to testify at the trial as an expert architectural witness. His opinions were that water intrusion occurred over a lengthy period prior to the date when the Maronies purchased the home. He based this opinion upon the structural deterioration of the wood framing of the home and testified that the original wood retaining wall and original gutters were the cause of the water intrusion. He also testified about the electrical work in the home and concluded that the installations had not been completed in a safe manner.

¶ 14 Before the trial, the Killions filed a motion *in limine* seeking to prevent Leroy Dawson from testifying as an expert. The Killions argued that the opinion testimony was irrelevant and prejudicial because the proffered opinion testimony was based upon speculative facts and data and because the opinion testimony would not assist the trier of fact in understanding the evidence. Because the expert did not examine the house until 4.5 years after the sale and after many renovations had been undertaken on the house, the Killions argued that the expert could not have "witnessed" anything and therefore should not be allowed to render opinions on causation.

¶ 15 In a lengthy order, the trial court denied the motion *in limine* and noted that the proffered opinions were relevant to the case because they dealt with inadequacies in a home inspection report, problems with the home, and the costs to repair. Because of the complicated nature of the allegations of the complaint, the trial court felt that Dawson's opinions would be of assistance to the jury. In finding Dawson qualified as an expert, the court noted that he had 40 years of experience as an architect and 25 years of experience in

the home inspection business. He had also operated as a design builder in a general contracting capacity, which provided him with experience in estimating the costs of repair. The court found that there were sufficient indicia of reliability for the expert's opinions, which were based upon his own observations as well as on photographs taken by the Maronies just prior to some of the major repairs to the home. The court noted that nothing would prevent the Killions' attorneys from objecting to specific instances of testimony sought and from cross-examining the expert on the weaknesses of his testimony. Judge Crowder stated that there was no requirement that an expert witness have actual personal knowledge in order to render an opinion and that any doubts would affect the weight but not the admissibility of the testimony. Upon a review of the deposition testimony, the court concluded that Leroy Dawson's opinions were not likely to cause more confusion and might assist the jury in understanding the issues in the case.

¶ 16 The Killions also filed two other *in limine* motions related to the testimony of Leroy Dawson, one seeking to restrict his testimony regarding the original construction of the home and another seeking to restrict Dawson's testimony about conditions he never witnessed. The trial court denied both of these on the record before the start of the trial, indicating that counsel should request a sidebar during the trial if an issue arose about the speculative nature of Dawson's anticipated testimony.

¶ 17 The trial of this case occurred in August 2008 and lasted six days.

¶ 18 The jury was not able to return a verdict after reporting that it was hopelessly deadlocked. A mistrial was declared. On December 17, 2008, the parties filed a joint stipulation for the submission of all the issues in this case to Judge Crowder for a judgment. By the stipulation, the parties waived their rights to have the matter retried again before a jury of their peers. Judge Crowder had been the judge who presided over the jury trial. A transcript of the trial was prepared and submitted to the court for review. No new evidence

or argument on this case was allowed pursuant to the terms of the stipulation.

¶ 19 The court entered its verdict in this case on May 21, 2009, in a lengthy written order. The court noted that the Residential Real Property Disclosure Act form did not constitute a warranty or an insurance policy. The court also noted that this was not a construction case and did not require a finding that the home was originally built in a workmanlike manner. However, the court concluded that the sellers were required to provide honest responses to the questions on the form, noting that the term "am aware" was defined on the form to mean to have "actual notice or actual knowledge without any specific investigation or inquiry." Because the water intrusion into the basement began before the Maronies replaced the roof, the court stated, "It defies logic *** that the repairs done by the Killions had completely resolved water intrusion problems." The court also found, "As Mr. Killion oversaw and performed much of the electrical work, he knew or should have known that the way he completed and wired much of the electrical system did not meet code standards and was a safety hazard." The court held that the Maronies had established by clear and convincing evidence that the responses by the Killions on the form were unreasonable regarding both the issues of the leaking in the basement and the electrical problems. With respect to the fraudulent-misrepresentation claim, the court noted that the Maronies' burden of proof was proof by clear and convincing evidence. The court found that the Maronies met this burden with respect to claims that William Killion denied water problems in response to a direct question during a site tour. The court noted that Killion was not credible in his version of the conversation. However, the court found that they had not met their burden with respect to Nancy Killion. As to an alternate argument that the Killions negligently misrepresented the state of the premises–either in not ascertaining the true condition or by being negligent in concealing the true condition of the premises; the court ruled that the Killions could not be held liable for negligence. The court explained that because the only duty the sellers owed

was created by statute in the Residential Real Property Disclosure Act, a common law negligence action does not exist for nonrealtors. The court concluded the order by entering a judgment in favor of the Maronies for $45,620 plus costs. No punitive damages were awarded.

¶ 20 Each side filed a posttrial motion. The Killions only asked for a clarification that the judgment amount of $45,620 included the attorney fees requested by the Maronies. The Maronies requested an award of attorney fees pursuant to section 55 of the Residential Real Property Disclosure Act (765 ILCS 77/55 (West 2000)), which gave the trial judge discretion to award a reasonable attorney fee. The amount sought was $105,769 and was subsequently amended to $116,133.50. The Maronies also sought an award of their costs of suit, which then totalled $842.50. The Maronies asked the trial court to reconsider its damages award and award the amount that was sought. Finally, the Maronies asked the trial court to reconsider its decision not to award punitive damages.

¶ 21 The trial court allowed an evidentiary hearing on this matter and also heard and considered the arguments of counsel. In an order dated September 1, 2009, the trial court denied the posttrial motions, stating that the court considered all the evidence when awarding the judgment, and awarded the Maronies $40,000 in attorney fees. With respect to the attorney fee request, the court reasoned as follows:

> "The Court finds that an award of attorney's fees is appropriate in this matter. However, the Court did not award plaintiff damages based on all counts and certainly not based on the evidence claiming the 14 year old home was not built in a workmanlike manner nor perfect at the time plaintiff's [*sic*] purchased it. The Court is not able to separately itemize the amount of time in preparation and the amount of time in trial presenting claims that were not successful from those that were and does not accept counsel's Time by Job Detail statement as constituting time that should all

be awarded. The Court notes by way of example trips to Jersey County to check public records to see if the Killions own assets, filing a Motion for Default and then additional time to go to court on it after defendants had answered the third amended complaint, and some 2003 charges dealing with attorney Pistorius and Judge Shiffman that do not appear to relate to this case. The Court declines to award fees for all the time plaintiffs' counsel put into its time record.

The contract is either for a contingency fee or fees awarded by the Court pursuant to statute. The Court has declined to award the fees based solely on the time sheets provided by counsel. The court has taken into account the areas of success, the complexity of the issues addressed, and what sum is fair and reasonable in light of the length of litigation in this matter."

¶ 22 ISSUES, LAW, AND ARGUMENT

¶ 23 The Killions appeal to this court and raise several issues. They argue that the negative answers they made on the residential real property disclosure report did not amount to violations of the statute. They also argue that the trial court's finding that William Killion fraudulently misrepresented the basement water intrusion matter was wrong. The Killions contend that the trial court committed reversible error in allowing Leroy Dawson to testify as an expert witness in any capacity, or at least committed error in allowing him to testify about the original construction of the home and about matters he did not personally witness. The Killions claim that the damages award was contrary to the manifest weight of the evidence and that the attorney fees award constituted an abuse of discretion.

¶ 24 The Maronies cross-appeal, asking this court to reverse the trial court's order denying their posttrial motion relative to the amount of damages awarded with regard to the punitive damages request. The Maronies also contest the attorney fee award as being inadequate.

¶ 25 Residential Real Property Disclosure Report

¶ 26 At issue are two negative answers made by the Killions on the form relative to their awareness of electrical problems and of recurring leakage problems in the basement.

¶ 27 Because the parties stipulated to the trial judge deciding the case on the merits, a review of the trial court's judgment is necessarily like that of a bench-tried case. Because the trial judge was able to assess each witness's credibility, we will not disturb a judgment following a bench trial unless the trial court's judgment is clearly contrary to the manifest weight of the evidence. *Jackson v. Bowers*, 314 Ill. App. 3d 813, 818, 731 N.E.2d 1252, 1257 (2000). A judgment is contrary to the manifest weight of the evidence if a conclusion opposite to that reached by the trial judge is clearly evident. *Comm. v. Goodman*, 6 Ill. App. 3d 847, 853, 286 N.E.2d 758, 763 (1972).

¶ 28 Section 25 of the Residential Real Property Disclosure Act addresses the liability of the seller:

> "(a) The seller is not liable for any error, inaccuracy, or omission of any information delivered pursuant to this Act if (I) the seller had no knowledge of the error, inaccuracy, or omission, (ii) the error, inaccuracy, or omission was based on a reasonable belief that a material defect or other matter not disclosed had been corrected, or (iii) the error, inaccuracy, or omission was based on information provided by a public agency or by a licensed engineer, land surveyor, structural pest control operator, or by a contractor about matters within the scope of the contractor's occupation and the seller had no knowledge of the error, inaccuracy, or omission.
>
> (b) The seller shall disclose material defects of which the seller has actual knowledge." 765 ILCS 77/25(a), (b) (West 2000).

The Killions claim that they cannot be held liable under the Residential Real Property Disclosure Act because they were under "a reasonable belief that a material defect *** had

been corrected." We disagree with this assertion and affirm the trial court's conclusion. The trial court was able to assess the credibility of both the Maronies and the Killions. While the Killions argue that the Maronies failed to rebut their "reasonable beliefs" that the problems had been remedied, the Maronies put on ample evidence of the breadth and scope of problems with the home, which can and should be considered by the court when assessing the credibility of the Killions' claims. On appeal, we cannot reweigh the evidence or substitute our judgment for that of the trier of fact. *Fox v. Heimann*, 375 Ill. App. 3d 35, 46, 872 N.E.2d 126, 137-38 (2007).

¶ 29 When making a complaint pursuant to the Residential Real Property Disclosure Act, a plaintiff is not required to prove that the seller actively concealed a material defect. *Hogan v. Adams*, 333 Ill. App. 3d 141, 147, 775 N.E.2d 217, 222 (2002). The seller is obligated to disclose any known defects, and a failure to do so will result in the seller's liability. *Id.*

¶ 30 *Water Intrusion.* The Killions testified that they were aware of problems before and that, just before listing the property for sale, self-repairs were undertaken based upon hunches regarding the cause of the water intrusion. While Nancy Killion lived there after the repairs for some time and testified that she experienced no further problems after the repairs had been completed, this became a matter of credibility for the trier of fact. The Maronies testified that shortly after the closing, they began experiencing water intrusion into the basement in multiple areas. Some documentary evidence, in the form of a recorded movie, established that water was getting into the basement.

¶ 31 The Killions attempt to argue that after the closing up until the date of the recorded movie, the Maronies made several structural changes that likely caused the water intrusion into the basement. However, the Killions put on no expert testimony to support this allegation. While the Maronies did not begin filming the water intrusion until March 2002 (about three months after they moved into the home), the Maronies testified that the water

started coming into the basement within the first few weeks after they first occupied the home.

¶ 32 Upon a review of the evidence, we affirm the trial court's determination that the Killions were liable for inaccurately answering the question about water intrusion into the basement.

¶ 33 *Electrical Problems.* William Killion testified about the electrical work that he completed in the home, including testimony about the use of extension cords being run through flooring, which he testified was safe in his opinion because the cords were UL approved. He further testified that he never disclosed to the Maronies that he had completed some of the home's electrical work. William Killion was involved with the installation of the electrical panel, all of which was completed by individuals who were not trained electricians. The Maronies' expert witness, Leroy Dawson, testified that the electrical work was not completed in a safe manner. He pointed to unsafe wiring in exposed areas of the basement and through the attic and bedrooms. He testified that certain outdoor electrical work associated with water hydrants was not ground-fault protected.

¶ 34 We see no fault in the trial court's determination that because William Killion had overseen or actually performed much of the electrical work, he knew or should have known of the problems with his work and that therefore the negative answer to the electrical problems question was inaccurate.

¶ 35 Fraudulent Misrepresentation of Basement Water Intrusion

¶ 36 In order to sustain a fraudulent misrepresentation claim, the plaintiff must plead and prove the following elements:

1. That the defendant made a false statement of material fact.
2. That the party making the statement knew that the statement was false.
3. That the party to whom the statement was made had a right to rely on that

statement and did rely on that statement.

4. That the statement at issue was made for the purpose of inducing the other party to act.

5. That reliance upon the statement at issue led to the reliant party's injury.

Stewart v. Thrasher, 242 Ill. App. 3d 10, 15-16, 610 N.E.2d 799, 803 (1993).

¶ 37 A court's conclusion that the plaintiff has established all the elements of fraudulent misrepresentation is a factual conclusion. *Stewart*, 242 Ill. App. 3d at 15, 610 N.E.2d at 803. Therefore, that decision cannot be overturned unless it is contrary to the manifest weight of the evidence. *Id.*

¶ 38 At issue is the negative answer William Killion gave to Linda Maronie's direct question about water leaking into the basement. At the trial, there were three people who testified to this brief conversation. William Killion initially testified that he did not recall this conversation, but then after hearing the testimony of Linda Maronie and the other eyewitness, he changed his story and admitted having this conversation. However, while he claimed that he had this conversation, he testified at the trial that what he thought she was talking about was a stain on the basement carpet, which had been caused by a soda spill. Linda Maronie testified that her concern and her question were directed to what appeared to be a water stain on the wall. Upon asking William Killion about water leaking into the basement, he denied that water had leaked into the basement. A realtor who was on the home tour at the time, Connie Hayes, recalled this conversation and agreed with Linda's version of the events.

¶ 39 While silence on the part of the seller, without more, does not support a fraudulent misrepresentation action (*Mitchell v. Skubiak*, 248 Ill. App. 3d 1000, 1005, 618 N.E.2d 1013, 1017 (1993)), William Killion was not merely silent. When asked point blank by the prospective buyer of the home if there had been water-leaking problems, he denied that fact.

At the trial, he stated that he did not tell the Maronies about the basement flooding history because he figured that he did not need to do so since they were having the home inspected. His stated attitude was that he would "let the chips fall where they may."

¶ 40 In this particular case, the trier of fact was the trial judge, who was able to assess the credibility of the witnesses. William Killion's change of testimony probably aided the court in its credibility determination. While he knew about the water-leaking problems, he attempted to wedge his response to Linda Maronie's question into a different category (a soda stain rather than a water leak) to make it seem that he did not misrepresent the status of the basement's history. From our review of the record, it appears that the trial court's determination was amply supported and that the verdict on this issue was not contrary to the manifest weight of the evidence.

¶ 41 Expert Witness Leroy Dawson

¶ 42 The admission of expert evidence is within the trial court's sound discretion. *Snelson v. Kamm*, 204 Ill. 2d 1, 24, 787 N.E.2d 796, 809 (2003). On appeal, the reviewing court is limited to determining whether the trial court abused that discretion. *Id.* Expert testimony is admissible if the proffered expert is deemed qualified by knowledge, skill, experience, training, or education in a field that has at least of modicum of reliability and if the testimony being proffered will tend to aid the jury in understanding the evidence. *Dotto v. Okan*, 269 Ill. App. 3d 808, 810, 646 N.E.2d 1277, 1279 (1995).

¶ 43 The Killions claim that the trial court erred in denying their motion *in limine*. Alternatively, they argue that the trial court should not have allowed him to testify about electrical work done when the home was constructed or about any aspect of the case that he did not personally observe.

¶ 44 *Motion in Limine.* The Killions recognize that Leroy Dawson is an expert in the field of architecture. However, they wanted the trial judge to bar his testimony as being entirely

too speculative. They cite to the case of *Village of Plainfield v. American Cedar Designs, Inc.*, 316 Ill. App. 3d 130, 775 N.E.2d 1002 (2000), as authority that an expert witness should not be allowed to testify if the expert witness did not actually witness the events at issue. We have reviewed the case upon which the Killions rely and find that the court did make the statement that the expert witness in that case would not testify about something he had not actually witnessed. *Village of Plainfield*, 316 Ill. App. 3d at 140, 775 N.E.2d at 1011. However, that statement was not connected to the holding of the case. The court agreed that the expert witness at issue had technical expertise, but it found that his testimony would not be helpful to the trier of fact. *Id.* Whether or not the expert had opinions about the effect of floating debris on floodwaters was simply irrelevant to the questions related to the flood control ordinance and whether the defendant had expanded the use of the ordinance. *Id.* Because those opinions were essentially irrelevant to the issues at the trial, the court determined that having this expert testify about these other matters would be of no benefit to the trier of fact. *Id.*

¶ 45 The trial court's order denying the motion *in limine* to bar Leroy Dawson's testimony at the trial was thorough and explained that he was qualified to testify and that his opinions were on matters before the jury and thus would be beneficial for it to hear. However, the court noted that specific instances of testimony could be objected to and argued about when they arose at the trial.

¶ 46 Having thoroughly reviewed the record and the evidence and the law considered by the court at the time the motion *in limine* was ruled upon, we conclude that the denial of that motion was correct. Leroy Dawson was thoroughly qualified to testify as an architect and as a home inspector. His 25-plus years in the home inspection business also provided ample foundation for any opinions he could offer. The case before the jury required a determination about problems with the house with respect to the establishment of the existence of problems

and the lack of disclosure, as well as the overall damages claimed. Given the nature of the issues to be decided by the jury, we agree with the trial court's determination that Leroy Dawson's testimony would be beneficial to an understanding of the issues.

¶ 47 *Testimony About Initial Home Construction*. The Killions complain that Leroy Dawson should not have been able to testify about the electrical work done in the house when it was constructed. We affirm the trial court's allowance of this testimony because the testimony was relevant and helpful on the matter of whether or not there were electrical problems and, if so, whether or not the Killions' response on the disclosure form was truthful.

¶ 48 *Testimony About Matters Not Observed*. The Killions also claim that the trial court erred in allowing Leroy Dawson to give testimony about matters he did not personally observe. No authority for this contention is cited. But the Killions claim that the testimony allowed was "substantially prejudicial" and affected the outcome of the trial and on that basis was improperly allowed. They cite to *Grant v. Petroff*, 291 Ill. App. 3d 795, 803, 684 N.E.2d 1020, 1026 (1997), as authority. The Killions are correct that the testimony must be deemed "substantially prejudicial," but that is just a component of a review court's determination regarding error in the admission of evidence or testimony. First, the testimony must have been erroneously allowed into evidence, and second, that testimony must have been substantially prejudicial. Whether or not this evidence was substantially prejudicial to the Killions' case would only be considered if we determine that the allowance of that expert testimony constituted an error.

¶ 49 Overall, the theory advanced by the Killions that an expert witness can only testify to matters personally observed is incorrect. Experts have always been allowed to review materials and provide opinions derived from their reviews. The fact that they did not actually observe events at issue is a matter that goes to the weight of the evidence–not to its admissibility.

¶ 50 The trial court's decision to allow testimony about matters not personally observed was proper.

¶ 51 Judgment Against the Manifest Weight of the Evidence

¶ 52 The Killions next argue that the $45,620 judgment was contrary to the manifest weight of the evidence. For violations of the Residential Real Property Disclosure Act, the Maronies were entitled to actual damages. 756 ILCS 77/55 (West 2000). The Killions argue that the damages award is unsupported by the Maronies' evidence of actual damages.

¶ 53 In a cross-appeal, the Maronies claim that the amount awarded was wholly inadequate. They ask us to enter a judgment awarding them the full amount requested or remand to the trial court with directions to award all proven damages.

¶ 54 In the review of a case tried before a judge, to reverse a finding of damages, the reviewing court must find that the trial judge ignored the evidence or that the measure of damages was erroneous as a matter of law. *Carey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 277, 909 N.E.2d 255, 259-60 (2009).

¶ 55 Evidence at the trial reflected costs associated with various attempts to remedy leaking water. The Maronies removed overgrowth, filled in sinkholes, and modified the slope of the yard. Finally, they installed a retaining wall. The expenses associated with the retaining wall were admitted into evidence with a paid invoice for $19,500, and expert witness Leroy Dawson testified that the repair was necessary. The costs to remediate the water intrusion by changing the slope of the land and the removal of landscaping were supported by estimates from Dawson totaling $3,048. The mold remediation in the basement was estimated to cost $9,609. Dawson also estimated that the electrical installation repair would cost $3,915. Invoices were admitted into evidence for the removal and replacement of the concrete patio at a cost of $4,590. The invoice for the purchase and installation of new gutters and downspouts listed total costs of $1,545. Dawson estimated that the expenses

associated with the removal and replacement of water-damaged flooring would total $1,614. The electrical panel replacement cost was established at $800. The receipts and invoices for repairs made by the Maronies to repair flooring and minor electrical problems, to tile the downspouts away from the home, and to perform an initial mold treatment totaled $3,006.25. These invoices slightly exceed the amount awarded by the trial court.

¶ 56 The Maronies were actually seeking damages in an amount in excess of $100,000.

¶ 57 From the court's order, we are not able to determine precisely how the court arrived at its damages award. Presumably, the court determined that not all the expenses requested were proven to be connected to the water intrusion and the electrical problems with the home. We will not disturb a verdict unless we determine that all reasonable persons presented with this evidence would construe the awarded amount as excessive. *Marchese v. Vincelette*, 261 Ill. App. 3d 520, 529, 633 N.E.2d 877, 883-84 (1994).

¶ 58 We do not find that the awarded amount of damages is contrary to the manifest weight of the evidence based upon our review of the record. We also deny the cross-appeal and are unable to find that the trial court's award was too low. The trial court's order expressly stated that it found liability and was awarding damages for problems related to the water intrusion in the basement and the electrical issues. The Maronies also sought damages for a myriad of other issues with the property–including replacing the roof, siding the house, plumbing repairs, and many other problems. It was within the trial court's authority to reject bills that were, in the court's opinion, not proven to be connected to the leaking water and electrical problems. Again, based upon our review of the record, we will not disturb the court's verdict, and we conclude that the judgment is not contrary to the manifest weight of the evidence.

¶ 59 Although the Maronies argue that they should have been awarded additional damages by the trial judge and they argue that the damages award was not itemized, there is no requirement that a judge in a bench-tried case itemize the judgment. Even with a jury, unless

the parties request that the verdict be itemized, a general verdict is proper. 735 ILCS 5/2-1108 (West 2000).

¶ 60 Attorney Fees

¶ 61 The Killions next argue that the trial court erred in granting the Maronies' request for attorney fees and in awarding $40,000.

¶ 62 The Maronies argue in their cross-appeal that the $40,000 awarded was inadequate in light of their request for $116,133.50.

¶ 63 A reasonable attorney fee is allowed in cases where a violation of the Residential Real Property Disclosure Act has been proven. 765 ILCS 77/55 (West 2000). However, such an award is not mandatory and lies within the trial court's sound discretion. *Miller v. Bizzell*, 311 Ill. App. 3d 971, 976, 726 N.E.2d 175, 179 (2000). The court's discretion to grant or deny the request for attorney fees shall not be reversed unless we find that the trial court abused its discretion. *Id.* The Killions argue that the trial court's order should be reversed because the court did not clearly consider the factors outlined in *Miller v. Bizzell*. In *Miller v. Bizzell*, the appellate court determined that the trial court should consider factors consistent with Supreme Court Rule 137 (eff. Aug. 1, 1989) in awarding attorney fees. *Id.* (citing *Haskell v. Blumthal*, 204 Ill. App. 3d 596, 599, 561 N.E.2d 1315, 1317 (1990)). In discussing this issue, the court stated as follows:

> "Consistent with Rule 137, factors that a trial court might consider include (1) the degree of bad faith by the opposing party, (2) whether an award of fees would deter others from acting under similar circumstances, and (3) the relative merits of the parties' positions." *Miller*, 311 Ill. App. 3d at 976-77, 726 N.E.2d at 179 (citing *Haskell*, 204 Ill. App. 3d at 602-03, 561 N.E.2d at 1319).

In *Miller*, the trial court granted attorney fees to the defendant but, in doing so, rejected the applicability of *Haskell v. Blumthal* elements. The appellate court concluded that the *Haskell*

factors should have been considered, and so the court vacated the order and remanded the matter to the trial court for a determination of whether attorney fees should be allowed in keeping with the *Haskell* elements. *Miller*, 311 Ill. App. 3d at 977, 726 N.E.2d at 179-80.

¶ 64 We turn to the trial court's order awarding attorney fees in this case. The trial court's order states, "The Court reviewed and considered the cases and positions in the response filed by defendants." Looking then to the Killions' response to the request for attorney fees, the Killions asked that the court consider the Rule 137 factors pursuant to the case of *Miller v. Bizzell*. Therefore, the court's order about the attorney fees request took those factors into consideration. The court found that an award of attorney fees was appropriate under the facts of this case, but the court stated that the judgment for damages was not in favor of the Maronies on all the counts and claims alleged. Therefore, the court did not find that it was appropriate to award attorney fees for everything billed by the attorneys for the Maronies. It stated, "The Court is not able to separately itemize the amount of time in preparation and the amount of time in trial presenting claims that were not successful from those that were and does not accept counsel's Time by Job Detail statement as constituting time that should all be awarded." The court cited to specific billed items that were simply not a part of the Residential Real Property Disclosure Act claim and/or appeared to have nothing to do with this case at all. Those types of charges were rejected by the trial court. Once the court determined that an award of attorney fees was warranted, the amount awarded was based upon the areas of success, the complexity of the issues addressed, and what sum would be fair and reasonable in light of the length of the litigation.

¶ 65 Having carefully reviewed the record and the law, we find no basis to conclude that the trial court's attorney fees award amounted to an abuse of the trial court's discretion.

¶ 66 The Maronies cross-appeal, seeking the full amount of the attorney fees requested. Considering this question in light of the applicable standard of review, and given the

specificity of the trial court's order, we find that the order did not constitute an abuse of discretion. The court carefully reviewed the billing entries provided and found numerous entries that were not applicable.

¶ 67 We do not find that the fees awarded were so inadequate that the award amounted to a clear abuse of discretion. While the award amounted to about one-third of the total amount sought, that percentage alone does not dictate that the award was unreasonable. Accordingly, we affirm the court's attorney fee award.

¶ 68 Punitive Damages

¶ 69 The final issue on the cross-appeal filed by the Maronies involves their request for punitive damages in the trial court. They argue that the trial court erred in not awarding punitive damages because there was a finding of fraud.

¶ 70 Punitive damages may be awarded in fraud cases in order to punish the offender and to serve as a deterrence to the offender and to others. *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 186, 384 N.E.2d 353, 359 (1978); *Loitz v. Remington Arms Co.*, 138 Ill. 2d 404, 414, 563 N.E.2d 397, 401 (1990). A trial court's decision that a defendant's conduct is sufficiently willful or wanton to justify an award of punitive damages is reversible if the decision is contrary to the manifest weight of the evidence. *Warren v. LeMay*, 142 Ill. App. 3d 550, 580, 491 N.E.2d 464, 483 (1986); *Jablonski v. Ford Motor Co.*, 398 Ill. App. 3d 222, 279, 923 N.E.2d 347, 395 (2010), *appeal allowed*, 236 Ill. 2d 555, 932 N.E.2d 1030 (2010).

¶ 71 The fraud in this case involved William's verbal response to the question about water damage noticed by Linda Maronie in the basement. A punitive damages award is not automatic but also is within the realm of possibilities available to the trier of fact. *Klucznik v. Nikitopoulous*, 152 Ill. App. 3d 323, 331, 503 N.E.2d 1147, 1152 (1987). In this case, the court considered all aspects of the case in awarding compensatory damages and denying punitive damages. In its posttrial order, the court indicated that it "took all evidence into

account in arriving at the judgment amount." Upon our review of the record and the arguments of counsel, we are not able to find that the court's determination is contrary to the manifest weight of the evidence.

¶ 72 CONCLUSION

¶ 73 For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed.

¶ 74 Affirmed.