STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE T. CURTIS,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED
November 25, 2003

No. 241632
Wayne Circuit Court
LC No. 00-032355-CH

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff commenced this action to recover damages arising from defendant's demolition of a building on his property. Following a bench trial, the court entered a judgment awarding plaintiff damages of $35,000, plus $4,298.79 in prejudgment interest, and costs of $1,215. We affirm in part and vacate in part.

I

Defendant argues that it complied with all applicable statutory notice provisions before demolishing plaintiff's building and, therefore, the trial court erred in granting plaintiff's pretrial motion for summary disposition on the issue of liability. We disagree.

A trial court's grant of summary disposition is reviewed de novo to determine whether the prevailing party was entitled to judgment as a matter of law. *Allen v Keating*, 205 Mich App 560, 562; 517 NW2d 830 (1994). When reviewing a motion for summary disposition under MCR 2.116(C)(10), the court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists precluding summary disposition. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2).

In this case, defendant complied with the notice requirements of Michigan's housing law, MCL 125.540, and the Detroit City Code, § 12-11-28.4(a), in 1994 and 1995.[1] However, it is apparent that the housing law and the City Code contemplate that the person who receives notice of a demolition still own the building at the time of demolition, and neither makes provision for notice to subsequent purchasers. But our Legislature has provided a mechanism for precisely that purpose. See MCL 600.2701 (lis pendens as constructive notice). If defendant had complied with the lis pendens statute, a subsequent bona fide purchaser for value such as plaintiff would have acquired the property subject to the order of demolition.

Although it is undisputed that a notice of lis pendens was filed, that notice expired by its terms in December 1997, and defendant did not attempt to renew it. Thus, under the clear terms of the statute, the notice of lis pendens did not operate to provide plaintiff, the subsequent titleholder, with constructive notice that the building was slated for demolition. Therefore, the trial court properly held that defendant incurred liability by destroying plaintiff's building without notice to plaintiff.

II

Defendant also argues that the trial court erred in finding that plaintiff's claim was not barred by governmental immunity. We disagree.

Because only government officers and employees may be sued for gross negligence, MCL 691.1407(2)(c), plaintiff's gross negligence claim was clearly barred. The governmental immunity act further provides that government agencies such as defendant are "immune from *tort* liability if . . . engaged in the exercise or discharge of a governmental function." MCL 691.1407(1); see also *Pohutski v Allen Park*, 465 Mich 675, 684-685, 689, 699; 641 NW2d 219 (2002). "There is no doubt that nuisance is a tort and that liability for nuisance would be within the scope of statutory governmental immunity as expressed in the first sentence of § 7." *Pohutski*, *supra* at 685, quoting with approval *Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139, 147; 422 NW2d 205 (1988).

Until recently, however, our courts have held that government agencies are not immune from trespass-nuisance claims. See *Hadfield*, *supra* at 145-147, 165-169. Although the Supreme Court in *Pohutski* abrogated the trespass-nuisance exception, it held that its decision "applied only to cases brought on or after April 2, 2002." *Pohutski*, *supra* at 699. Because this case was filed before that date, the interpretation of the trespass-nuisance exception "set forth in *Hadfield*" applies. *Pohutski*, *supra* at 699.

"Trespass-nuisance is 'defined as trespass *or* interference with the use or enjoyment of land caused by a physical intrusion that is set in motion by the government or its agents and

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[1] Although Barbara Hoyle was not initially notified of the city council hearing, it is undisputed that she subsequently received actual notice and appealed the hearing officer's decision. Hoyle received title from defendant on August 29, 1994 and transferred title to plaintiff on November 13, 1998.

resulting in personal or property damage.'" *Continental Paper & Supply Co v Detroit*, 451 Mich 162, 164; 545 NW2d 657 (1996) (emphasis added), quoting *Hadfield*, *supra* at 169. "To establish trespass-nuisance[,] the plaintiff must show 'condition (nuisance or trespass); cause (physical intrusion); and causation or control (by government).'" *Continental Paper*, *supra* at 164, quoting *Hadfield*, *supra* at 169. A claim is sufficiently pleaded if the plaintiff makes "specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." MCR 2.111(B)(1); see also *Mack v Detroit*, 467 Mich 186, 203-204; 649 NW2d 47 (2002).

In the present case, plaintiff alleged both an unconstitutional taking of property[2] (destruction of the building) and a trespass (of people and machinery upon plaintiff's property).[3] Plaintiff asserted condition (trespass), cause (physical intrusion of defendant's agents and machinery on plaintiff's property), and causation or control (that defendant caused the demolition that damaged plaintiff's property). Thus, plaintiff sufficiently asserted a trespass-nuisance claim. The trial court did not err in finding that the claim was not barred by governmental immunity.

III

Defendant next argues that the trial court failed to sufficiently articulate the basis for its finding of liability. We disagree.

"In actions tried on the facts without a jury . . . the court shall find the facts specially, [and] state separately its conclusions of law[.]" MCR 2.517(A)(1). "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2). Findings are sufficient if "it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation." *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

As noted previously, plaintiff voluntarily dismissed his claim of an unconstitutional taking, and defendant was clearly immune from plaintiff's gross negligence claim. Therefore,

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[2] Plaintiff voluntarily dismissed his claim for an unconstitutional taking of property without just compensation.

[3] A taking that does not involve a trespass is not covered by the trespass-nuisance exception. *Peterman v Dept of Natural Resources*, 446 Mich 177, 207-208; 521 NW2d 499 (1994) (citation omitted). However, contrary to defendant's argument, "[w]hile 'the Taking Clause of the constitution rests at the foundation of the trespass-nuisance exception,' . . . the two actions are distinct and the ['constitutional provision should not be confused with the assertion of the trespass-nuisance exception . . . .'" *Peterman*, *supra* at 206-207, quoting *Li v Feldt (After Remand)*, 434 Mich 584, 594 n 10; 456 NW2d 55 (1990), and *Hadfield*, *supra* at 165 n 10. Therefore, plaintiff's voluntary dismissal of his taking claim is not dispositive of whether he sufficiently asserted a trespass-nuisance claim.

plaintiff's only viable remaining theory was trespass-nuisance. After reviewing the record, we conclude that the trial court sufficiently explained its ruling, particularly at the hearing on defendant's motion to set aside the judgment, to enable this Court to engage in meaningful review. The court found that defendant trespassed on private property because defendant, without proper notice and authority, demolished plaintiff's building. Accordingly, remand for clarification is unwarranted.

IV

Lastly, defendant argues that the trial court erred in awarding plaintiff interest on the value of the building from the date of demolition, and $2,000 in property taxes.

An award of damages following an evidentiary hearing or a bench trial is reviewed for clear error. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 513; 667 NW2d 379 (2003). However, an award of statutory interest on a judgment is reviewed de novo. *Amerisure Ins Co v Graff Chevrolet, Inc*, 257 Mich App 585, 600; 669 NW2d 304 (2003).

In some circumstances, interest may be allowed as an item of damages in order to fully compensate a plaintiff. *Vannoy v Warren*, 26 Mich App 283, 288; 182 NW2d 65 (1970), aff'd 386 Mich 686; 194 NW2d 304 (1972). As plaintiff observes, interest has been allowed in some trespass cases from the date of injury. See *Lane v Ruhl*, 103 Mich 38, 45; 61 NW 347 (1894) (trespass by holdover tenant); *Gates v Comstock*, 113 Mich 127, 129; 71 NW 515 (1897) (trespass and cutting of timber). Similarly, in *Buckeye Union Fire Ins Co v Michigan (After Remand)*, 38 Mich App 155, 156-158; 195 NW2d 915 (1972), a trespass-nuisance case, where certain buildings owned by the state caught fire and the fire spread to nearby properties, interest was awarded from the date of the fire.[4]

In the present case, the trial court awarded plaintiff the fair market value of his building at the time of demolition, not at the time of trial. Therefore, an award of interest from the date of demolition was appropriate in order to compensate plaintiff for the loss of the use of the building as well as any subsequent increase in value. Thus, the trial court did not clearly err in awarding interest from the date of demolition as an item of damages.

We agree, however, that the trial court erred by including as a measure of damages the $2,000 in real estate taxes that plaintiff allegedly paid soon after purchasing the building. Plaintiff cites no authority allowing such an item to be awarded as a measure of damages. The fact that defendant's conduct may have made plaintiff's actual damages more difficult to calculate is irrelevant to whether property taxes properly may be included as an item of damages. There is no basis for concluding that reimbursement of these taxes was necessary in order to fully compensate plaintiff for the loss of the building. Indeed, plaintiff would have been liable

[4] Remanding to the Court of Claims, the Supreme Court held that the plaintiffs' claim was not barred by governmental immunity. See *Buckeye Union Fire Ins Co v Michigan*, 383 Mich 630, 640-644; 178 NW2d 476 (1970).

for this amount even if defendant had not demolished the building. Accordingly, we vacate that portion of the judgment, but affirm the judgment in all other respects.

Affirmed in part and vacated in part.

/s/ Karen M. Fort Hood
/s/ Janet T. Neff

I concur in result only.

/s/ William B. Murphy