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Jan 02 2026

SC Court of Appeals

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Alan J. Baumann, et al.,

C/A No. 2023CP3203506

Plaintiffs,

**ORDER REGARDING
POST-TRIAL MOTIONS**

vs.

Ivan Chernev, et al.,

Defendants.

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SC Court of Appeals

Heard: November 14, 2025

Attorney for Plaintiffs: Anna W. Youge

Attorneys for Defendants: Sierra C. Hartley and James Edward (Ward) Bradley

Court Reporter: Digital – Melinda D. Jones

Defendants’ post-trial motions consist of the following: (1) motion for the plaintiffs to elect remedies which is granted with the plaintiffs electing to recover under the verdict for trespass; (2) motion for judgment notwithstanding the verdict (JNOV), which is denied; (3) motion for new trial absolute, which is denied; (4) motion for new trial *nisi remittitur*, which is denied. The plaintiffs’ post-trial motions are for the following: (1) costs, which is granted; and (2) injunctive relief, which is granted.

This is a dispute between neighbors regarding the flow of water across their properties. Both sides recognize that surface water is a common enemy. For the most part, the plaintiffs’ property sits uphill from the defendants’ property, though there is one element of the defendants’ entrance of their driveway being at a higher elevation. There is evidence that the defendants constructed a type of natural wall along that section that is alleged to increase the water flow onto the plaintiff’s property. The major dispute relates to the defendant’s contention that the plaintiffs have concentrated surface water into pipes and cast the water onto the area of the defendants’ lot where

defendants' septic drain field is located. The ground gets saturated and endangers the proper operation of the septic system. There is a fence between the properties, and it seems clear that there is one area where water travels through the plaintiffs' property to a low spot along the fence, then crosses under the fence onto the defendants' property.

The common enemy rule is obviated where surface water is collected or diverted into artificial structures, such as pipes, then cast in concentrated form onto the neighbors' property. The court finds that there was conflicting evidence regarding the effect of the concentration of surface water into pipes on the plaintiffs' property. Plaintiffs admit that such pipes are in place but testified that they are ineffectual and do not contribute to the problem. The defendants testified that the pipes bring water directly to the critical area where the crossover occurs. There is also a dispute concerning the effect of a berm placed in the plaintiffs' driveway. The defendants maintain that the berm is an artificial means of concentrating water to cast onto the defendants' property. There being conflicting testimony, the court determines these to be issues of fact for the jury.

There was evidence that the defendants cannot remedy the problem by simply constructing a ditch or drain on their side of the fence to catch the water and divert it downhill to a safe location. This is because there is not enough room between the property line and the ends of the drain fields. Presumably, this would allow sewerage effluent to leak out from those ends into whatever drains would be constructed. So, what the defendants did was to place obstructions to turn the water back onto the plaintiffs' property. There was a dispute as to whether these obstructions were put on the plaintiffs' side of the property line. The jury had evidence from which they could determine that the defendants' actions were done surreptitiously, intentionally, and repeatedly to constitute trespass upon the plaintiffs' land.

A jury trial was conducted, and an interrogatory verdict form was utilized. The jury found for the plaintiffs on their trespass claim, awarding \$350 actual damages, determining the existence of clear and convincing evidence that the defendants' relevant conduct was reckless and assessing \$10,000 in punitive damages. The jury also found for the plaintiffs on their nuisance claim, awarding \$400 actual damages but no punitive damages. The verdict also found against the defendants on their nuisance counterclaim.

Following the verdict, the court conducted a post-trial review of the punitive damage award. A written order was filed on August 11, 2025, affirming the punitive damages determined by the jury.

The defendants now seek JNOV, a new trial absolute, a new trial *nisi remittitur*, or for the court to set aside the verdict and order a new trial as the thirteenth juror. They also require the plaintiffs to elect their remedy.

1. Election of Remedies

Since the actual damages overlapped, the plaintiffs are required to elect between the verdicts rendered in their favor. They choose trespass, so the claim for nuisance is of no further force and effect.

2. The Nuisance Per Se Issue

The defendants challenge the court's submitting plaintiffs' nuisance per se claim to the jury arguing that there was no evidence that the nuisance existed at all times and for all purposes. The court does not deem this to be a continuing issue because the trespass claim was elected and the nuisance claim no longer remains. Nonetheless, this issue was fully discussed during the trial and in the well-researched memorandum in support. The court believes that the appropriate rulings were made.

