

STATE OF MICHIGAN
COURT OF APPEALS

DAVID H. EARLE,

Plaintiff-Appellant,

v

CONSUMERS ENERGY COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 28, 2001

No. 226610

Clare Circuit Court

LC No. 98-900523-NZ

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased real property pursuant to a land contract that provided that defendant would install a power line and electrical poles within an easement on the property. Defendant's employee, Nadene Clark, staked out the location for the service. She relied on a survey drawing, and used a compass. Some of the stakes were placed outside the easement. As a result, the power line was placed in part on plaintiff's property. Defendant destroyed some trees and landscaping on plaintiff's property. Defendant did not secure plaintiff's permission to install the power line on his property or to destroy trees and landscaping on the property.

Plaintiff filed suit, alleging that defendant intentionally placed the power line on his property and intentionally destroyed trees and landscaping on the property. He alleged that defendant's actions resulted in a depreciation of his property value and caused him mental and emotional trauma, and requested treble damages. MCL 600.2919(1)(a). Plaintiff testified that he neither gave defendant permission to place the power line on his property, nor gave defendant permission to destroy trees or landscaping on the property. The parties stipulated to the admission of a report from plaintiff's expert. The report stated that the destroyed trees were valued at \$361.55, a figure later corrected to \$283.54, that the cost of property clean up was \$400.00, and that the cost of stump removal was \$500.00. Plaintiff did not submit evidence regarding other damages. Clark testified that she intended to keep the stakes within the easement, but that some of the stakes were placed outside the easement and on plaintiff's property. She denied that she acted intentionally.

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

The trial court found that defendant committed a trespass by installing a portion of the line on plaintiff's property, but concluded that the trespass was "casual and inadvertent." MCL 600.2919(1). The court declined to award treble damages, and entered judgment in the amount of \$1,378.81. Plaintiff moved for reconsideration, and for the first time sought to enjoin defendant from continuing the trespass. The court denied the motion for reconsideration, and declined to award injunctive relief.

Plaintiff argues that the trial court clearly erred by finding that he was not entitled to treble damages because defendant's trespass was "casual and involuntary." MCL 600.2919(1). We disagree. We review a trial court's findings of fact for clear error. MCR 2.613(C). Treble damages may be recovered for a knowing and intentional trespass, *Governale v Owosso*, 59 Mich App 756, 759; 229 NW2d 918 (1975), but are not recoverable if the trespass was merely negligent, *Iacobelli Construction Co, Inc v The Western Casualty & Surety Co*, 130 Mich App 255, 263; 343 NW2d 517 (1983). Contrary to plaintiff's assertion, the evidence did not support a finding that defendant acted knowingly and intentionally in placing a portion of the line on plaintiff's property. Clark consulted a survey drawing and used a compass to determine the location of the easement. She acknowledged that she positioned some stakes on plaintiff's property, and that as a result of her error a portion of the line ran over the property. She contended that she did not act intentionally. Plaintiff acknowledged that he did not discover that a portion of the line ran over his property until a survey was conducted nearly one year after the line was installed. No evidence supported a finding that defendant acted knowingly or intentionally when it trespassed on plaintiff's property. The trial court's finding that plaintiff was not entitled to treble damages because defendant acted inadvertently was not clearly erroneous. *Governale, supra*; *Iacobelli, supra*; MCL 600.2929; MCR 2.613(C).

Plaintiff argues that the damage award of \$1,378.81 was inadequate. We disagree. A party has the burden of proving a claim for damages with reasonable certainty. Damages based on speculation or conjecture cannot be recovered; however, damages need not be proven with mathematical certainty. It is sufficient if a reasonable basis for the computation of damages exists. *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). At trial, the only evidence regarding damages was submitted in the form of a report from plaintiff's expert. Plaintiff presented no evidence regarding other economic loss or emotional harm. Any additional award would have been based on conjecture, and would have been improper. *Id.*

Plaintiff argues that the trial court abused its discretion by denying his motion for reconsideration and his request for an injunction. He emphasizes that defendant's trespass is continuing, and asserts that money damages are inadequate under the circumstances. MCL 600.2919(3)(a). We disagree. Plaintiff first requested an injunction in his motion for reconsideration. A request for this relief could have been made at or prior to the time of trial. Under the circumstances, no abuse of discretion occurred. *Charbeneau v Wayne Co General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham