

DA 19-0168

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 251

SHIRLEY RENZ,

Plaintiff and Appellee,

v.

ROSE EVERETT-MARTIN,

Defendant and Appellant.

APPEAL FROM: District Court of the Second Judicial District,
In and For the County of Butte-Silver Bow, Cause No. DV-17-65
Honorable Kurt Krueger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

David L. Vicevich, Lawrence E. Henke, Vicevich Law, Butte, Montana


For Appellee:

Brian J. Miller, Morrison, Sherwood, Wilson & Deola, PLLP, Helena,
Montana

Submitted on Briefs: September 11, 2019

Decided: October 22, 2019

Filed:


Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Rose Everett-Martin (Rose) appeals an order of the Second Judicial District Court, Butte-Silver Bow County, denying her motion to set aside the jury’s verdict. While Rose presents four issues on appeal, we condense her arguments and restate the dispositive issue as follows:

Did the District Court err by entering a judgment granting equitable relief in the form of possession of real property, given the jury’s finding of trespass against Rose?

¶2 We conclude that the District Court did not err in entering a judgment granting possession of real property, and therefore affirm the District Court’s denial of Rose’s motion to set aside the jury’s verdict.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 In January 2017, Shirley Renz (Shirley) and her husband Bob Renz (Bob) (now deceased) filed a Complaint for Possession or Trespass against their daughter, Rose, in the Silver Bow County Justice Court. In her complaint, Shirley alleged that, since 2000, Rose had occupied Shirley’s twenty-acre property at 425 Little Basin Creek Road in Butte, Montana, with Shirley’s express permission. According to Shirley’s complaint, Rose had no legal interest in the property, did not pay rent to Shirley, moved a manufactured home onto the property, and had begun interfering with Shirley’s use and enjoyment of the property. Shirley set forth theories of relief under §§ 70-33-427 and 70-24-427, MCA, and asserted an alternative theory that Rose was “trespassing on [Shirley’s] property” without “legal right or authority to do so.” Shirley sought an

injunction against Rose, “removing her and her belongings from [Shirley’s] property and permanently enjoining her from entering [Shirley’s] property or interfering with [Shirley’s] use in any way,” and prayed for “any further relief which is just and necessary.”

¶4 Rose filed an answer to the complaint, requested a jury trial, and asserted various counterclaims against Shirley, including claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, negligent misrepresentation, and specific performance. According to Rose, in 1998, Bob asked her to relocate from her home in Utah and move to the property in Butte, Montana, to care for Bob and Shirley. In exchange for care provided, Rose alleged Bob offered her ownership of the twenty acres at 425 Little Basin Creek Road. Around 1999, Rose poured a foundation on the property, stationed a manufactured home onto the foundation, built a garage, and installed a sewer line, electricity, and a well. Subsequent improvements made by Rose included fencing and landscaping work. The parties never had a written agreement between them for the transfer of land from Bob or Shirley to Rose.

¶5 Shirley’s claims, and Rose’s counterclaims, were later transferred to District Court because of the type of action and amount of damages at issue. *See* §§ 3-10-301(1)(a)-(e), 25-31-102(1), MCA. Shirley filed an amended complaint with the District Court on March 26, 2018, asserting several discernable causes of action and seeking: (1) issuance of a writ of possession from the District Court entitling Shirley to seek assistance from the Butte-Silver Bow County Sheriff’s Department in removing Rose and her trailer from the property; (2) should the court issue the writ of assistance, an additional order from the

District Court directing Rose to provide a mailing address to which Shirley may send notices as required in § 70-33-432, MCA, if Rose failed to remove her modular home within five days; (3) a permanent injunction against Rose, “removing her and her belongings” from Shirley’s property and “permanently enjoining” Rose from entering Shirley’s property or “interfering with [Shirley’s] use in any way”; (4) damages for emotional distress caused by Rose’s trespass; (5) damages for unjust enrichment, “for remaining on [Shirley’s] property without paying rent”; (6) emotional distress damages “caused by [Rose’s] conduct in the course of committing the tort of unjust enrichment”; and (7) emotional distress damages for intentional infliction of emotional distress. The complaint separately prayed for a judgment awarding “actual damages, along with interest on damages,” and ordering Rose’s ejectment from Shirley’s land “so that [Shirley] may take immediate possession.”

¶6 Following a scheduling conference between the parties, the District Court scheduled a jury trial for November 26, 2018. A final pretrial order was filed by the District Court on October 19, 2018. The order contained assertions made by Shirley and Rose of the factual and legal issues to be decided in the case. Shirley hoped for a resolution as to whether Rose was trespassing on Shirley’s land. Under “Issues of Law,” Rose stated the legal issues to be decided as “[w]hether [Bob and Shirley] are entitled to possession of the 20-acre parcel,” and “[w]hether [Rose] has trespassed.”

¶7 After a three-day trial, the jury determined: (1) Rose was trespassing on Shirley’s property, but the trespass did not cause Shirley any money damages; and (2) Shirley was

unjustly enriched at the expense of Rose in the amount of \$35,000. The verdict was entered on November 27, 2018. By December 21, 2018, Rose had dismissed her attorney and filed a pro se motion in District Court asking the court to set aside the jury's verdict and grant an emergency stay. Shirley filed a motion seeking an order of eviction and assistance on January 11, 2019. Rose opposed Shirley's motion for eviction but failed to argue that the District Court lacked the authority to enter an order for Rose's removal from the property.

¶8 On March 22, 2019, the District Court entered a judgment awarding \$35,000 in favor of Rose and ordering possession of the real property at 425 Little Basin Creek Road to Shirley. The District Court then denied Rose's pro se motion to set aside the jury's verdict, as the majority of the motion contained "a repetition of arguments that were made at trial or complaints about other arguments [Rose] believes should have been made but were not." The District Court noted that Rose's motion failed to cite either of the rules that govern a motion for a new trial under § 25-11-102, MCA, and M. R. Civ. P. 59.

¶9 On March 19, 2019, Rose filed a notice of appeal with this Court, based on the District Court's denial of her motion to set aside the jury's verdict. Then, on March 29, 2019, Rose filed a motion to stay the execution of the District Court's judgment granting possession. Accordingly, the District Court entered an order staying the execution of its judgment on April 12, 2019, pending this Court's disposition of Rose's appeal.

STANDARDS OF REVIEW

¶10 "The rule in Montana as well as in other jurisdictions, seems to be well settled that a judgment must be based on a verdict or findings of the court and must be within the issues

presented to the court.” *National Sur. Corp. v. Kruse*, 121 Mont. 202, 205-06, 192 P.2d 317, 319 (1948). “There is no principle of law more firmly established than that the judgment must follow and conform to the verdict, decision, or findings in all substantial particulars.” *National Sur. Corp.*, 121 Mont. at 206, 192 P.2d at 319 (quoting *Morse v. Morse*, 116 Mont. 504, 508, 154 P.2d 982, 984 (1945)).

¶11 Here, Rose’s post-judgment motion to the District Court failed to cite the rule governing a motion for a new trial under M. R. Civ. P. 59. Nonetheless, we discern that, as the basis for her motion included unfounded allegations of gross negligence and ineffective assistance of counsel, the motion was grounded in M. R. Civ. P. 59. As such, “[w]e review district court rulings on motions for post-judgment relief under M. R. Civ. P. 59 and 60 for an abuse of discretion.” *Davis v. Westphal*, 2017 MT 276, ¶ 10, 389 Mont. 251, 405 P.3d 73 (citing *Folsom v. Mont. Pub. Emps. Ass’n*, 2017 MT 204, ¶ 18, 388 Mont. 307, 400 P.3d 706).

DISCUSSION

¶12 In her brief to this Court, Rose asserts four issues related to the District Court’s grant of possession of the real property to Shirley, arguing that the afforded relief: (1) was neither requested nor granted in the jury’s verdict; (2) was not a type of relief provided for under § 70-33-427, MCA, as the dispute did not involve a mobile home lot; (3) was not the type of relief provided for under § 70-24-422, MCA, as there was no landlord-tenant relationship between the parties; and (4) was not in accordance with either §§ 70-33-427

or 70-24-422, MCA, because there was no predicate rental agreement as required by both statutes.

¶13 Addressing all four of Rose’s stated issues collectively, the gist of her argument suggests that the judgment entered by the District Court does not comport with the jury’s trespass finding against Rose. In other words, the jury’s finding of trespass does not predicate the entry of a judgment for possession. In Rose’s view, the District Court’s possession order expanded past the bounds of the jury’s verdict. We disagree. Our explication of the jury’s verdict, together with the applicable law and the District Court’s equitable authority, makes clear that a jury’s finding of trespass could, at a district court’s discretion, entail the grant of a right to possession.

¶14 “The law predicates the tort of trespass upon a party’s right to exclusive possession of his [or her] property. . . . The entry of another person or thing obstructs a property owner’s exclusive possession. A party need not establish actual harm or damages in a traditional trespass action.” *Tally Bissell Neighbors, Inc. v. Eyrie Shotgun Ranch, LLC*, 2010 MT 63, ¶ 38, 355 Mont. 387, 228 P.3d 1134 (internal citations omitted). “A civil trespass encompasses both the initial unauthorized entry upon the property of another *and* the subsequent failure to cease or abate the intrusion.” *Davis*, ¶ 15 (citing *Branstetter v. Beaumont Supper Club, Inc.*, 224 Mont. 20, 24, 727 P.2d 933, 935 (1986); Restatement (Second) of Torts §§ 158, 163 (Am. Law Inst. 1965) (emphasis in original)).

¶15 “It has always been the rule in this jurisdiction, . . . that where the right of possession to real estate is at issue, whether the action be based upon a claim of legal title, or upon a

mere possessory right, either party is entitled to a trial by jury.” *State v. Chilinski*, 2016 MT 280, ¶ 10, 385 Mont. 249, 383 P.3d 236 (citing *Mont. Ore Purchasing Co v. Boston & Mont. Consol. Copper & Silver Mining Co.*, 27 Mont. 536, 538, 71 P. 1005, 1006 (1903)). However, while “the action remains one at law,” “the equitable power of the court may be invoked to aid an action at law by removing, for example, some obstruction to the legal title or by preserving the property pending ascertainment of the title.” *Chilinski*, ¶ 10 (citing *Mont. Ore Purchasing*, 27 Mont. at 536, 71 P. at 1005). “[A] court sitting in equity is empowered to grant all relief necessary to the entire adjustment of the subject matter of the litigation.” *City of Whitefish v. Troy Town Pump*, 2001 MT 58, ¶ 27, 304 Mont. 346, 21 P.3d 1026; *see also* Restatement (Second) of Torts § 951 cmt. a (providing where administration of suits in law and equity have merged, “all of the various forms of [legal and equitable] relief” are available to provide complete relief as necessary on a case basis).

¶16 Where a jury finds a trespass, it is not further required to include a separate finding as to which party has a right to possession. *See McGregor v. Lang*, 32 Mont. 568, 572-74, 81 P. 343, 344 (1905) (affirming the district court’s judgment granting possession of property to the plaintiff because, although the appellant complained that the jury’s verdict did not contain a specific finding that the plaintiff was the owner or entitled to possession of the property, this Court “d[id] not understand that in a verdict a jury is expected to make any such statement in terms”). “Because the legal harm [in a common law trespass action] is the interference with another’s right to exclusive possession of property, an unauthorized

tangible presence on the property of another constitutes a trespass regardless of whether the intrusion caused any other harm.” *Davis*, ¶ 15 (citing *Tally Bissell Neighbors*, ¶¶ 37-38). While a jury may find that no money damages were incurred as a result of a trespass, disposition of complete relief could require a court to grant an equitable remedy to the injured party.