Most significantly, the defendants continue to assert their position that the plaintiffs admitted that they collected surface water into pipes. That is true, but there was also testimony that the pipes were ineffective and did not contribute to the casting of water onto the defendants' property. Those were issues of fact, and the court declines to grant relief on the grounds related to nuisance per se.

These issues were fully discussed during the trial, and rulings were made based on well-stated arguments. The defendants appear to want the court to ignore or reject testimony that the plaintiffs' collection of pipes and the berm were ineffective and did not contribute to the casting of water onto the defendants' property. The court finds these to be issues of fact.

Finally, the defendants maintain that their counterclaim for negligence per se should have been decided in the defendants' favor. They reiterate the common enemy rule. They argue that the gutter and French drain on the plaintiffs' property brought water directly to the area near the septic tank drain field and constituted a nuisance per se for which directed verdict should have been granted. The court finds that there was conflicting evidence such that jury issues were created. The jury was within its province to find the facts as they apparently did.

The defendants' motions for relief are denied concerning these arguments.

3. Punitive Damage Issues

The defendants assert error in submitting punitive damages to the jury. The defendants cite steps taken within their rights to protect their property, that they moved the berm back after complaints, and that the allegations concerning trespass were not specific enough to warrant a determination that the conduct was reckless, willful, wanton, or in conscious disregard for the rights of others.

The court finds that there was competent evidence that enabled the jury to determine that the plaintiffs are entitled to punitive damages. There was evidence from which a jury could have determined that the actions of the defendants were wrongful, intentional, conducted surreptitiously, and involved repeated trespass. Damages in trespass actions include at least an award of nominal actual damage.

Defendants cite S.C. Code Ann. Section 15-32-530(A) requiring that “an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.” However, as defendants are aware, Subsection (C) provides that the cap does not apply when the court finds that the defendants had an intent to harm and did in fact harm the plaintiffs. So, the defendants’ argument also raises the claim that the court erred in finding there was clear and convincing evidence of intended harm and actual harm caused. They assert that if punitive damages are allowed they should be reduced to \$1,050.

Having reviewed the matter in its entirety, the court stands by its interpretation of the evidence set forth in the prior order on punitive damages. Relief on these issues is denied.

The defendants argue in a related vein that the punitive damages verdict should be reduced or eliminated because of the disproportionality between the actual damage award and the punitive damage award. Three Hundred Fifty (\$350) Dollars is 3.5% of \$10,000. Said another way, the punitive damages awarded here are 96.5% greater than the actual damages awarded.

While proportionality and reasonable relationship concerning actual and punitive damages is a factor to be evaluated, it is important in this case to remember that recovery is based on trespass. Proving trespass entitles a plaintiff to recover at least some actual damages.

Trespass is in a rather unique position in the law because proof of trespass entitles the property owner to some actual damages. Clearly there is a great variation between acts that fall within the definition of trespass, ranging from a simple technical intrusion onto another's land to a continuing series of trespassing events. This record contains strong evidence that the latter intrusion is the type that occurred, and those types of ongoing trespasses justify a significant punitive damage award in this court's view. There is also disputed evidence of concealment, including the allegation that the defendants moved a surveying pin to mislead the boundary of their property. The court declines to set aside punitive damage in whole or in part.

4. Indication of Improper Considerations

To the extent that it is raised, the court rejects the argument that the award of damages was so grossly excessive as to indicate that it was the result of passion, caprice, prejudice, misunderstanding, or some other influence outside of the evidence at trial. The court denies the motions for setting aside the verdict and for a new trial in this regard.

5. Thirteenth Juror Doctrine

The thirteenth juror doctrine permits a trial judge to hang the jury for any reason and declare a mistrial. It is a matter of discretion with the trial court which this court declines to enter.

6. Injunction

Based on the jury's verdict and the evidence presented at trial, the court finds that the plaintiffs are entitled to injunctive relief. The specific terms of the injunction are to be submitted in a proposed order by plaintiffs' counsel within 10 days of this order. The parties are encouraged to work together to develop a plan. Nothing in the injunction should prohibit

the defendants from creating structures that carry surface water away from their property to a lower gradient, if it does not cast water back onto the plaintiffs' yard.

7. Costs

The plaintiffs are entitled to recover costs, which are set forth in a separate order.

THEREFORE, IT IS ORDERED that the post-trial motions are granted or denied as set forth in the initial paragraph.

AND IT IS SO ORDERED.

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separate page



Lexington Common Pleas

Case Caption: Alan J. Baumann , plaintiff, et al VS Ivan Chernev , defendant, et al

Case Number: 2023CP3203506

Type: Order/Other

Circuit Judge (Code #2050)

s/ William P. Keesley