

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS VON MEYER,

Plaintiff/Counter-Defendant-
Appellee,

v

PAXTON PROPERTIES, LLC, PAXTON, INC.,
and PETER PAXTON,

Defendants/Counter-Plaintiffs-
Appellants,

and

MICHIGAN NATIONAL BANK, DETROIT
EDISON COMPANY, MICHIGAN BELL
TELEPHONE COMPANY, f/k/a AMERITECH,
and SEMCO ENERGY GAS COMPANY,

Defendants.

UNPUBLISHED

July 12, 2002

No. 230687

St. Clair Circuit Court

LC No. 99-002014-CH

Before: Hood, P.J., and Saad and E. M. Thomas*, JJ.

PER CURIAM.

Defendants appeal as of right that portion of the trial court's judgment awarding treble damages to plaintiff. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1986 plaintiff purchased a parcel of property that housed a junkyard and a used car lot. A wooden fence ten feet high and 280 feet long separated plaintiff's property from the adjacent lot. The previous owners represented to plaintiff that the fence served as the boundary between plaintiff's property and the adjacent property. Plaintiff relied on the representation. In 1998 defendants purchased the adjacent property. A survey showed that plaintiff's fence was located on defendants' property. Defendants used a chain saw to cut down the fence.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff filed an action to quiet title, claiming title to the disputed portion of property by acquiescence. He alleged that defendants trespassed onto the property and ejected him by force, and sought treble damages pursuant to MCL 600.2918(1).¹ The trial court found that plaintiff gained title to the disputed property by acquiescence.² In addition, the trial court found that plaintiff was ejected from the property by force when defendants used a chain saw to cut down the fence, and awarded plaintiff treble damages totaling \$36,000.

An action to quiet title is equitable in nature. We review the trial court's findings of fact for clear error, and its conclusions of law de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). An issue of statutory interpretation presents a question of law that we review de novo. *McJunkin v Cellasto Plastic Corp*, 461 Mich 590, 596; 608 NW2d 57 (2000).

MCL 600.2918(1) provides for the awarding of treble damages to any person who is ejected from land "in a forcible and unlawful manner." Defendants argue that the trial court clearly erred in finding that plaintiff was ejected in such a manner. Defendants emphasize that the force required to support the awarding of treble damages must not merely be that used against or on the property. Rather, the force must be used or threatened against a person for the purpose of expelling the person from the land. *Shaw v Hoffman*, 25 Mich 162, 168-169 (1872).

We affirm the trial court's award of treble damages to plaintiff. Plaintiff testified that he told Peter Paxton to stop cutting down the fence but that Paxton, who was using a chain saw, refused to do so and began chasing him and trying to knock a camera out of his hand. Plaintiff stated that he was forced to stand on the sidewalk until the police arrived. This evidence of threatened force against plaintiff's person supported the awarding of treble damages. MCL 600.2918(1); *Shaw, supra*; *Killips, supra*.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Edward M. Thomas

¹ Plaintiff also named as defendants the bank that held the mortgage on defendants' property, and the utilities that held easements on the property that was the subject of the litigation.

² Defendants do not challenge this portion of the trial court's decision.