

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 MARY GREENE-MACKEY,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID BEVINS,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT
 CASE NO. 2016-CP-18-2122

ORDER

FILED-RECORDED
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 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

Trial Date: Monday, February 5, 2018
 Trial Judge: The Honorable Diane S. Goodstein
 Plaintiff's Attorney: Eduino K. Curry, Esquire
 Defendant's Attorney: Marvin I. Oberman, Esquire
 Court Reporter: Clark & Associates

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STATEMENT OF THE CASE

The Defendant and Counter Claimant, David Bevins, purchased and occupied the home and lot shown as Lot 207, Moss Pointe, Phase 3, represented on a plat prepared by E.M. Seabrook dated November 17, 1982, by deed from Julian B. Glover dated August 28, 2003. The plat referred to in that deed was recorded in Plat Book D, page 245, Register of Deeds for Dorchester County on January 6, 1983. The deed into Bevins was introduced into evidence as Defendant's Exhibit 1 at trial. The survey and plat of E.M. Seabrook dated November 17, 1982, showing Moss Pointe, Phase 3, was introduced as Plaintiff's Exhibit 3 and Defendant's Exhibit 5 at trial.

The Plaintiff, Mary Greene-Mackey, purchased the home and lot know and designated as Lot 208, Moss Pointe, Phase 4-117 Robert Drive, Ladson, SC 29456-by deed from her daughter,

Kimberly D. Washington, dated January 22, 2015 and recorded in Book 9600, page 6, Register of Deeds for Dorchester County. The survey and plat of Phase 4 were introduced as Plaintiff's Exhibit 1. That survey was dated November 18, 1982. The surveys and plats of Phase 3 and Phase 4 showing the two lots in question each show the courses of the southeastern boundary between Lots 207 and 208 to be magnetic north at $N 32^{\circ}45'49''$. The recent plats of Associated Surveyors of Summerville (John David Bass) dated December 7, 2015 and revised April 21, 2017—Defendant's Exhibits 8 and 9—show a very slight magnetic north deviation from the two plats of 1982 of 3 minutes 27 seconds over the period of approximately thirty-three (33) years. More importantly, the Bass plat of 2015 show the found corners of Lot 207 to be marked by steel staubs designated Found "FND" and the length of the line in question to be identical or nearly identical in length.

Mrs. Greene-Mackey acquired Lot 208 from her daughter on January 22, 2015. In September 2015, Mrs. Greene-Mackey called Mr. Bevins and advised him that his fence was on her property. On October 16, 2015, Mrs. Greene-Mackey had some workmen cross the fence and start cutting some branches from the trees on the property of Mr. Bevins. Mr. Bevins called the police who arrived, stopped the activities, talked to both, and advised the parties to get a survey done. On October 17, 2015, Mr. Bevins instituted a notice of trespass (Defendant's Exhibit 10). He also hired a survey company who delivered the requested survey (Exhibit 8 aforesaid, dated December 7, 2015). Mr. Bevins tendered that survey to Mrs. Greene-Mackey. She refused the survey and did not secure and deliver, at that time, to his knowledge, a survey for her property.

By Complaint and Motion for Restraining Order (harassment and stalking) dated July 6, 2016, Mrs. Greene-Mackey instituted an action against Mr. Bevins (Defendant's Exhibit 11). That

matter was heard on July 19, 2016 and dismissed by the judge who again advised the parties to secure a survey or surveys.

On October 17, 2016, Mrs. Greene-Mackey had her agents remove the fence in question or a large portion of that fence and cut down three (3) of trees on the property of Mr. Bevins (Defendant's Exhibit 9, revised April 21, 2017).

At the time of the purchase of Lot 207 by Mr. Bevins in August 2003, there existed a chain link fence that ran along the line separating the two lots. That line was shown as almost an exact bearing on the surveys and plats of Associated Surveyors of Summerville dated December 7, 2015 and revised April 21, 2017 (Defendant's Exhibits 8 and 9).

The Defendant/Counter Claimant submits that the very minor change in the north south bearing is explained by the drift of the magnetic north over a period of thirty-three (33) years and notes more importantly that the line between the street point on Robert Drive is marked by a 5/8" rebar found and at the rear by a 1/2" rebar found and that the boundary is a straight line between the two points. The two rebar markers appeared by their condition to be the original lot stakes from 1982 and should be determinative of the survey closure of Lot 207 of Bevins and lot 208 of Greene-Mackey. It appears that Mrs. Greene-Mackey commissioned a firm to locate the rebar stakes and one or two firms to survey the boundary line between lots 207 and 208. Mrs. Greene-Mackey testified that devices were used to clear the vegetation and soil to reveal the two boundary stubs in question. Mrs. Greene-Mackey though served with notice to produce and the Defendant's Motion for Summary Judgment opted to secrete any of the results or information from Mr. Bevins, his attorneys, and this Court.

Mrs. Greene-Mackey instituted her suit against Mr. Bevins on November 3, 2016. Mr. Bevins entered his Answer and Counterclaim dated January 3, 2017. Mrs. Greene-Mackey replied to the Defendant's Counterclaim and to the Defendant's Request to Admit but did not respond to the Defendant's Interrogatories, Amended Interrogatories, Request to Produce, and Amended Request to Produce. She did not respond to the Defendant's Motion for Summary Judgment dated October 19, 2017 until the day of the trial of this case on February 5, 2018 by submitting three (3) recorded surveys of the Moss Pointe Subdivision; each drawn in November, 1982.

LAW AND ARGUMENT OF DEFENDANT

Though this Court did not grant the Bevins' Motion for Summary Judgment, such decision of the Court is not to be considered as dispositive of the underlying case and the Court allowed the issues to go forward to trial.

After the testimony and exhibits elicited from the Plaintiff and the Defendant/Counter Claimant, David Bevins, it became clear that the Complaint of the Plaintiff and the three causes of action therein contained were not supported by the facts and should be dismissed. The testimony and exhibits elicited from the Plaintiff by cross examination and from that of the Defendant/Counter Claimant, David Bevins, made out a strong case in favor of the Defendant/Counter Claimant in trespass and the damages resulting therefrom as herein shown.

In the case of Snow v. City of Columbia, 305 S.C. 544 (1991) at pp. 552-553, 409 SE 2d 787, it was held that:

At common law, all land held in peaceable possession is deemed to be enclosed. Harris v. Baden, 54 Fla. 373, 17 So.2d 608 (1994). The person in peaceable possession has the right to exclude all others from the enclosure. See Statos v. King, 282 S.C. 501, 319 S.E. 2d

356 (Ct.App. 1984). The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means by which the enclosure is broken, or the extent of the damages inflicted. Lee v. Stewart, 218 N.C. 287, 10 S.E.2d 804 (1940). The entry itself is the wrong. The mere entry entitles the party in possession at least to nominal damages. Lee v. Stewart, *supra*. To constitute an actionable trespass, however, there must be an affirmative act, the invasion of the land must be intentional, and the harm caused must be the direct result of that invasion. Alabama Power Co. v. C.G. Thompson, 278 Ala. 367, 178 So.2d 525 (1965).

Intent is proved by showing that the defendant acted voluntarily and that he knew or should have known the result would follow from this act. Snakenberg v. Hartford Casualty Insurance Co., 299 S.C. 164, 383 S.E.2d 2 (Ct.App. 1989). Although neither deliberation, purpose, motive, nor malice are necessary elements of intent, the defendant must intend the act which in law constitutes the invasion of the plaintiff's right. *Id.* Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land. See Phillips v. Sun Oil Co., 307 N.Y. 328, 121 N.E.2d 249 (1954); Lee v. Stewart, *supra* (it is immaterial whether defendant in committing the trespass actually contemplated the resulting damage to plaintiff).

Mr. Bevins from the date of his purchase enjoyed an enclosure of his rear and side yard. He had enjoyed that enclosure from August 28, 2003 to the date of the intrusion by Mrs. Greene-Mackey on October 17, 2016. It has been said that a man's home is his castle. The unwarrantable entry on land in the peaceable possession of another is a trespass without regard to the degree of force used, the means by which the enclosure is broken or the extent of the damage inflicted. The entry itself is the wrong. The mere entry entitles the party in possession at least to nominal damages. Lee v. Stewart, 218 N.C. 287, 10 S.E.2d 804.

The Plaintiff and her counsel appear to defend on the 3'27" magnetic deviation of the boundary line between lots 207 and 208 that occurred over a 33-year period. Such a deviation would be of a de minimis scale of the resulting frontal line of lot 207 on Robert Drive. In any event, the straight line between the survey stakes ($\frac{5}{8}$ " rebar found and $\frac{1}{2}$ " inch rebar found) would be controlling.

The Court notes
The failure of the Plaintiff, Mrs. Greene-Mackey, to produce the findings and work of the two or three surveyors she had hired, ~~should be and are determinative of that issue of the case.~~ ^{DSJ} The Bass plats dated December 7, 2015 and revised April 21, 2017 remain uncontroverted and controlling in this matter and case.

Mr. Bevins followed the advice of the police and judges in the matters leading up to the breach of his fence on October 17, 2016. Both parties were advised to get surveys of their properties. Mr. Bevins did so. He secured the services of Associated Surveyors of Summerville who drew two surveys - the first dated December 7, 2015 and the revised survey showing the tree stumps dated April 21, 2017. Both surveys were given to the attorney(s) for Mrs. Greene-Mackey, and the Court and entered as Exhibits 8 and 9 at the trial of the case. Mrs. Greene-Mackey testified that she had an engineer locate the lot staubs and at least one surveyor to locate and mark the boundary line between the two lots in question. Mrs. Greene-Mackey did not give the Defendant nor the Court any evidence of the findings of these two or three persons. ~~Those findings under the theory of "The dog that didn't bark" of Sherlock Holmes must be considered an important clue that these findings were adverse to the position of Mrs. Greene-Mackey.~~ *DSJ*

Within days after the dismissal of her case by the judge on July 19, 2016 Mrs. Greene-Mackey disregarded the earlier advise of the police and judges and took steps on November 3, 2016

to trespass upon the property of Mr. Bevins, remove his chain link fence and destroy three trees on his property.

Mrs. Greene-Mackey started her process by advising Mr. Bevins in September 2015 that his fence was on her property. On October 16, 2015, Mrs. Greene-Mackey directed some workmen to cross the fence and start to cut some branches from the trees clearly on the property of Mr. Bevins. The actions of Mrs. Greene-Mackey were stopped by the police who advised the parties to get surveys to determine who was right. The judge in his determination of the question again in this case on July 19, 2016 also advised that the parties secure a survey or surveys. Mr. Bevins did so on October 17, 2016. Mrs. Greene-Mackey did not follow this advice ^{or} ~~not~~ _{DSG} did not share the result(s) of her surveyors with Mr. Bevins or the Court. Mrs. Greene-Mackey instead instituted this suit on November 3, 2016 some two weeks after the ruling of the Judge.

Mrs. Greene-Mackey by her actions ~~and in total disregard of the evidence and the advice of~~ ^{DSG} ~~the police and judge~~ intentionally trespassed over Mr. Bevin's fence and cut three (3) trees on the land of Mr. Bevins and subjected herself to damages due by her to Mr. Bevins. Under the laws of this State, Mrs. Greene-Mackey is liable to Mr. Bevins for nominal damages, compensatory damages and punitive damages. These damages would include:

| | |
|---|--|
| Nominal damages | \$ 1,000.00 DSG |
| Actual or compensatory damages-paid out of pocket | \$17,925.00 |
| Punitive damages | 1,000.00 DSG <u>\$6,000.00</u> |
| for a total of | \$24,925.00 \$18,925.00 |

The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless,

willful, wanton, or malicious conduct in the future. Clark v. Cantrell, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). 'Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party.' *Id.* at 378-79, 539, S.E.2d at 533.

To receive an award of punitive damages, the [party claiming punitive damages] has the burden of proving by clear and convincing evidence the [trespassing party's] misconduct was willful, wanton, or in reckless disregard of the [owner's] rights. Austin v. Specialty Transp. Servs, Inc. 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct.App. 2004). 'A conscious failure to exercise due care constitutes willfulness.' McCourt ex rel. McCourt v. Abernathy, 318 S.C. 301, 308, 457 S.E. 2d 603, 607 (1995). The issue of punitive damages before the finders of fact if more than one reasonable inference can be drawn from the evidence as to whether the [trespasser's] behavior was reckless, willful, or wanton. Graham v. Whitaker, 282 S.C. 393, 398, 321 S.E. 2d 40, 43 (1984).

Mr. Bevins submitted evidence and testified to the damages caused to him as the owner of the Lot 207 by the actions of the Plaintiff Greene-Mackey. Those damages includes the following:

| | | | |
|---------------|--|--------------------------|--------------|
| A. | Nominal damages to be determined by the Court | \$1,000.00 | 0 |
| A | The destruction and replacement of the fence in question | | |
| | (a) Destruction | TBD | |
| | (b) Replacement | \$575.00 | |
| C. | Replacement of three (3) trees, grind stumps and removal of debris of three (3) trees cut down | \$2,500.00 | |
| D. | The surveys and plats | \$350.00 | |
| E. | Attorneys' fees and costs | \$14,500.00 ¹ | |

¹Mr. Bevins testified to the total of the amounts paid to his attorneys Oberman and Oberman and the Court takes judicial notice of the reputation of the senior principal member of

for a total out of pocket determined fees of \$18,925.00. This figure does not account for the value of the destroyed fence and the value of the three (3) mature trees.

① punitive damages

of 1,000.00
~~If the Court awards nominal damages in the amount of \$1,000.00 and punitive damages in the amount of \$6,000.00, the Court would find the sum of \$24,925.00 for nominal, compensatory,~~

\$18,925.00

and punitive damages due from Mrs. Greene-Mackey to Mr. Bevins. If the Court considers these damages and determines a fair value for the "to be determined" damages and punitive damages, a very fair judgment in the amount of ~~\$24,925.00~~ *\$18,925.00* would be most consistent with the actions of Mrs. Greene-Mackey and the trespass she committed.

CONCLUSION AND ORDER

The Court heard the motion of the Defendant/Counter Claimant, David Bevins, for Summary Judgment during the morning hours of Monday, February 5, 2018. The Plaintiff, Mary Greene-Mackey, was in attendance with her attorney, Edurdo K. Curry, Esquire and the Defendant Counter/Claimant, David Bevins, was also in attendance with his attorneys Marvin I. Oberman and Harold A. Oberman. After a full review of the motion, the supporting affidavit and the arguments of counsel, the motion was denied and the case went forward on the merits.

Upon consideration of the testimony of the parties, the voluminous exhibits, the law pertaining to the trespass, argument of counsel and the merits of the positions of both parties, the Court finds that:

the firm over the past fifty (50) years and the scope of the work done by that firm in the this case, as evidenced by the pleadings in the file.

A. The Complaint of the Plaintiff, Mary Green-Mackey, and the three causes of action therein contained against the Defendant/Counter Claimant, David Bevins, should be and it is hereby dismissed with prejudice.

B. The Plaintiff, Mary Greene-Mackey, intentionally and voluntarily, entered the property - the enclosure - of the Defendant/Counter Claimant, David Bevins, on two occasions - October 16, 2015 and one year later on October 17, 2016. On the first occasion in 2015, Mrs. Greene-Mackey had her workmen trim the branches of three (3) trees on the property of Mr. Bevins. On the second occasion of October 17, 2016, Mrs. Greene-Mackey had her workmen remove a large portion of the chain link fences on the property of Mr. Bevins, enter the property and cut down three (3) trees on the property of Mr. Bevins without permission or license.

C. During that year from October, 2015 to October, 2016,, police were called and the parties appeared in the lower courts. The parties were advised by the police and judges to secure the services of surveyors or other professionals to designate the boundary line between the properties of the parties. The Defendant/Counter Claimant, David Bevins, hired a surveyor - Associated Surveyors of Summerville - and tendered the resultant survey dated December 7, 2015 to the Court and Mrs. Greene-Mackey. It appears that Mrs. Greene-Mackey retained the services of an engineer and one or two surveyors but never presented their results to Mr. Bevins, his attorneys or the Court. Within days after the ruling by the lower court judge - July 19, 2016 to October 17, 2016 - and the request/order to secure a survey, Mrs. Greene-Mackey had her agents enter the property of Mr. Bevins, remove a large portion of his fence and cut down three (3) trees on his property.

D. The Plaintiff, Mary Greene-Mackey, ~~apparently disregarded the advice/request of the police and judges to secure and present surveys and other~~ *failed to present* evidence as to the boundary in question

and disregarded the existing fence and lot stubs in the ground, entered upon the property of Mr. Bevins, removed a large portion of the existing fence and had three (3) mature trees on the property of Mr. Bevins cut to their stumps. Mrs. Greene-Mackey did not have the stumps or debris of the ~~3~~ trees removed from Mr. Bevins' property.

E. The evidence is compelling that the Defendant/Counter Claimant, Mr. David Bevins, held Lot 207 Moss Pointe, Phase 3 in peaceable possession and the portion of that lot and the fence butting to the east on Lot 208 of the Plaintiff which lot lies to the east of the line between the 1/2" rebar found and the 5/8" rebar found on Robert Drive - all on the survey and plat of Associated Surveyors of Summerville and Mr. Bevins had the right to exclude all others from his enclosure of Lot 207.

F. The evidence is clear that the Plaintiff, Mary Greene-Mackey, with knowledge and intention made an unwarranted entry on two occasions upon the enclosure of the property of Mr. David Bevins resulting in damages to Mr. Bevins in the amounts of actual damages in the amount of \$17,925.00 and punitive damages in the amount of \$1,000.00 for a total of damages due by Mary Greene-Mackey to David Bevins in the amount of ~~\$24,925.00~~ \$18,925.00.

And it is therefore

ORDERED that:

First: The motion of the Defendant/Counter Claimant, David Bevins, for Summary Judgment against the Plaintiff Mary Greene-Mackey is denied; and

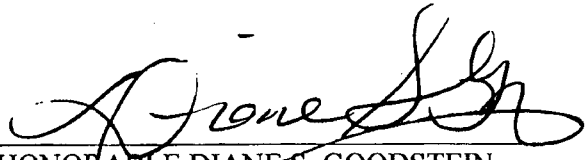
Second: the Complaint of the Plaintiff, Mary Greene-Mackey, and the three causes of action therein contained against the Defendant/Counter Claimant, David Bevins, is hereby dismissed with prejudice; and

Third: The Defendant/Counter Claimant, David Bevins, have judgement against the Plaintiff, Mary Greene-Mackey, in the sums of ~~\$18,925.00~~ ^{\$17,925.00} actual damages and ~~\$6,000.00~~ ^{\$1,000.00} punitive damages for the total sum of ~~\$24,925.00~~ ^{\$18,925.00}; and

Fourth: The boundary line between Lot 207 - the property of Bevins - and Lot 208 - the property of Greene-Mackey - be definitely established as that shown between the 1/2" staub to the rear and the 5/8" staub to the front on Robert Drive on the plat of Associated Surveyors of Summerville dated December 7, 2015, and it is confirmed as correct and binding, and

Fifth: The aforesaid survey and plat may be recorded with a copy of this Order by the Defendant/Counter Claimant.

AND IT IS SO ORDERED.


HONORABLE DIANE S. GOODSTEIN
Judge of the First Judicial Court
for Dorchester County

St. George, South Carolina

May 18, 2018.

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