

[Cite as *Stevens v. Joliet*, 2009-Ohio-3836.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JAMES AND PHORTIA STEVENS

Plaintiffs-Appellants

-vs-

JENNY JOLIET, ET AL.

Defendants-Appellees

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 09CA0001

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 07CVF2219

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

July 29, 2009

APPEARANCES:

For Plaintiffs-Appellants

For Defendants-Appellees

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Farmer, J.

{¶1} On August 3, 2007, appellants, James and Phortia Stevens, filed a complaint against appellee, Jenny Joliet, regarding a water well shared by the parties on adjacent properties. Appellants claimed trespass and conversion, and sought compensatory damages, punitive damages, and attorney fees. On November 29, 2007, appellants filed an amended complaint adding appellee, Deborah Joliet, and various John Does.

{¶2} On February 26 and 27, 2008, appellees filed an answer and counterclaim for unjust enrichment and an amended answer and counterclaim for unjust enrichment, respectively.

{¶3} A bench trial commenced on September 26, 2008. By judgment entry filed December 4, 2008, the trial court found in favor of appellants as against appellees in the amount of \$500.00 plus interest and costs. The trial court denied appellants' request for punitive damages and attorney fees.

{¶4} Appellants filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE TRIAL COURT ERRED AS THE AMOUNT OF THE AWARD WAS INSUFFICIENT AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

II

{¶6} "THE TRIAL COURT ERRED AS THE TYPE AND AMOUNT OF THE AWARD WAS AGAINST THE SUFFICIENCY OF THE EVIDENCE."

III

{¶7} "THE TRIAL COURT ERRED AS TO THE DENIAL OF PUNITIVE DAMAGES."

IV

{¶8} "THE TRIAL COURT ERRED AS TO THE DENIAL OF PLAINTIFF'S ATTORNEY FEES.

V

{¶9} "THE TRIAL COURT ERRED BY NOT REQUIRING DEFENDANT'S TO REROUTE THE ELECTRIC BACK TO PLAINTIFFS' PROPERTY."

VI

{¶10} "THE TRIAL COURT ERRED BY NOT REQUIRING DEFENDANTS TO REMOVE THE PUMP HOUSE DEFENDANTS INSTALLED, OR IN THE ALTERNATIVE AWARDING THE PUMP HOUSE TO PLAINTIFFS."

{¶11} At the outset, we note on page 19 of appellees' pro se brief filed March 19, 2009, there is a copy of a canceled check from appellees to appellants. The check in the amount of \$657.96 was written on December 29, 2008 and states "Settlement of claim/Case # 07CVF2219," the underlying case number herein. The check was canceled on January 29, 2009, after the filing of appellants' notice of appeal on January 5, 2009. In its December 4, 2008 judgment entry which appellants are appealing from, the trial court found in favor of appellants "in the amount of \$500.00, plus interest at the statutory rate, and the costs of this action."

{¶12} Because it appeared that accord and satisfaction had settled this case, we decided to treat appellees' brief as a motion to dismiss the appeal and so noticed

appellants. See, Judgment Entry filed June 15, 2009. Pursuant to App.R. 15(A), we ordered appellants to respond within ten days from the date of the judgment entry. As of June 29, 2009, appellants have not filed a response. Therefore, we accept the copy of the canceled check as accord and satisfaction of the claim against appellees.

{¶13} This appeal is dismissed.

By Farmer, J.

Edwards, P.J. and

Delaney, J. concur.

s/Sheila G. Farmer

s/Julie A. Edwards

s/Patricia A. Delaney

JUDGES

SGF/db 0625

