IN THE COURT OF APPEALS OF IOWA

No. 1999-47 (9-202) / 98-1190
Filed August 27, 1999

LELAND HEISDORFFER, KENNETH HEISDORFFER, ROGER HEISDORFFER, DAVID HEISDORFFER, AND EDITH WILLIAMS,
Plaintiffs-Appellees,

vs.

T.I.P. RURAL ELECTRIC COOPERATIVE,
Defendant-Appellant.

FILED
AUG 27 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Keokuk County, James P. Rielly, Judge.

The defendant appeals from the district court's award of damages to the plaintiffs for the defendant's acts in cutting down the plaintiffs' red cedar trees. **AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH DIRECTIONS.**

Scott P. Duncan of Duncan, Green, Brown, Langeness & Eckley, Des Moines, for appellant.

Garold F. Heslinga of Heslinga, Heslinga & Dixon, Oskaloosa, for appellees.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

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MAHAN, J.

Defendant T.I.P. Rural Electric Cooperative ("Cooperative") appeals the district court's award of damages to the plaintiffs for the defendant's acts in cutting down the plaintiffs' red cedar trees. The Cooperative contends there is not substantial evidence to support the district court's finding the lumber value of the trees was $24,242.58. The Cooperative argues there is not substantial evidence to support the district court's finding they willfully removed the Heisdorffers' trees. We affirm in part, reverse in part and remand with directions.

In 1995, employees of the Cooperative cut down a grove of thirty-three red cedar trees on the plaintiffs' farmstead property. Plaintiffs Leland, Kenneth, Roger, and David Heisdorffer and their mother, Edith Williams ("Heisdorffers") subsequently filed this trespass and conversion action against the Cooperative. As the Cooperative admitted it had removed the red cedar trees, the only issues at trial were the amount of damages and whether the Heisdorffers were entitled to treble damages.

Jim Dietrich, the Cooperative's superintendent in the area, knew the owners of the Heisdorffer property. He had developed a good relationship with Edith Williams and her second husband, received permission from them before trimming, and honored their wishes to take only what was necessary to prevent interference with the power line. Dietrich had also previously discussed trimming of the trees on the property with Leland Heisdorffer.

Prior to 1995, the Cooperative trimmed trees by putting notches in them to eliminate the problem of branches encroaching on the power line. Dietrich testified that in 1995, the Cooperative adopted a clear cut program to remove trees in the county right-of-way which could potentially interfere with power lines. In 1995, it appeared to Dietrich that the Heisdorffer property was uninhabited and he knew the property had been offered for sale, so he ordered the removal of trees on the county right-of-way without contacting the known owners of the property. He took no action to ascertain the location of the boundary line by survey or by checking any courthouse records. The Cooperative's employees were then ordered to remove the trees under the mistaken belief the trees were in the public right of way.

The Heisdorffers's expert calculated a dollar-per-square-inch value for the trees and determined the total value of the red cedars removed from the property was $24,242.58. The Cooperative's expert used the same method and determined the value of the trees was $7,010. Experts also testified to diminution in value of the real property and cost to cure. Leland Heisdorffer testified the trees were of lumber quality, however, there was no testimony regarding the lumber value of the trees.

The district court found the trees had no special use value and determined the appropriate measure of damages was lumber value of the trees removed. The district court found the lumber value of the trees was $24,242.58 and the Cooperative had willfully removed the Heisdorffers' trees. The Heisdorffers were awarded treble damages for a total damage award of $72,727.74.

The Cooperative appeals.

I. STANDARD OF REVIEW. Our review is for the correction of errors at law. Iowa R. App. P. 4; *Drew v. Lionberger*, 508 N.W.2d 83, 85 (Iowa App. 1993). The district court's findings of fact have the effect of a jury verdict and are binding on us if supported by substantial evidence. *Grinnell Mut. Reinsurance Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988); *Lionberger*, 508 N.W.2d at 85. Evidence is substantial when a reasonable mind would accept the evidence as adequate to reach the same findings. *Grinnell Mut.*, 431 N.W.2d at 785; *Lionberger*, 508 N.W.2d at 85.

II. DAMAGES. The Cooperative contends there is not substantial evidence to support the district court's finding the lumber value of the trees was $24,242.58. We agree.

The district court found the trees had no special use value. Thus, the district court correctly determined the appropriate measure of damages is the lumber value of the trees removed by the Cooperative. *Bangert v. Osceola County*, 456 N.W.2d 183, 189-90 (Iowa 1990); *Lionberger*, 508 N.W.2d at 85.

However, the district court accepted the special use testimony of the Heisdorffers' expert to be the lumber value of the trees. The dollar-per-square-inch valuations by the experts in this case took into account the value of the trees as part of a windbreak in this particular location.[1] This is clearly a measure of special use value, not lumber value. *See Bangert*, 456 N.W.2d at 189 (evidence presented that

[1] The expert testified his determination of damages was based on the "value of the trees had they been standing there."

value of trees claimed to have special use should be determined by assignment of dollar-per-square-inch values or cost of replacement).

Despite the lack of lumber value evidence, the Heisdorffers argue there is substantial evidence to support the award of damages in this case because recovery may be had if there is proof of a reasonable basis from which the amount can be inferred or proximated if the uncertainty lies only in the amount of damages. *Bangert*, 456 N.W.2d at 190 (citing *Patterson v. Patterson*, 189 N.W.2d 601, 605 (Iowa 1971)). Special use damages, by definition, may be greater and not less than the commercial loss of the trees. *Id.* We find the proof in this case does not provide a reasonable basis for the inference the special use value and the lumber value of these trees are the same, thus there is not substantial evidence to support a finding the lumber value of the trees was $24,242.58. Furthermore, difficulty in ascertaining the amount of damages does not alone constitute a reason for substituting an inappropriate method. *Id.* (citing *Dealers Hobby, Inc. v. Marie Ann Linn Reality Co.*, 255 N.W.2d 131, 134 (Iowa 1977)). We find there is not substantial evidence to support the district court's findings regarding the lumber value of the trees. Therefore, we reverse the damages award and remand for a hearing to take evidence on the lumber value of the red cedars at issue in this case.

III. TREBLE DAMAGES. The Cooperative maintains the trial court erred in allowing treble damages for the willful injury of trees under Iowa Code section 658.4 (1997). We disagree.

Iowa Code section 658.4 provides as follows:

> For willfully injuring any timber, tree or shrub on the land of another, or in the street or highway in front of another's cultivated ground ... the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property.

Iowa Code § 658.4.

We have indicated in order to receive treble damages the plaintiffs must prove the defendant acted intentionally and deliberately without regard to the rights of others. *Bangert*, 456 N.W.2d at 188; *Cozad v. Strack*, 254 Iowa 734, 742, 119 N.W.2d 266, 271 (1963).

> It must be apparent we are dealing with a word of elastic use in ordinary conversation, and of legal meaning not always too well defined. These trees were cut and removed under conditions that may be said to indicate something more than mere carelessness or recklessness. Of course there was no personal malice against the owner. But there was a loose disregard for the rights of others. . . . Certainly there was something more than mere inadvertence.

Lionberger, 508 N.W.2d at 86. The questions of intent, purpose and motive are for the fact finder. *Bangert*, 456 N.W.2d at 188; *Cozad,* 254 Iowa at 742, 119 N.W.2d at 272.

The district court found the Cooperative's removal of the Heisdorffers' trees was willful within the meaning of Iowa Code section 658.4. Dietrich knew the trees belonged to the Heisdorffers and had previously spoken to them before trimming trees in the past. He did not speak to the Heisdorffers before ordering the removal of the trees, nor did he take other action to determine the location of the property lines. After review of the record, we conclude there is substantial evidence to support a

finding the Cooperative willfully removed the Heisdorffers' trees. It was not error to award treble damages.

For these reasons, we affirm in part, reverse in part, and remand for a hearing to determine the lumber value of the trees.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH DIRECTIONS.