

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 24, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-1572
STATE OF WISCONSIN**

Cir. Ct. No. 98-CV-0600

**IN COURT OF APPEALS
DISTRICT II**

JENIFER BLODGETT AND CHRISTOPHER BLODGETT,

PLAINTIFFS-RESPONDENTS,

v.

**STATE FARM MUTUAL AUTOMOBILE INS. CO. AND
JEFFREY J. LAGERHOLM,**

DEFENDANTS-APPELLANTS,

AMERICAN FAMILY MUTUAL INS. CO.,

DEFENDANT.

APPEAL from a judgment of the circuit court for Walworth County:
JAMES L. CARLSON, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. State Farm Mutual Automobile Insurance Co. and its insured, Jeffrey J. Lagerholm, have appealed from a judgment entered after a jury trial, awarding damages to the respondents, Jenifer and Christopher Blodgett. The jury awarded the Blodgetts \$26,750 for damage to their home. The damage occurred when Lagerholm lost control of his automobile and struck the Blodgetts' house. We affirm the judgment.

¶2 When recovery is sought for damage to property, and evidence is presented as to both the cost of repair of the property and the diminution in value of the damaged property, the jury is required to award the lesser of the two amounts. *Engel v. Dunn County*, 273 Wis. 218, 222, 77 N.W.2d 408 (1956); *Zindell v. Cent. Mut. Ins. Co.*, 222 Wis. 575, 583, 269 N.W. 327 (1936). At trial, State Farm presented expert testimony from Eric Dixon indicating that the reasonable cost of repair of the Blodgetts' home was \$14,661. The Blodgetts presented expert testimony from James Buchta, who testified that the diminution in value of the property was \$26,750. The jury was subsequently instructed that if the evidence allowed the jury to determine both the diminution in fair market value of the property, and the reasonable cost of repair to restore the property to its prior condition, the jury's answer to the damages question should be the lower of the two figures. In its verdict, the jury awarded \$26,750 for damages to the home.

¶3 In motions after verdict, State Farm moved the trial court to change the jury's award for damages to the home from \$26,750 to a maximum of \$17,850. While acknowledging that the jury was entitled to reject Dixon's opinion as to the reasonable cost of repair of the Blodgetts' home, State Farm contends that Buchta also testified as to the reasonable cost of repair of the property, determining that the cost of repair was approximately \$17,500. State Farm contends that, as a

matter of law, the jury was precluded from awarding more than this amount as damages.

¶4 When a trial court has sustained a jury's award of damages despite a claim of excessiveness, the question on review is whether there is any credible evidence which under any reasonable view supports the verdict and removes the issue from the realm of conjecture. *Coryell v. Conn*, 88 Wis. 2d 310, 315, 276 N.W.2d 723 (1979). The jury's award may not be set aside unless it is so clearly excessive as to indicate that it was the result of passion, prejudice or corruption, or it is clear that the jury disregarded the evidence or the rules of law. *Id.*

¶5 Buchta was retained by the Blodgetts to determine the value of the Blodgetts' home before and after the accident. He thus determined the diminution in value of the property. Buchta testified that the fair market value of the home before the accident was \$115,000, and that after the accident in its damaged condition, its fair market value was \$95,000, a diminution of \$20,000.¹

¶6 Buchta testified that in determining the diminution in the value of damaged property, it was common in the industry to use a range of what it may cost to repair the property. He testified that a range was used because different contractors may charge different amounts, and hidden damage might be discovered during repairs which causes additional expenses.

¶7 Buchta testified that the range of repair costs, or "cost to cure" the Blodgetts' home, was \$10,000 to \$15,000. Selecting the approximate midpoint of this range, he used \$13,000 as the repair figure in assessing the diminution in

¹ This figure did not take into account the re-siding of the house.

value. He multiplied this \$13,000 figure by one and one-half to arrive at a diminution in value of \$20,000. He explained that appraisers will discount property anywhere from one and one-half to two times the “cost to cure” in assessing diminution in value, and that this discount is necessary because the typical buyer purchasing a home in damaged condition will want more of a discount than the cost of repair. After adjusting for the re-siding of the Blodgetts’ house which was also necessitated by the accident, Buchta arrived at a figure of \$26,750 as the diminution in value of the property.

¶8 State Farm argues that the jury could not have accepted Buchta’s opinion as to the diminution in fair market value of the Blodgetts’ home without also accepting his opinion as to the reasonable cost of repair, since he arrived at the diminution in value figure by multiplying the repair cost. State Farm contends that the jury therefore was required to award no more than the \$13,000 “cost to cure” utilized by Buchta, plus an additional \$4,500 for re-siding.

¶9 We disagree. Although Buchta agreed with counsel for State Farm that consideration of the cost of repair was an essential ingredient in determining the diminution in fair market value of the house, he did not testify as an expert on the reasonable cost of repair of the property. Instead, he testified as an expert in determining diminution in value, and simply gave a range of repair costs based on what were essentially “ballpark” figures.

¶10 The lack of precision in the \$13,000 figure utilized by Buchta is clear from his description of how he selected the range of repair costs. He testified: “Well, I think I looked at it when I was out there and just tried to estimate, you know, what you would spend to fix this up.” He later testified: “I think I just estimated, you know, just in my head, you know, threw some numbers

around and came up with that range.” In explaining why he used an estimate only, Buchta reiterated that different contractors would charge different amounts, and that “when you get in there and find out what was actually wrong, there may be additional costs to replace what you find.”

¶11 It is thus clear that Buchta did not determine with any precision or detail what had to be repaired on the Blodgetts’ home or what the reasonable costs of these repairs would be. His imprecise estimate of a range of repair costs, and his selection of a midpoint figure to utilize in determining diminution of value, does not constitute an expert opinion as to the reasonable cost of repair of the property. The jury was not required to construe it as such and reasonably chose to rely on his opinion as to the diminution in value of the Blodgetts’ home in awarding damages.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