¶17 This Court has often stated that trespasses to real property, “when they consist of single acts, or occasional acts which are temporary in their nature and effect,” for which “damages as estimated by a jury [is] adequate restoration, will not be enjoined.” *Union Cent. Life Ins. Co. v. Audet*, 94 Mont. 79, 89-90, 21 P.2d 53, 56 (1933). However, equitable relief is appropriate in trespass actions where: (1) “the legal remedy is inadequate because the trespass is continuous, or because repeated acts of wrong are done or threatened, although each of these acts, taken by itself is not destructive;” or (2) “the legal remedy is inadequate because the defendant is insolvent.” *Union Cent. Life Ins. Co.*, 94 Mont. at 90, 21 P.2d at 56 (citations omitted). Taken together, the appropriateness of issuing equitable relief “should be tested in the light of the adequacy of the legal remedy.” *Union Cent. Life Ins. Co.*, 94 Mont. at 90, 21 P.2d at 56 (citing *Sankey v. St. Mary’s Female Academy*, 8 Mont. 265, 268-70, 21 P. 23, 24-25 (1889); *Lee v. Watson*, 15 Mont. 228, 233-34, 38 P. 1077, 1078 (1895); *Musselshell Cattle Co. v. Woolfolk*, 34 Mont. 126, 132-35, 85 P. 874, 875-76 (1906)); see also *Jeppeson v. Dep’t of State Lands*, 205 Mont. 282, 287, 667 P.2d 428, 430-31 (1983) (“[W]hen a party is seeking to enforce a *legal* interest in real property, then the remedy is not available unless facts and

circumstances indicate that the party's legal remedies . . . are inadequate.” (emphasis in original)).

¶18 Shirley's prayers for relief in her complaint, including “any further relief which is just and necessary,” together with her issues of law and fact as outlined in the District Court's pretrial order, present a broad request for relief. *See City of Whitefish*, ¶ 27. The District Court's grant of possession amounts to equitable relief from the continuing trespass of Rose. Rose openly asserts that a jury's finding of trespass is not coterminous with a court's granting of the right to exclusive possession. It appears that Rose intends to remain upon Shirley's real property, to which Rose has no right of occupancy. Under this circumstance, should a finding of trespass not include a judgment for the right to exclusive possession, Shirley would be left with no relief from the complained-of and proven injury. “[I]t is better for the courts to interfere by injunction when a trespasser boldly asserts his intention to continue in possession, than to cast upon the owner of the premises a resort to force, likely to result in physical combat.” *Gibbons v. Huntsinger*, 105 Mont. 562, 576, 74 P.2d 443, 450 (1937) (citation omitted). Therefore, as between use of force and a grant of equitable relief, public policy compels the latter. *See Gibbons*, 105 Mont. at 576, 74 P.2d at 450.

¶19 In *Sankey v. St. Mary's Female Academy*, 8 Mont. at 269-70, 21 P. at 24-25, we held that a grant of equitable relief was proper in a trespass action “where it is necessary to protect the applicant in the beneficial use and enjoyment of his [or her] own property.” While physical injury to the property might have been adequately remedied by money

damages, a grant of money damages for impairment of the exclusive use and enjoyment of the property in the future could not be ascertained or would not sufficiently reimburse for the interests lost. *See Sankey*, 8 Mont. at 269-70, 21 P. at 24-25. Shirley is entitled to protection in the exclusive use and enjoyment of her property. The District Court's judgment was properly issued to prevent Rose from continuing to wrongfully enter and remain upon Shirley's property. The jury found no money damages to Shirley for Rose's trespass; however, the injury complained of was irreparable and continuous, and when such is the case equitable relief by the court should be granted.

CONCLUSION

¶20 Upon a jury's finding of trespass, it is within the discretion of a district court to afford equitable relief to a party whose exclusive possession has been divested by a continuing trespasser. Therefore, where appropriate to the case at hand, a grant of possession is available as an equitable remedy to afford complete relief on a common law trespass claim where legal relief is inadequate. *See Davis*, ¶ 23. Based on the foregoing, the District Court did not abuse its discretion in denying Rose's motion to set aside the jury's verdict, as the court's judgment followed and conformed to the jury's verdict. The District Court may proceed in ruling on Shirley's motion for an order of eviction and assistance.

¶21 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE