

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

Michael MARTIN, et al., Respondents,
v.
David EISFELD, Appellant.

No. C7-93-1842

1994 WL 200595

May 24, 1994.

Appeal from District Court, Murray County; David E. Christensen, Judge.

Rodney C. Hanson, Leeann Clayton, Hulstrand Anderson Larson & Hanson, Willmar, for respondents.

Gregory E. Kuderer, Erickson, Zierke, Kuderer, Madsen & Wollschlager, P.A., Fairmont, for appellant.

Considered and decided by AMUNDSON, P.J., and FORSBERG and CRIPPEN, JJ.

UNPUBLISHED OPINION

AMUNDSON, Judge.

*1 A jury held appellant liable for damages for cutting down trees and plants on respondents' property. Appellant argues the trial court erred by: (1) failing to instruct the jury on the proper measure of damages; (2) excluding evidence; and (3) failing to submit a special verdict interrogatory to the jury concerning his defense to treble damages. We affirm.

FACTS

Appellant David Eisfeld rents farmland surrounding respondents' property. A portion of respondents' property contained a grove of trees that extended onto the property rented by appellant. Respondents used the trees as a snow and wind break. Respondents also had lilac plants on their property.

Appellant received permission to clear out the trees on the property he rented so that he could farm the land more fully. Respondents commenced this

action alleging that appellant, without permission, came onto their property and cut down or otherwise injured lilac plants and/or poplar trees.

Appellant admitted conducting clearing activities but testified that he never went onto respondents' property and never cut down or ran over any trees. The jury found that appellant did cut down the lilac plants and/or trees and awarded respondents \$4000 in damages. The trial court awarded treble damages pursuant to Minn.Stat. § 561.04 (1990). The court denied appellant's new trial motion and this appeal followed.

DECISION

I. Jury Instructions

Appellant argues the trial court erred in instructing the jury that the proper measure of damages, before trebling, was the restoration cost rather than the diminution in value of the property. Trial courts have broad discretion in determining jury instructions. *State Farm Fire & Casualty Co. v. Short*, 459 N.W.2d 111, 113 (Minn.1990).

In *Baillon v. Carl Bolander & Sons*, 306 Minn. 155, 157, 235 N.W.2d 613, 614 (1975), the supreme court adhered to the longstanding rule that the proper measure of damages for destroyed trees is the difference in the land value resulting from the damage to the trees. In *Rector, Wardens & Vestry of St. Christopher's Episcopal Church v. C.S. McCrossan, Inc.*, 306 Minn. 143, 144-45, 235 N.W.2d 609, 610 (1975), however, the court held it was proper for the plaintiffs to rely on replacement cost in submitting the damage issue to the jury. The court stated the trees, unlike the trees in *Baillon*, which were “for the most part, ill-formed, unattractive, and of little intrinsic value,” had “substantial value for shade and ornamental purposes and acted as a sound barrier and a screen from highway traffic.”¹ *Id.* at 144, 235 N.W.2d at 610.

In the present case, it would have been preferable for the trial court to have instructed the jury on both theories of damages. Cf. *Muehlstedt v. City of Lino Lakes*, 473 N.W.2d 892, 899 (Minn.App.1991), (trial court properly allowed evidence regarding both the diminution in the property's value and the replacement value of the destroyed trees), pet. for rev. denied (Sept. 25, 1991). We do not, however, under the facts of this case find the lack of a diminution in

¹ The court relied in part on the Restatement of Torts which provides that damages shall be determined by the “difference between the value of the land before the harm and the value after the harm or the cost of restoration” at “the plaintiff's election.” *McCrossan*, 306 Minn. at 147, 235 N.W.2d at 611 (quoting Restatement of Torts § 929) (emphasis added).

value instruction prejudicial. See *Lewis v. Equitable Life Assurance Soc'y of the United States*, 389 N.W.2d 876, 885 (Minn.1986) (errors in the jury instructions are not a basis for reversal unless the error was prejudicial).

*2 There was evidence introduced that, in addition to the trees and lilac plants serving as a snow and wind break, they had aesthetic value, provided privacy and served as a sound barrier. Thus, the cost of replacement was not unreasonable or excessive in relation to the damage to the land itself. See *McCrossan*, 306 Minn. at 150, 235 N.W.2d at 613. Therefore, we conclude the trial court did not abuse its discretion by instructing the jury only on the replacement cost of the trees and plants.²

II. Exclusion of Evidence

Appellant argues the trial court erred in failing to allow testimony on the wholesale cost of replacing the trees.

Whether evidence is admissible is left to the sound discretion of the trial court. In *re Conservatorship of Torres*, 357 N.W.2d 332, 341 (Minn.1984). A trial court's ruling on the relevancy of evidence will only provide a basis for reversal where the trial court's discretion has clearly been abused. *Jenson v. Touche Ross & Co.*, 335 N.W.2d 720, 725 (Minn.1983).

There was no evidence introduced that respondents would be able to purchase the trees and plants at their wholesale cost. Therefore, we agree with the trial court that the wholesale cost was not relevant. Rather, the cost respondents would actually have to pay to replace the trees and plants was relevant. Accordingly, the trial court did not abuse its discretion in disallowing the testimony.

III. Treble Damages

Trespassers are liable for treble damages for the unlawful cutting down of trees unless the trespass was "casual or involuntary." Minn.Stat. § 561.04 (1990). Appellant asserts a good faith mistake of fact occurred as to the clearing activities. Thus, appellant argues the trial court erred in failing to submit a special interrogatory to the jury concerning whether his trespass was "casual or involuntary."

² We note that this result is consistent with courts throughout the country which are placing a greater emphasis on the rights of a property owner to "enjoy the aesthetic value of trees and shrubbery, notwithstanding the fact that they may have little commercial value." *McCrossan*, 306 Minn. at 146, 235 N.W.2d at 610.

A trial court judge has broad discretion in submitting special interrogatories to the jury. *Zobel & Dahl Constr. v. Crotty*, 356 N.W.2d 42, 45 (Minn.1984). Where there is evidence reasonably tending to prove the existence of a factual issue, the court may submit the issue to the jury. *Id.*

Ordinarily, the factfinder should determine whether the cutting down of trees is “casual or involuntary.” See *Lawrenz v. Langford Elec. Co.*, 206 Minn. 315, 324, 288 N.W. 727, 731 (1939). In this case, however, the trial court noted that appellant's defense was that he “absolutely, and with no doubt” did not cross the line onto respondents' property and did not damage any trees or plants. The court viewed appellant's defense as an all-or-nothing defense, i.e. appellant did not trespass on respondents' property and damage the trees and lilac plants, or he did so intentionally.

Therefore, we hold that under this unique set of circumstances, the jury did not need to determine whether appellant's actions were “casual or involuntary.” Accordingly, the trial court did not abuse its discretion in refusing to submit appellant's requested special interrogatory to the jury.

*3 We deny respondents' request for attorney fees incurred in this appeal.

Affirmed.