

F I L E D

JUN 29 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**LEROY DAMMANN and
PEARL DAMMANN,**

Plaintiffs-Appellees,

vs.

**BOYER VALLEY SPRAY DRYING
COMPANY, INC.,**

Defendant-Appellant.

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Filed June 29, 1988

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Appeal from the Iowa District Court for Carroll County (28748), M.D.
Seiser, Judge.

Defendant appeals a district court order awarding plaintiffs \$6,000 for damages to their use and enjoyment of their home caused by particulate matter emitted from defendant's blood drying plant. **AFFIRMED.**

Clauz Bunz of Hansen & Bunz, Manning, and James Furey, Carroll, for defendant-appellant.

Joseph B. Reedy, Council Bluffs, for plaintiffs-appellees.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

PER CURIAM

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Defendant appeals a district court order awarding plaintiffs \$6,000 plus statutory interest for damages to their use and enjoyment of their home caused by particulate matter emitted from defendant's blood drying plant. On appeal, defendant argues: (1) the damage award was excessive and not supported by the evidence and (2) the district court erred in finding that interest on the award should accrue from the date the petition was filed. Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. We affirm.

On February 27, 1985, the plaintiffs, Leroy and Pearl Dammanns instituted this action, claiming that defendant's emissions had trespassed on their property. The Dammanns claimed, and the district court agreed, that the emissions deprived them of their full use and enjoyment of their property. A judgment of \$6,000 plus statutory interest accrued from February 27, 1985, was entered against the defendant, Boyer Valley Spray Drying Company, Inc. (Boyer).

At the outset, we note that this action was brought, tried, and decided upon the theory of trespass to realty. This appeal is not concerned with the question of liability, which was clearly settled by the trial court. Plaintiffs' appeal deals only with alleged errors in the sufficiency of the evidence to support the damage award and the accrual of interest under section 535.3 of the Iowa Code.

I. Sufficiency of the Evidence. Defendant first contends that the damage award was excessive and not supported by the evidence. The trial court found that the Dammanns did not have the free and unrestricted use of the property, based upon the following facts: During 1983 and 1984, the Dammanns had to keep the windows and doors to their house closed and could not enjoy being outdoors due to blood dust particles that settled on their property. In addition, this particulate matter came in through closed windows and was tracked into

the house. Mrs. Dammann testified that the dust problem made her a "slave to the house." Furthermore, in October and November of 1984, the Dammanns' house was splattered with blood, and there were blood droppings and blood stains within every two inches of surface or less. Boyer cleaned the house after each occasion and there was no physical damage to the house as a result of these episodes. Based upon the foregoing, the trial court awarded the Dammanns \$6,000 in damages.

Findings of fact in a law action are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence is to be considered "substantial" if "a reasonable mind would accept [it] as adequate to reach a conclusion." C.F. Sales, Inc. v. Amfert, Inc., 344 N.W.2d 543, 553 (Iowa 1983) (citation omitted).

The trial court relied on substantial evidence in finding that the Dammanns were denied the free and unrestricted use of their property due to defendant's blood drying plant. The evidence supports the trial court's finding that plaintiffs are entitled to an award of actual damages in the amount of \$6,000. Its decision is binding upon us.

In response to defendant's argument that the measure of damages was improper, we note that there are no "hard and fast" principles as to the measure of damages in trespass to realty cases. 75 Am. Jur.2d, Trespass, § 49. In the instant case, plaintiffs only submitted evidence on the loss of their use and enjoyment of their property. The trial court discussed fully in its findings of fact the deprivations suffered by the plaintiffs and made a conscious, reasoned decision that they were damaged in the amount of \$6,000.

II. Interest Accrual under Section 535.3. Defendant next contends that the court erred in taxing interest from the filing of the petition. The statutory amendment to section 535.3 of the Iowa Code increased the interest rate

on judgments to 10% and provided for the accrual of interest from the date of the commencement of the action. The supreme court has held the award of interest obligatory on the trial court. Rowen v. LeMars Mutual Insur. Co. of Iowa, 347 N.W.2d 630, 641 (Iowa 1984). This statute is applicable to all judgments entered after January 1, 1981. Janda v. Iowa Industrial Hydraulics, Inc., 326 N.W.2d 339, 344 (Iowa 1982). Since the judgment in this case was rendered after January 1, 1981, the trial court correctly granted interest from the date of the commencement of the action.

AFFIRMED.