

REVERSED and RENDERED and Opinion Filed June 18, 2024



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-23-00549-CV

**DANIEL HERNANDEZ, Appellant
V.
CHRIS AYALA, Appellee**

**On Appeal from the 422nd Judicial District Court
Kaufman County, Texas
Trial Court Cause No. 109431-422**

MEMORANDUM OPINION

Before Justices Smith, Miskel, and Breedlove
Opinion by Justice Smith

Appellant Daniel Hernandez appeals the trial court's final judgment awarding appellee Chris Ayala \$104,400 in damages. Hernandez challenges the legal sufficiency of the evidence, arguing that Ayala's testimony regarding the property value of certain partnership assets was insufficient under the Texas property-owner rule and, thus, judgment should have been rendered that Ayala take nothing in damages. Alternatively, Hernandez argues that the evidence was factually insufficient to support the award of \$104,400 and asks that this Court suggest a remittitur of \$75,475. For the reasons discussed below, we conclude the evidence

was legally insufficient to support the award of damages, reverse the judgment of the trial court as to damages, and render judgment that Ayala take nothing in damages.

Procedural and Factual Background

Hernandez began dating Ayala's mother when Ayala was a toddler. They moved in together, had children together, but never married. Ayala and Hernandez became very close over the years and consulted each other regarding large purchases and business ventures. In 2014, Hernandez and Ayala purchased a farm together. According to Hernandez, the farm belonged to Hernandez. Hernandez believed that Ayala was just a cosigner and had no idea Ayala's name was on the deed, or that he owned fifty percent of the farm, until the underlying dispute arose in 2021. According to Ayala, they intended to purchase the farm together, as Hernandez was helping him with cattle on his land nearby and they thought it would be a good investment.

In 2021, a domestic dispute arose between Hernandez and Ayala's mother, and Hernandez left their home in Grand Prairie. He then permanently moved to the barndominium on the farm. The parties discussed Hernandez purchasing the farm from Ayala, but Ayala believed the offers were too low and communication stopped between them. Ayala went out to the farm to discuss the matter, but the gates were locked, and he could not enter the property. He retained counsel, and counsel sent a demand letter stating that Ayala was offering to sell his one-half interest in the farm

for \$250,000 in lieu of pursuing litigation. Hernandez did not accept Ayala's offer and filed suit to recover the farm.

Ayala filed a separate suit against Hernandez, alleging claims for breach of fiduciary duty, conversion, and theft of property.¹ Specifically, Ayala alleged that Hernandez breached his fiduciary duties by seizing partnership property, locking Ayala out of partnership assets, taking partnership funds for personal use, and seeking to deny the partnership after openly participating and benefiting from the partnership. Ayala further alleged that the breach injured him by depriving him of the benefits of the partnership, which resulted in lost revenues and opportunities of at least \$250,000. Ayala also sought to partition the partnership property by sale, as the buildings and improvements could not be physically divided, and for expulsion of Hernandez from the partnership or the dissolution of the partnership. Hernandez answered, generally denying all allegations asserted by Ayala and specifically denying that a partnership existed between the parties.

The case proceeded to a jury trial, and the parties presented conflicting evidence as to whether Hernandez spoke, read, and understood the English language to a degree in which he understood they had purchased the property together and as

¹ Hernandez filed suit on October 5, 2021, in the Kaufman County Court at Law (Trial Court Cause No. 109218-CC). Ayala filed suit on October 25, 2021, in the 86th Judicial District Court of Kaufman County, Texas (Trial Court Cause No. 109431-86). Hernandez's case was transferred from the County Court of Law to the 86th Judicial District and consolidated with Ayala's case. Subsequently, per a recusal order, the case was then transferred to the 422nd Judicial District Court in Kaufman County and assigned Trial Court Cause No. 109431-422, which is the cause before us.

to who contributed what amount to the operation of the partnership and the building costs of the barndominium over the years. Hernandez presented evidence that he had paid the down payment on the property and that the monthly mortgage payments, taxes, and insurance had been withdrawn from his bank account, as well as payments for a tractor that he purchased. Hernandez's daughter testified that she paid for much of the costs to finish out the barndominium.

Ayala testified that he gave Hernandez cash to make the various payments from Hernandez's bank accounts. Hernandez was retired and his main source of income was from social security distributions. Ayala testified that he paid for the majority of the operations, including the mortgage, taxes, and insurance. He conceded that Hernandez purchased the tractor on his own; he did not believe they needed a second tractor. Ayala believed the following partnership property remained on the farm at the time he was locked out of the property: a tractor, brush hog, flatbed trailer, utility trailer, stock trailer, small storage shed, hay fork, hay rings, metal rows, four-wheelers, hand tools, winches, piping, drill stems, two paddle boats, culverts, the barndominium, a bed, sofa, flat screen, cabinets, water heater, kitchen table, nightstands, clothes, fans, two window units, and cows. In closing, Ayala's counsel argued that Ayala testified that the value of the cows allegedly sold, the value of the building, and the value of the remaining partnership assets equaled

\$163,350.² Counsel continued, “If you divide that in half, the answer to what is his damages, \$81,675.”

The jury found that a partnership, as well as a relationship of trust, existed between the parties and that Ayala complied with his fiduciary duty to Hernandez but that Hernandez did not comply with his duties owed to both Ayala and the partnership. The jury found that \$104,400 would fairly and reasonably compensate Ayala for his damages that were proximately caused by the conduct of Hernandez. The jury further found that Hernandez was liable for theft and conversion; however, found \$0 in damages for each of those causes of action.

Hernandez filed a motion for judgment notwithstanding the verdict and a motion for new trial. The trial court denied Hernandez’s motion for judgment notwithstanding the verdict and entered judgment that Ayala was entitled to \$104,400 in damages to be paid by Hernandez. The trial court also ordered the partnership to be dissolved and appointed a receiver to dispose of the real and personal property located on the property at issue. The trial court further ordered the following:

6. All proceeds from the sale of the partnership assets shall be first placed in the Court’s registry and then divided as follows:
 - a. First, to the fees of the receiver.

² Hernandez asserts in his brief that the numerical values to which Ayala testified actually add up to \$177,850.

- b. Then to any partner who has incurred costs related to the sale of the partnership after April 25, 2023.
- c. Then \$104,400.00 to Defendant, Chris Ayala, to satisfy this judgment.
- d. Then any remaining funds shall be split equally between Plaintiff, Daniel Hernandez, and Defendant, Chris Ayala.

Subsequently, the trial court entered an agreed order for supersedeas, ordering that “upon sale of the property, the net proceeds are divided evenly between the parties; but \$110,664.00 will be withheld from Hernandez’s fifty-percent share and deposited into the court’s registry” to “constitute the supersedeas for the damages portion of the judgment.” The trial court further ordered, “If Hernandez succeeds in challenging the damages portion of the judgment on appeal, the money will be paid to him at its conclusion. If not, it will be paid to Ayala.” According to the closing settlement statement, the property sold for \$439,993.80. After deducting settlement charges, \$110, 664.01 of Hernandez’s proceeds were assigned to the court’s registry, Ayala received \$205,976.82, and Hernandez received \$95,312.82. Hernandez’s motion for new trial was overruled by operation of law, and this appeal followed.

Sufficiency of the Evidence

Evidence is legally insufficient when (1) there is a complete absence of evidence of a vital fact in the record, (2) the court is barred from considering the only evidence presented to prove a vital fact, (3) the evidence presented to prove a

vital fact is no more than a mere scintilla, or (4) the evidence conclusively establishes the opposite of a vital fact. *City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005). In determining whether there is legally sufficient evidence to support a jury’s finding, we review the entire record in the light most favorable to the verdict. *Id.* at 807, 822, 827. We credit favorable evidence if a reasonable juror could and disregard contrary evidence unless a reasonable juror could not. *Id.* at 807, 827. “The final test for legal sufficiency must always be whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review.” *Id.* at 827.

Generally, market value is established through expert testimony. *See Reid Rd. Mun. Util. Dist. No. 2 v. Speedy Stop Food Stores, Ltd.*, 337 S.W.3d 846, 851–52 (Tex. 2011). However, a property owner may testify to property value if certain requirements are met. The Supreme Court of Texas has explained:

Because property owner testimony is the functional equivalent of expert testimony, it must be judged by the same standards. Thus, as with expert testimony, property valuations may not be based solely on a property owner’s *ipse dixit*. An owner may not simply echo the phrase “market value” and state a number to substantiate his diminished value claim; he must provide the factual basis on which his opinion rests. This burden is not onerous, particularly in light of the resources available today. Evidence of price paid, nearby sales, tax valuations, appraisals, online resources, and any other relevant factors may be offered to support the claim.

Nat. Gas Pipeline Co. of Am. v. Justiss, 397 S.W.3d 150, 159 (Tex. 2012). This requirement is usually met if the property owner testifies he is familiar with the

market value of his property. *Id.* at 155–56. Failure to meet this standard renders the evidence of value legally insufficient, even when unchallenged by the opposing party, because it amounts to no evidence at all. *Id.* at 156–58.

After Ayala listed the partnership assets he believed remained on the property when he was locked out, counsel asked him how much he thought each item was worth. Ayala answered as follows:

Q. . . . At the time of separation what do you think that Mahindra tractor was worth?

A. Maybe \$23,000.

Q. What about the brush hog?

A. Maybe \$100.

Q. What about the grader?

A. Maybe 200 bucks, \$200.

Q. The stock trailer?

A. Maybe 2,000, 2,500.

Q. Is it 2,000?

A. 2,500.

Q. And then you said you had two flatbed trailers you use to haul hay. What is the value of both flatbed trailers?

A. Maybe a thousand each.

Q. So a total of 2,000?

A. Yes.

Q. And then you said there was one inoperable trailer is how you described it. What do you think it's worth in that state?

A. Maybe \$200.

Q. A small storage shed?

A. \$1,500.

Q. You said something about a hay fork?

A. Yeah. I don't know, \$300.³

Q. Hay rings. How many hay rings?

A. There was like two of them. Those are probably \$50 each or something.

Q. So a total of 100?

A. Yeah.

Q. You referred to it as a metal row with plastic.

A. Yeah. It's like a, it's like a feed bin, like, where you put stuff. That's probably \$50. There was a couple of those.

Q. How many?

A. Like two of them.

Q. So a total of 100?

A. Yeah.

Q. You said something about a four-wheeler.

A. Yeah. It was an older four-wheeler. Probably \$400.

³ Although a 2015 insurance document admitted into evidence shows hay forks to be covered at \$400, there is no evidence as to how many hay forks were valued in 2015, how the value was ascertained, or what the value of one hay fork in 2021 would be in comparison.

Q. You said a bunch of miscellaneous hand tools.

A. We had chains, you know, chains and stuff like that and saws. You know, just miscellaneous hand tools. Maybe \$400, \$500.

Q. Then you said, several times you mentioned a steel piping that you would use for fencing. Both types you mentioned combined together, how much do you think that that's worth?

A. There's a lot of pipe out there that's just miscellaneous piping, maybe a thousand dollars.

Q. You said there was two paddle boats for the pond out there.

A. Yeah. Probably a hundred dollars each.

Q. Total of 200 then?

A. Yes.

Q. Miscellaneous culverts.

A. Maybe a hundred dollars.

Q. And then let's talk about the barndominium itself. At the time of separation, because I know there's a lot of receipts that showed improvement after the separation, but at the time of separation what do you think that barndo was worth?

A. I would say about a 120.

Q. Thousand?

A. 120,000, yeah.

Q. I was going to buy a barndo from you.
How much for the bed?

A. The bed?

Q. You said there --

A. Oh, okay. Maybe a hundred dollars.

Q. You said there was miscellaneous sofa.

A. Yeah. \$50.

Q. There was a flat screen TV?

A. A hundred dollars.

Q. Cabinetry?

A. Maybe \$400 worth of cabinets.

Q. Is that installed or just sitting there?

A. They're installed.

Q. 400?

A. Yeah.

Q. You said there was a water heater?

A. Well, it's got a new water heater. Yeah. Probably \$200.

Q. You said there was a table and a kitchen table. Combined together, the two tables out there?

A. Maybe a \$150.

Q. You said there was a nightstand?

A. Yeah. Probably \$25.

Q. Several fans. Are those like box fans or ceiling fans or what?

A. Well, they're like little oscillating fans. Maybe \$25.

Q. Then you said there was one window HVAC unit.

A. There was two window units.

Q. I apologize. Two window HVAC units. What would you say the value on those are?

A. A hundred dollars each.

Q. Do you have any of these items in your possession?

A. No.

Q. And while we've talked about them being a losing proposition, they're still worth money. So let's talk about at the time of separation how many cows do you think the partnership owned?

A. I want to say I seen when I went up there that one time it was 20, I want to say 23 or 27. They move around so. And they had points like, you know, I want to say, I want to say like 23.

Q. And then what was the time of separation, the date, give or take, roughly?

A. In June '21.

Q. May or June of '21. What were those 23 cattle worth in May or June of '21?

A. At least, the bigger ones at least 1,200.

Q. How many of them were bigger?

A. There was probably, I want to say there was like eight small, eight or nine small ones and the rest are bigger.

Q. Would you like to say eight or nine, sir?

A. No. Bigger ones or smaller?

Q. No, sir. The smaller ones, you have to pick an eight or a nine.

A. Oh, eight small ones.

Q. And what are the small ones worth?

A. Probably 700, \$800. 800, I'd say 800.

Q. So if my calculator is correct, you're estimating 15 large and 8 small. So 18,000 in large and 6,400 in small.

On cross-examination, Ayala explained that an independent appraiser told him the barndominium was worth \$120,000.

We first note that, after the trial had concluded and the jury had reached its verdict, the court entered a specific finding that the tractor was not purchased with funds belonging to Ayala and ordered that the 2008 Mahindra Tractor purchased by Hernandez was his sole and separate property to the exclusion of Ayala. Ayala has not challenged this finding in a cross appeal, and the finding is supported by the record. Therefore, the tractor cannot be included in the jury's determination of damages.

Furthermore, Ayala provided no basis for his valuations of the property. He did not testify that he was familiar with the market value of the partnership property or otherwise explain how he determined the value of each item, except for his testimony that an appraiser told him the barndominium was worth \$120,000. "There is no evidence that he knew the actual market value of other similar [items], or that his testimony referred to anything other than the subjective value of the [items] to

him.” *Town East Ford Sales, Inc. v. Gray*, 730 S.W.2d 796, 802 (Tex. App.—Dallas 1987, no writ) (op. on reh’g); *see also Megatel C90-2, Inc. v. Bank of Utah*, No. 05-22-01057-CV, 2024 WL 469565, at *9–10 (Tex. App.—Dallas Feb. 7, 2024, no pet. h.) (mem. op.) (neither purchase price, nor agreement between the parties, was supported by market considerations and, thus, evidence was legally insufficient to support award for diminished value). In fact, much of Ayala’s testimony regarding the value of the partnership assets appears to be sheer guesses. Additionally, contrary to Ayala’s response on appeal, the value of the barndominium alone could not support the award of damages because permanent improvements have no market value separate from the land and, thus, cannot be considered for their own market value. *See Babaria v. City of Southlake, Tex.*, No. 02-14-00068-CV, 2016 WL 287523, at *9 (Tex. App.—Fort Worth Jan. 14, 2016, pet. denied) (mem. op.); *see also Gill v. State*, 531 S.W.2d 322, 325 (Tex. 1975).

Ayala also responds that there was other evidence that would justify the award of damages, such as the monthly operating costs and mortgage that Ayala paid between 2015 and 2023, which amounted to approximately \$22,000 annually. However, as Hernandez argues in his reply brief, Hernandez’s breach of fiduciary duty in 2021 could not proximately cause damages in the form of contributions to the partnership that Ayala sustained years earlier. *See, e.g., Nationstar Mortg., LLC v. Barefoot*, 654 S.W.3d 440, 456 (Tex. App.—Houston [14th Dist.] 2021, pet. denied) (concluding that damages sustained in 2012 could not have resulted from

the defendant's conduct in 2014 and later). Furthermore, there is no evidence as to how Ayala was actually damaged from Hernandez locking him out of the property, such as testimony regarding lost profits or business opportunities.

We conclude that the jury's finding of \$104,400 in damages was not supported by legally sufficient evidence and, therefore, we sustain Hernandez's first issue. Because we have sustained Hernandez's first issue, it is not necessary for us to reach his second issue regarding the factual sufficiency of the evidence and his request for a remittitur. *See* TEX. R. APP. P. 47.1.

Conclusion

The evidence is legally insufficient to support the jury's finding and the trial court's award of damages. Therefore, we reverse the trial court's judgment awarding Ayala \$104,400 in damages and render judgment that Ayala take nothing in damages. We further order the \$110,664.01 paid into the trial court's registry as a supersedeas bond be released to Hernandez.

/Craig Smith/
CRAIG SMITH
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

DANIEL HERNANDEZ, Appellant

No. 05-23-00549-CV V.

CHRIS AYALA, Appellee

On Appeal from the 422nd Judicial
District Court, Kaufman County,
Texas

Trial Court Cause No. 109431-422.

Opinion delivered by Justice Smith.
Justices Miskel and Breedlove
participating.

In accordance with this Court’s opinion of this date, the judgment of the trial court awarding appellee CHRIS AYALA \$104,400 in damages is **REVERSED** and judgment is **RENDERED** that:

appellee CHRIS AYALA take nothing in damages.

It is **ORDERED** that appellant DANIEL HERNANDEZ recover his costs of this appeal from appellee CHRIS AYALA. It is further **ORDERED** that, pursuant to the Agreed Order for Supersedeas and because appellant DANIEL HERNANDEZ has “succeed[ed] in challenging the damages portion of the judgment on appeal” the District Clerk of Kaufman County shall release the \$110,664.01 deposited in the trial court’s registry to supersede the damages portion of the judgment to appellant DANIEL HERNANDEZ.

Judgment entered this 18th day of June 2024.