

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

FILED

2014 JUL 11

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Carl Eugene Berry

Plaintiff,

v.

Jess T. Reichardt and Thomas H. Reichardt,

Defendants.

CLERK OF COURT
SALUDA CO. S.C.

Case No: 2013-CP-41-0091

**ORDER DENYING MOTION FOR
JUDGMENT ALTERATION**

This matter comes before the Court on Defendants' Motion to Reconsider this Court's June 18, 2014, order, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. After reviewing the ruling, this Court remains satisfied with its order and finds no basis to reconsider or amend. Therefore, Defendants' motion is DENIED.

IT IS SO ORDERED.



Letitia H. Verdin
Circuit Court Judge

July 8, 2014

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

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IN THE COURT OF COMMON PLEAS

Carl Eugene Berry)
Plaintiff,)

CLERK OF COURT
SALUDA CO. S.C.

C.A. No.: 2013-CP-41-0091

v.)

ORDER FOR JUDGMENT

Jess T. Reichardt and Thomas H. Reichardt,)

Defendants.)
_____)

This matter comes before the Court upon Plaintiff's motion for a damages hearing. The Defendants were found to be in default by order of the Court issued on September 26, 2013. The Defendants sought to be relieved from default pursuant to Rule 60(b), SCRPC, which the Court denied on November 17, 2013, citing the lack of an adequate reason for the failure to answer within 30 days and the lack of any meritorious defenses. The damages hearing was held on June 16, 2014. Present for the hearing were the Plaintiff and his counsel, Richard L. Whitt, as well as both Defendants and their counsel, Phil Woolhiser. For reasons set forth herein, this Court orders judgment be entered against the Defendants Jess T. Reichardt and Thomas H. Reichardt, jointly and severally, in the amount of Twenty-Five Thousand One Hundred Sixty-Three (\$25,163.00) dollars.

Factual Background

Although the facts alleged in the complaint are deemed admitted by virtue of the default by the Defendants, the court heard testimony from the Plaintiff which confirmed the matters giving rise to this action. This is a dispute over real property. According to the testimony and evidence,



the Plaintiff owns approximately 476 acres in Saluda County, for which he is in possession of plats depicting the property. There is a conservation easement with the Savannah River Land Trust on the Plaintiff's land, as well as many wildlife plots and areas designated for hunting. Defendant Jess T. Reichardt owns approximately 1.8 acres abutting Plaintiff's property, which this Defendant purchased without first obtaining a title search or having the property surveyed. The Plaintiff testified that both Defendants intentionally trespassed onto his land on several occasions, apparently believing Defendant Jess T. Reichardt owned close to 10 acres instead of the 1.8 acres he actually purchased.

After the first trespass, the parties met to discuss the property lines, at which time the Plaintiff showed the Defendants the plats depicting the boundary lines and the acreage each party actually owns. The Plaintiff testified, and the Defendants admit by virtue of default, that at this meeting, Defendant Jess T. Reichardt admitted to the Plaintiff that he did not have a plat for the property he claimed to own. After the meeting, which served to put the Defendants on actual notice of the boundary lines, the Defendants trespassed onto the Plaintiff's property and cut timber, in violation of South Carolina Code subsection §16-11-580(A)(1) (Supp. 2013). The Defendants also erected a fence and removed "No Trespass" signs the Plaintiff had personally installed. Plaintiff's counsel sent written notice of these intentional trespasses to the Defendants, which Defendants' counsel acknowledged, and Plaintiff's counsel notified both the Saluda County Sheriff's Department and the South Carolina Forestry Commission of the incidents. At the damages hearing, the Plaintiff called Kathryn Rauton, a real estate attorney, who testified she obtained a title search on Defendant Jess T. Reichardt's property and that the Defendants had actual, record notice of the boundary line between Jess Reichardt's and the Plaintiff's property at the time of the trespass and interference.

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The Plaintiff testified to the effects of the Defendants' actions. He said the timber the Defendants cut was not timber he normally allowed to be cut because it is nut-bearing and instrumental in feeding wildlife on the land, and the cutting was not done in compliance with guidelines from the South Carolina Forestry Commission and the Savannah Land River Trust. The Plaintiff testified that a portion of his land is used as a hunt club, for which he did not charge dues but asked the members to help him with the upkeep of the property. As a result of the Defendants' trespass, the land is no longer suitable for hunting. The Plaintiff also testified that the fence the Defendants erected inhibited his ability to access a section of the land to plant food plots. The Plaintiff testified he has incurred \$4,193.90 in actual damages as a result of the Defendants' actions. Finally, the Plaintiff testified to the physical toll on him from the stress and worry caused by the Defendants' actions.

In addition to actual damages, the Plaintiff seeks punitive damages. Punitive damages serve to punish a wrongdoer and "to vindicate a private right" of the injured party. *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). Such damages can only be awarded when the plaintiff proves by clear and convincing evidence the defendant's actions were willful, wanton, or in reckless disregard of some right of the plaintiff. *Austin v. Specialty Transp. Services, Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct.App. 2004). "Violation of a statute does not constitute recklessness, willfulness, and wantonness per se, but is some evidence the defendant acted recklessly, willfully, and wantonly." *Id.* at 315, 594 S.E.2d at 875-76.

While there is not an exact formula for calculating punitive damages, our courts have set out numerous factors a trial court may consider, including (1) the character of the defendant's acts;

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(2) the nature and extent of the harm to the plaintiff caused by the defendant; (3) the defendant's degree of culpability; (4) the appropriate punishment; (5) the duration of the defendant's conduct; (6) the defendant's awareness or concealment; (7) similar past conduct; (8) the likelihood an award of punitive damages would deter the defendant or others from similar conduct; (9) whether the award is reasonably related to the harm resulting from the conduct; and (10) the defendant's ability to pay. *Id.*; see also *Welch v. Epstein*, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct.App. 2000) ("The trial court is not required to make findings of fact for each factor to uphold a punitive damage award"). In this case, the evidence and testimony presented show the Defendants continued to trespass onto the Plaintiff's land after they were put on actual and record notice by the Plaintiff of the boundary line between the 1.8 acres of land rightfully owned by Defendant Jess T. Reichardt and the Plaintiff's land. The Defendants were aware they were trespassing onto the Plaintiff's land. The evidence and testimony presented show the Plaintiff was unable to use and enjoy certain parts of his land because of the Defendants' actions, and the Plaintiff suffered economic losses as a result. The Defendants cut timber on the Plaintiff's land in violation of South Carolina Code subsection §16-11-580(A)(1) (Supp. 2013). Finally, there is no evidence that any party other than the Defendants is responsible for the Plaintiff's damages.

This Court finds the Plaintiff proved by clear and convincing evidence that an award of punitive damages is appropriate in this case. Under the facts and circumstances, this Court finds an award of Twenty Thousand Nine-Hundred Sixty-Nine (\$20,969.00) dollars to be just and warranted as punitive damages.

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THEREFORE, IT IS SO ORDERED judgment be entered against Defendants Jess T. Reichardt and Thomas H. Reichardt, jointly and severally, in the amount of Twenty-Five Thousand One Hundred Sixty-Three (\$25,163.00) dollars.

IT IS SO ORDERED.



Letitia H. Verdin
Circuit Court Judge

June 18, 2014

