

[Cite as *Hartman v. Ohio Dept. of Transp.*, 2008-Ohio-3628.]

Court of Claims of Ohio

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HARRY W. HARTMAN

Plaintiff

v.

OHIO DEPARTMENT OF
TRANSPORTATION

Defendant

[Cite as *Hartman v. Ohio Dept. of Transp.*, 2008-Ohio-3628.]

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Case No. 2006-03150

Judge Joseph T. Clark

JUDGMENT ENTRY

{¶1} On December 20, 2007, the court found that defendant trespassed upon plaintiff's property during its mowing operations performed in 2003 and 2004. Defendant twice mowed down a hedgerow of bushes and small trees that had served as a noise barrier and provided plaintiff with privacy for over 20 years. Accordingly, judgment was rendered in favor of plaintiff. The case proceeded to trial on April 30, 2008, on the issue of damages.

{¶2} At the damages trial, plaintiff offered compelling and credible testimony detailing how the near decimation of the hedgerow and the resulting loss of privacy has negatively affected his day-to-day activities. Plaintiff opined that only 20 to 30 percent of the vegetation that was mowed has regrown. According to plaintiff, the hedgerow needs to be at least ten feet high and the foliage needs to be intertwined both to provide privacy and to prevent intrusion upon his property. Plaintiff explained that the abrupt loss of privacy has had a profound effect on his mental and physical health and that he continues to struggle with this situation daily.

{¶3} "The measure of damages a landowner may recover for a trespassory cutting of trees on his property includes reasonable replacement costs where the trees served some specific purposes, such as a sight or sound barrier isolating the property from an adjoining tract of land." *Hecker v. Greenleaf Village Dayton Financial Services Corp.* (Feb. 7, 1994), Warren App. No. CA93-05-041, citing *Denoyer v. Lamb* (1984), 22 Ohio App.3d 136, 139-140.

{¶4} Defendant maintains that plaintiff has not provided any statement verifying the replacement cost of the naturally-occurring vegetation. At best, plaintiff advised that one way to attempt to replace the vegetation would be to plant Forsythia bushes, and that each plant would cost approximately \$20. Nevertheless, plaintiff opined that even with extensive replanting, it would be several years before the foliage would approximate an impenetrable thicket similar to the character of the vegetation destroyed by defendant. Indeed, plaintiff contends that he may have to install chain link fencing to provide the level of privacy and security he enjoyed prior to defendant's incursion onto his property.

{¶5} Upon review, the court does not find defendant's arguments to be well-taken. "In Ohio, the general rule is that the measure of damages for injury to personal

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property is the difference in market value of the property immediately before and immediately after the injury. Where the property is totally destroyed, the measure of damages is the reasonable market value of the property immediately before its destruction. However, '[w]hen market value cannot be feasibly obtained, a more elastic standard is resorted to, sometimes called the standard of value to the owner.' This value is determined via consideration of a number of factors including value to the owner, original cost, replacement cost, salvage value, if any, and fair market value at the time of loss. In determining this value, a court may consider the owner's opinion '* * * which will be some evidence of the actual value, though not conclusive.'" *Cooper v. Feeney* (1986), 34 Ohio App.3d 282, 283-284. (Additional citations omitted.)

{¶6} In addition, "an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property," *City of Cincinnati v. Banks* (2001), 143 Ohio App.3d 272, 291; and "the owner may establish the market value differential by offering an opinion of the value of the property both before and after the injury." *Rospert v. Old Fort Mills, Inc.* (1947), 81 Ohio App. 241. See also *Leppla v. Sprintcom Inc.*(2004), 156 Ohio App.3d 498, 509.

{¶7} Because the market value to restore vegetation to the condition appreciated by plaintiff cannot be feasibly obtained, the court finds that the appropriate standard is that of the value to the owner.

{¶8} Although plaintiff estimated that his damages were at least \$10,000 to \$15,000, his calculations included the cost of repairs to antique tractors stored on his property that had been vandalized. The court finds that plaintiff failed to prove that such damage was proximately caused by ODOT's negligence.

{¶9} Based upon the testimony and evidence produced at plaintiff's damages trial, the court finds that plaintiff has proven, by a preponderance of the evidence, that he is entitled to an award in the total amount of \$5,025, which includes the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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JOSEPH T. CLARK
Judge

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SJM/cmd
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