

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ESCAMBIA COUNTY, FLORIDA,

Appellant,

v.

EARNEST STANBERRY, JR.,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NOS. 1D02-4558 and 1D02-4559

Opinion filed November 19, 2003.

An appeal from the Circuit Court for Escambia County.
Judge Nickolas P. Geeker.

Charles V. Pepler, Escambia County Attorney's Office, Pensacola, for Appellant.

Lisa S. Minshew, Pensacola, for Appellee.

BARFIELD, J.

We find no reversible error, except for the trial court's instruction to the jury regarding real property damages, which we find to have been an incorrect statement of the law which led the jury to a finding that was not supported by the evidence.

We therefore REVERSE the \$225,000.00 award of damages for "cost of repair or

replacement of the damaged property,” and REMAND the case to the trial court for entry of an order offering the appellee the choice of remittitur on this element of damages to the fair market value of the property or a new trial on this element of damages. In all other respects, the final judgment awarding damages is AFFIRMED.

The award of attorney fees and costs based on section 768.79, Florida Statutes, is VACATED and the trial court is ordered to determine, after a final judgment has been rendered on remand, whether the appellee is entitled to attorney fees.

BENTON, and VAN NORTWICK, JJ., CONCUR.