

COA Opinion: Treble damages are allowed for cutting or carrying away another's grass, not for poisoning it.

24. March 2010

On March 23, 2010, the Court of Appeals issued an opinion authored by Judge Sawyer in *Persell v. Wertz*, No. 288858, partially reversing a jury verdict in favor of the plaintiff homeowners against their next-door neighbor for trespass, nuisance, defamation, and infliction of emotional distress. The Court dismissed three of the plaintiffs' four trespass and nuisance claims and remanded for a new trial on the plaintiffs' claim of infliction of emotional distress, because it was impossible to determine the extent to which the jury relied on the dismissed claims in concluding that the defendant inflicted emotional distress or in assessing damages.

After these two neighbors had amicably agreed to create an artificial pond extending onto both of their properties, their relationship degenerated. The plaintiffs eventually filed a six-count complaint against the neighbor for spraying their lawn and killing their grass with an herbicide, constructing a two-strand wire fence across the pond, and making defamatory statements about plaintiff David Perell to third parties.

The Court dismissed their trespass and nuisance claims related to the wire fence because they depended upon plaintiffs having riparian rights to the entire pond. Under Michigan law, plaintiffs did not have riparian rights to this artificial body of water, which was less than five acres in size. The Court also dismissed the plaintiffs' claim for treble damages under MCL § 600.2919(1)(c) for killing their lawn grass. While the statute specifically allows treble damages against any person who "cuts down or carries away any grass," it says nothing about poisoning grass. However, the Court affirmed the \$750 award for common-law trespass for poisoning the plaintiffs' grass.

Because the claims related to placing a fence across the pond were invalid, the jury should not have relied on such evidence in determining whether the defendant had inflicted emotion distress or the amount of damages that should be awarded. The Court therefore invalidated the jury's verdict and remanded for a new trial excluding evidence of the wire fence, because it was impossible to determine whether the jury had relied on that evidence.