STATE OF MICHIGAN

COURT OF APPEALS

JAMES DANIEL DUSTEN,

Plaintiff-Appellant-Cross Appellee,

v

DTE ENERGY,

Defendant-Appellee-Cross Appellant,

and

COREY FUSON,

Defendant.

UNPUBLISHED
December 27, 2005

No. 256057
Oakland Circuit Court
LC No. 02-044972-CH

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant DTE Energy's motion for a directed verdict. DTE Energy (hereinafter "defendant") cross appeals from an order denying its motion for summary disposition. We affirm.

A defendant may move for a directed verdict at the close of the plaintiff's proofs. MCR 2.515. "A directed verdict is appropriate only when no material factual questions exist on which reasonable minds could differ." *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 123; 680 NW2d 485 (2004). The trial court's decision on a motion for a directed verdict is reviewed de novo on appeal. *Diamond v Witherspoon*, 265 Mich App 673, 681; 696 NW2d 770 (2005). This Court "reviews all the evidence presented up to the time of the directed verdict motion, considers that evidence in the light most favorable to the nonmoving party, and determines whether a question of fact existed." *Id.* at 681-682.

The Road Commission abandoned a vacant parcel of property abutting plaintiff's land, reserving an easement for public utilities. Plaintiff sued defendant for trespass after defendant entered onto the vacant parcel and cut down trees. Trespass is an intentional and unauthorized invasion of another person's interest in the exclusive possession of his property. *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 344; 568 NW2d 847 (1997); *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 195; 540 NW2d 297 (1995).

"In order to recover for trespass, a plaintiff must have title to or actual possession of the land on which the trespass is claimed." *Mable Cleary Trust v Edward-Marlah Muzyl Trust,* 262 Mich App 485, 508; 686 NW2d 770 (2004).

Plaintiff did not have title to or actual possession of the property in question, although he had an ownership interest in the vacant parcel after the Road Commission abandoned it. *Thompson-McCully Quarry Co v Berlin Charter Twp,* 259 Mich App 483, 497; 674 NW2d 720 (2003); *Dalton Twp v Muskegon Co Bd of Co Rd Comm'rs,* 223 Mich App 53, 57; 565 NW2d 692 (1997). However, plaintiff was one of at least three abutting landowners, and produced no evidence as to which portion of the parcel belonged to him.

Plaintiff argues that because he had some ownership interest as an abutting landowner, it was up to the jury to determine whether he owned all or a part of the parcel and if only a part, how to apportion his share. We disagree. Plaintiff has not shown on what basis the jury could make such a determination other than speculation or conjecture (assuming the jury could make such a determination in the absence of necessary parties). Speculation or conjecture is insufficient to meet the burden of proving a genuine issue of material fact, *Libralter Plastics, Inc v Chubb Group of Ins Cos,* 199 Mich App 482, 486; 502 NW2d 742 (1993), because the jury is not permitted to guess. *Karbel v Comerica Bank,* 247 Mich App 90, 107; 635 NW2d 69 (2001). Furthermore, while plaintiff's expert drew a diagram of the missing trees, it was not to scale, and the expert did not know how many trees had been cut outside defendant's easement. Therefore, even if the jury had some basis on which to determine how much of the parcel plaintiff owned, it would be unable to determine which trees, if any, had been removed from plaintiff's portion of the lot. Therefore, the trial court did not err in granting defendant's motion for a directed verdict.

Having determined that the trial court properly directed a verdict in defendant's favor, we find it unnecessary to address the issue raised in defendant's cross appeal.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood