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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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**Larry Toomey**

v.

**Riverside RV Resort, LLC**

**Appeal from Baldwin Circuit Court  
(CV-17-900203)**

MITCHELL, Justice.

Larry Toomey blocked a culvert that had been installed to channel water away from the only road providing access to his property and to the

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property of his neighbor, Riverside RV Resort, LLC ("Riverside"). He did so with the knowledge that the blockage might damage the road and Riverside's property. Riverside sued and obtained an injunction against Toomey, as well as a judgment awarding it compensatory damages, punitive damages, and attorney fees. Toomey now appeals. We affirm the judgment to the extent it enjoins Toomey from blocking the culvert and grants Riverside compensatory and punitive damages, but we reverse it to the extent it awards attorney fees to Riverside.

#### Facts and Procedural History

Riverside is the owner and operator of a recreational-vehicle park in Robertsdale. When this action was filed, Riverside possessed the park property under a seller-financed purchase agreement with Styx, LLC ("Styx"), the developer and original owner of the park. The purchase agreement granted Riverside immediate management and control of the park, with a reversionary interest in the property preserved for Styx until the balance of the purchase price was paid. Two days after the trial court entered its judgment in this case, Riverside made its final payment to Styx and became the sole owner of the property.

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Toomey owns property that shares a boundary line with Riverside. Water Rapids Road is on that boundary line and provides access to both properties. As a result, the parties are each burdened with an ingress/egress easement for the benefit of the other party ("the easement"). The existence of the easement is confirmed in two places – first, a prior order of the Baldwin Circuit Court, and second, the property description in Toomey's deed, which states that his property has a "50-foot easement for ingress and egress along the South line and 25.0 feet along the East line of said parcel."

At some point before 2008, Water Rapids Road was raised and improved, and a drainage pipe was installed under the road. The drainage pipe ends in a culvert located on Toomey's property but within the easement. The properties are located downhill from a 200-acre area near Interstate 10, commonly referred to as the I-10 watershed, from which water drains naturally onto both properties. Surface water from the I-10 watershed flows into a ditch running alongside Water Rapids Road where the drainage pipe and culvert are located. A portion of the water from the I-10 watershed remains in the ditch and eventually flows

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into the Styx River. Another portion of the water flows into the drainage pipe under Water Rapids Road, exits out of the culvert, and then flows in a naturally diffuse manner onto Toomey's property, as it did before the improvements to Water Rapids Road.

The culvert is central to the controversy between Riverside and Toomey. Before August 2016, Toomey placed hay bales in front of the culvert to prevent sediment from moving with the water flowing naturally onto his property. But in August 2016, Toomey blocked the flow of water exiting the culvert with a piece of tin. After the culvert was completely blocked, significant erosion began in the area around it, causing the culvert to become elevated. The blocked culvert contributed to cracking in the pavement of Water Rapids Road, and eventually led the ditch on Riverside's property to increase in size from 3 feet wide up to 20 feet wide in some places.

In January 2017, during a major rainstorm, Riverside removed the tin blocking the culvert to reduce the force of the water coming back onto its property. Riverside notified Toomey that it had done so. Toomey was also made aware of the significant erosion that had occurred around the

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culvert after his intentional blockage. A month later, despite seeing the damage caused to Water Rapids Road and the Riverside property by blocking the culvert with tin, Toomey poured concrete into the culvert to create a new, more permanent blockage.

Riverside then sued Toomey in the Baldwin Circuit Court. In its complaint, Riverside brought claims of wrongful interference with the easement, wantonness, negligence, trespass, and nuisance.<sup>1</sup> Toomey filed a trespass counterclaim and filed a motion to join Styx as a necessary party under Rule 19, Ala. R. Civ. P., as holder of a reversionary interest in the Riverside property.

Approximately two months after the complaint was filed, Riverside asked the trial court to enter a temporary restraining order and preliminary injunction against Toomey. Riverside made this request because, it said, there was a high likelihood that a major springtime rainfall would further damage the Riverside property if the culvert remained blocked. The trial court granted Riverside's request for a

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<sup>1</sup>Riverside later withdrew its negligence claim.

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preliminary injunction, but its written order did not go into effect until several months later, when Riverside paid the required bond. In issuing the preliminary injunction, the trial court ordered Toomey to remove the concrete and to restore the culvert to its pre-blockage elevation. Toomey partially complied with the trial court's order by removing the concrete but failed to return the culvert to its pre-blockage elevation. That failure caused the water from the I-10 watershed to continue to be blocked from flowing through the culvert onto Toomey's property.

The matter proceeded to a bench trial. April Givens, a co-owner and manager of Riverside, testified about the erosion and other harms the blocked culvert caused to the ditch, the road, and the Riverside property. She also testified that Toomey and visitors to his property would park their vehicles so that access to the Riverside property would be blocked or impaired. Finally, Givens testified that she saw Toomey remove the concrete from the culvert, then use his tractor to change the elevation of the culvert to prevent water from flowing through it onto his property.

Toomey also testified. He did not deny that he had blocked the culvert with tin and later with concrete or that the blocked culvert had

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caused erosion to the road and surrounding areas. He acknowledged that the ditch on the Riverside property sustained significant erosion from the January 2017 rainfall and that it was possible for the road to "blow out" if a large amount of water stopped at the blocked culvert. When asked why he did not comply with the preliminary-injunction order and return the culvert to its pre-blockage condition, Toomey said he complied only after Riverside paid the required bond.

In addition to Givens's and Toomey's testimony, both sides offered expert witnesses to testify about how water flows onto the Riverside and Toomey properties from the I-10 watershed. The expert offered by Toomey to rebut Riverside's civil-engineering expert was Greg Spies, a licensed land surveyor. The trial court admitted expert testimony by Spies in the areas of land surveying, topographical surveying, and wetland delineations. But the court did not accept Spies as an expert able to provide opinions that required an engineering degree, such as opinions about the cause of erosion or drainage problems caused by the blocked culvert.

After receiving the evidence, testimony, and arguments, the trial court issued its final order, finding, among other things, that Toomey acted intentionally with knowledge that damage would occur to Riverside's property; that the sums expended by Riverside to repair the culvert and surrounding area were necessary to protect and preserve the culvert and the road; and that Toomey had interfered with Riverside's use and enjoyment of the easement by permanently placing obstacles in the easement. The trial court then concluded: (1) that Styx was not required to be joined to the action under Rule 19; (2) that the culvert is a necessary improvement for the easement to be used for its intended purpose; (3) that Riverside met its burden of proving that Toomey had wrongfully diverted water onto the Riverside property and that the diversion had caused undue and unreasonable damage; (4) that Riverside met its burden of proving its claim of wantonness by presenting sufficient evidence of Toomey's intention to cause damage and harm to Riverside; (5) that Toomey's actions constituted trespass; and (6) that Riverside proved common-law nuisance. Based on those conclusions, the trial court entered a judgment in favor of Riverside, awarding compensatory damages of

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\$49,000 and punitive damages of \$50,000, and entering a permanent injunction prohibiting Toomey from blocking, interfering with, or impeding Riverside's use and enjoyment of the easement. After a separate hearing, the trial court awarded Riverside \$50,000 in attorney fees. Toomey appealed.

### Analysis

Toomey raises several issues on appeal. We first consider his argument that Styx was a necessary party required to be joined under Rule 19. After concluding that joinder was not required, we address: (1) whether the trial court correctly held that the easement allowed Riverside to maintain and improve the culvert; (2) whether the trial court properly excluded Spies's testimony about the cause of erosion and drainage problems, and (3) whether attorney fees were properly awarded to Riverside.<sup>2</sup>

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<sup>2</sup>Toomey also argues that the trial court erred by basing its judgment on the belief that his action in blocking the culvert violated a previous order of the Baldwin Circuit Court. Because the trial court had sufficient independent evidence apart from that order to support its judgment, we need not address that issue in detail.

A. Rule 19 Joinder

Toomey argues that the trial court exceeded its discretion when it failed to join Styx as a necessary party because the purchase agreement between Riverside and Styx provided Styx a reversionary interest in the Riverside property. This Court will not disturb a trial court's Rule 19 determination unless it exceeded its discretion, because such a determination is based on equitable and pragmatic considerations. See Ross v. Luton, 456 So. 2d 249, 256 (Ala. 1984).

In support of his argument, Toomey cites Chandler v. Branch Banking & Trust Co., 275 So. 3d 531 (Ala. Civ. App. 2018). In Chandler, the Court of Civil Appeals held that both co-owners of a mortgaged property were necessary and indispensable parties required to be sued in an ejectment action brought by a mortgaging bank. But this case is different. Unlike the mortgagees in Chandler, Riverside and Styx are not co-owners of real property, and neither Riverside nor Styx are seeking to eject Toomey from his property. Therefore, Chandler is not applicable.

A more analogous case is AmSouth Bank, N.A. v. City of Mobile, 500 So. 2d 1072 (Ala. 1986), in which the landlord of a property sought to

bring a trespass claim against the City of Mobile for injury to the property while the land was in possession of the tenant. This Court held that a landlord may not bring a trespass claim against a third party because such a claim rests solely with the tenant. Id. at 1074. Like the tenant in AmSouth, Riverside holds exclusive possession of the property and has brought only personal claims against Toomey. And because Styx does not have possession of the Riverside property, it cannot seek the remedies sought by Riverside from Toomey. See Jeffries v. Bush, 609 So. 3d 362, 362 (holding that trespass is a wrong against the right of possession and is a personal claim, not a real-property claim). To the extent that Toomey's actions might have provided Styx a basis to sue for an injury to its reversionary interest, Riverside completed purchasing the property from Styx two days after the trial court entered its order, and Styx no longer has any interest in the Riverside property. Thus, the trial court did not exceed its discretion when it declined to join Styx as a necessary party under Rule 19.

### B. The Easement

We now turn to the claims based on the easement. When evidence is presented to the trial court *ore tenus*, a presumption of correctness is accorded to the court's findings of fact, and those findings will not be disturbed unless they are clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence. Weeks v. Wolf Creek Indus., Inc., 941 So. 2d 263, 268 (Ala. 2006). Questions of law are reviewed *de novo*. Id. at 269.

Toomey argues that the great weight of evidence does not support the trial court's finding that the culvert was reasonably necessary to maintain the easement -- and that Riverside therefore trespassed when it repaired the culvert on his property. In response, Riverside argues that the easement included the authority to maintain or repair the culvert and that, regardless of the existence of the easement, Toomey wrongfully forced storm water onto its property by blocking the culvert, causing damage to the Riverside property and the shared roadway, Water Rapids Road. Therefore, Riverside argues, the actions it took after the culvert was blocked were to protect its property from further harm.

There is no dispute that an easement exists along the property line between Toomey and Riverside, that the culvert is located within the easement, and that the culvert was installed before 2008. Toomey argues that, in making the repairs and improvements to the culvert, Riverside exceeded its rights granted under the easement. In making that argument, Toomey cites Kratchoville v. Cloverleaf Plaza, Inc., 165 So. 2d 112 (Ala. 1964). But that case is distinguishable. In Kratchoville, a landowner installed pipes under a neighboring property to divert surface water, without an easement or any form of permission from the neighboring landowner. In response, the neighboring landowner sought a preliminary injunction to remove the underground pipes. This Court held that no easement existed to install underground pipes because there was no assertion or evidence of any easement by deed, prescription, or an adverse user for the statutory period. Here, by contrast, there is no dispute that the easement exists.

Whether an ingress/egress easement may include the right to construct a culvert was addressed in Byerley v. Griffin, 512 So. 2d 91 (Ala. 1987). In Byerley, the Griffins constructed a culvert for drainage on the

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Byerley property within an ingress/egress easement that was granted for their benefit. Like Toomey, the Byerleys argued that an existing ingress/egress easement did not include the construction of a culvert near the roadway that had been constructed for ingress and egress. After receiving the evidence ore tenus, however, the trial court determined that the culvert and related improvements were "necessary and reasonable" to provide the Griffins access to their property via the ingress/egress easement. This Court affirmed, holding that the construction of a culvert by the Griffins on property owned by the Byerleys was not outside the grant of the ingress/egress easement because the culvert was related to the roadway for which the ingress/egress easement was provided.

Similarly, the easement for Riverside's benefit does not preclude the construction, maintenance, or improvement of a culvert because the culvert is reasonably necessary for the purpose of the easement. The easement from Toomey to Riverside is for "ingress and egress." Riverside presented evidence indicating that the culvert is reasonably necessary for that use of the easement. And, in its order, the trial court found that the construction of the head wall and other remedial efforts by Riverside

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around the culvert "were necessary to protect and preserve the culvert and Water Rapids Road."

On review, we conclude that the evidence in the record is sufficient to support the trial court's factual finding that the culvert was necessary and that the law allows for the grant of an ingress/egress easement in this case to reasonably include the construction, maintenance and improvement of the culvert. We therefore hold that Riverside did not exceed the grant of the easement when it improved the culvert and the surrounding area to maintain access to its property.<sup>3</sup>

### C. Expert Testimony

Toomey next argues that the trial court exceeded its discretion when it refused to allow Spies, a land surveyor, to provide expert-witness testimony about the cause of erosion on the properties based on his personal observations and interpretation of topography, contours, and water accumulation. The standard of review applicable to whether a trial court properly permits or excludes an expert witness is well settled.

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<sup>3</sup>This conclusion makes it unnecessary to discuss Toomey's trespass claims against Riverside based on those actions.

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"[T]he trial court has broad discretion over whether to consider a witness qualified as an expert and to consider that witness's expert testimony," and this Court will not disturb those findings unless the trial court exceeds its discretion. Vesta Fire Ins. Corp. v. Milan & Co. Constr., Inc., 901 So. 2d 84, 106 (Ala. 2004). See also Kyser v. Harrison, 908 So. 2d 914 (Ala. 2005) (holding that a trial court did not exceed its discretion when it excluded the testimony of a forensic pathologist who was not specialized in the area of pediatric pathology in a case involving the death of an infant).

From our review of the record, it is clear that the trial court did not exceed its discretion when it limited Spies's testimony to the area of land surveying, topographical surveying, and wetland delineations. Although engineers rely on maps created by land surveyors to provide opinions and plan engineering projects, Alabama law recognizes that the work and expertise of an engineer is different from that of a land surveyor. See § 34-11-1 et seq., Ala. Code 1975 (setting forth licensing and education requirements for engineers and land surveyors). Spies, as a land surveyor, is a professional specialist in the technique of measuring land.

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But only the direction and erosive effects of the water flowing over the properties and the water's natural drainage paths were in controversy, not the boundaries and topography of the properties. Thus, the trial court's decision not to allow Spies to testify or to rebut the testimony of an engineer on drainage and causes of erosion is not a basis for reversal.

#### D. Attorney Fees

Toomey finally argues that the evidence presented by Riverside does not support the award of attorney fees. Although Toomey concedes that the trial court has equitable power to award attorney fees to a prevailing party, he says that his actions do not justify such an award. See Reynolds v. First Alabama Bank of Montgomery, N.A., 471 So. 2d 1238, 1243 (Ala. 1985) (recognizing authority to award attorney fees "where fraud, willful negligence or malice has been practiced"). Ordinarily, we defer to the trial court when it makes an award of attorney fees because it " 'has presided over the entire litigation [and] has a superior understanding of the factual questions that must be resolved' " to make such a determination. See Ex parte Shinaberry, \_\_ So. 3d \_\_, \_\_ [No. 1180935, July 31, 2020] (Ala. 2020) (quoting Pharmacia Corp. v. McGowan, 915 So. 2d 549, 553 (Ala. 2004)).

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Even so, where a trial court awards attorney fees, its order "'must allow for meaningful appellate review by articulating the decisions made, the reasons supporting those decisions, and how it calculated the attorney fee.' " Id.

In its order awarding attorney fees in this case, the trial court gave no explanation for its decision, nor did it discuss the factors a court must consider to determine the reasonableness of the fees. The order simply stated:

"This is a matter coming on for a hearing on [Riverside's] motion to establish attorney fees. This matter being submitted upon the pleadings, testimony taken ore tenus and argument of counsel on February 19, 2019. Based upon the foregoing, the court is of the opinion that the following judgment order is due to be entered.

"It is therefore, ordered, adjudged and decreed by the Circuit Court of Baldwin County, Alabama, as follows:

"1. To the extent authorized by law, the court grants [Riverside's] request for reasonable attorney fees in the amount of \$50,000.00.

"2. Any specific request for relief not specifically addressed herein is denied."

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The record also does not indicate what evidence, if any, the trial court relied on to award Riverside its attorney fees or to calculate the amount awarded. Although an attorney-fee award is within the sound discretion of the trial court, this Court cannot provide meaningful appellate review without the trial court providing a reasoned order of its award. Shinaberry, \_\_ So. 3d at \_\_. We hold, therefore, that the trial court exceeded its discretion in awarding Riverside \$50,000 in attorney fees without explaining the basis for its award, and we reverse the judgment to the extent it awarded attorney fees and remand the case to the trial court for further proceedings.

### Conclusion

We affirm the trial court's judgment granting Riverside compensatory damages and punitive damages, as well as a permanent injunction prohibiting Toomey from impeding access to the easement, including blocking the culvert. But we reverse the trial court's judgment to the extent it awards attorney fees, and we remand this case for the trial court to reconsider the attorney-fee award in accordance with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

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Parker, C.J., and Wise, Bryan, and Stewart, JJ., concur.

Bolin, Shaw, Sellers, and Mendheim, JJ., concur in the result.