

STATE OF MICHIGAN
COURT OF APPEALS

LAURI K. HATT, a/k/a LAURI K. PARKS,

Plaintiff-Appellee,

v

CCS CONCRETE CONSTRUCTION and
DARRELL PARKS,

Defendants-Appellants.

UNPUBLISHED

February 2, 2001

No. 218883

Oakland Circuit Court

LC No. 97-000320-CZ

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Defendants appeal as of right from the circuit court's March 3, 1999 denial of defendants' motion for new trial from an opinion and order entered February 3, 1999, after a bench trial for slander of title. The circuit court awarded plaintiff \$20,133.13 in actual damages plus \$10,000 in exemplary damages. We affirm and remand to the trial court for assessment of appellate costs.

Plaintiff and defendant Parks were divorced on August 27, 1996, after protracted and acrimonious litigation. Defendant Parks is the sole shareholder of defendant Concrete Construction Systems, Inc. (CCS). Pursuant to the judgment of divorce, plaintiff was awarded the marital home free and clear of any claim of defendant Parks. In the same judgment, defendant Parks was awarded CCS free and clear of any claim by plaintiff. About a year later, plaintiff sold the marital home and was prepared to close with a definite closing date. Seventeen days prior to the closing, defendant CCS filed a Claim of Lien on the subject property.

The trial court found no evidence of any valid claim by defendant CCS against plaintiff or any issue which would justify the filing of a Claim of Lien. The trial court further found that defendant CCS acted fraudulently and in bad faith by filing the Claim of Lien and that an injustice would result if defendant Parks was shielded from liability by his corporation. Additionally, the court awarded damages for legal fees and exemplary damages pursuant to MCL 600.2907; MSA 27A.2907.

Defendants contend that the trial court erred in awarding exemplary damages, claiming that they are generally not allowed in actions for slander of title and specifically not authorized in this case since plaintiff failed to prove a prima facie case. They also take exception to the trial court's decision to hold defendant Parks individually liable, asserting that there was no basis for

piercing the corporate veil. In a bench trial, the trial court's findings of fact are reviewed for clear error but its conclusions of law are reviewed de novo. *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997). The trial court's award of damages is reviewed "under the clearly erroneous standard." *Meek v Dep't of Transportation*, 240 Mich App 105, 121; 610 NW2d 250 (2000).

This Court's review of the evidence leads us to conclude that the trial court did not err in finding plaintiff had proven the necessary elements of slander of title. *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). There was absolutely no legal or factual basis for the defendants' lien against the former marital home. Rather, defendant filed the lien solely to stop the sale of the home and further harass plaintiff. The attorney fees plaintiff was forced to expend, to obtain quiet title to her own property, constituted special damages. *Sullivan v Thomas Organization, PC*, 88 Mich App 77, 85; 276 NW2d 522(1979).

Nor did the trial court err in holding defendant Parks individually liable, given that he personally participated in the filing of an invalid construction lien against plaintiff's property. *Attorney General v Ankersen*, 148 Mich App 524, 557; 385 NW2d 658 (1986). Contrary to defendants' assertion, exemplary damages are available in an action for slander of title. *B & B Investment Group, supra* at 6 n 3; MCL 600.2907a(1)(c); MSA 27A.2907a(1)(c).

Defendants also assert that because plaintiff failed to prove perfection of the construction lien, see MCL 565.25(2); MSA 26.543(2), exemplary damages are not recoverable. *Royce v Citizens Ins Co*, 219 Mich App 537, 545; 557 NW2d 144 (1996). Defendants failed to preserve the issue before the circuit court and this Court therefore declines to address it. *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266; 568 NW2d 411 (1997).

Defendants next contend that the trial court improperly denied their motion to adjourn trial. However, defendants failed to establish that diligent efforts were made to secure the presence of witnesses for trial. MCR 2.503(C)(1); MCR 2.503(C)(2). The request for adjournment was made the day of trial and the record reflects that the trial date had been set for many months. Defendants' failure to appear was based on voluntary vacation plans. Therefore, the trial court did not abuse its discretion in denying the motion. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992).

Finally, plaintiff requests sanctions against defendant Parks for filing a vexatious appeal. This Court has discretion to assess actual or exemplary damages where an appeal is taken for purposes of hindrance or delay and without any reasonable basis for belief that there was a meritorious issue to be determined on appeal. MCR 7.216(C)(1)(a).

The Court notes that when the underlying divorce case was appealed, a panel of this Court found plaintiff Darrell Park's argument on appeal to be disingenuous. *Parks v Parks*, unpublished opinion per curiam of the Court of Appeals, issued November 21, 1997 (Docket No. 197955). In the present case, the trial court found that defendant Parks acted in bad faith when he participated in a fraudulent legal action against plaintiff. Defendants' appeal to this Court was clearly without merit. Based on the arguments set forth, we remand to the trial court for an assessment of exemplary damages for plaintiff's appellate costs and attorney fees.

Affirmed and remanded to the trial court for determination of damages consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper