Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-547

JANUARY TERM, 2007

George and Carole Trickett	}	APPEALED FROM:
	}	
v.	}	Addison Superior Court
	}	
Peter and Carla Ochs	}	
	}	DOCKET NO. 267-11-00 Ancv

Trial Judge: Christina Reiss

In the above-entitled cause, the Clerk will enter:

Plaintiffs appeal the damages portion of a jury verdict in their favor and also challenge the terms of a permanent injunction entered by the superior court.[1] We affirm.

Defendants have operated an orchard on their property since 1965.[2] The orchard operations include harvesting and packing apples from over 10,000 trees. The nature, scope and intensity of the orchard operations have changed over the years in response to changes in the market. Plaintiffs purchased a residence on the adjoining property in 1992. The home was built in 1835 and has been used as a residence since that time. Plaintiffs have made improvements to the structure, and the home has undisputed historical value. As a result of increasing activity on the orchard, plaintiffs began to experience problems with noise, fumes and lights associated with the orchard operations. These problems emanated primarily from the orchard-packing house, which is close to plaintiffs= home. Plaintiffs complained to defendants, but the parties were unable to reach a compromise.

Accordingly, plaintiffs brought this action for trespass and nuisance. The claims were addressed in two stages. First, a jury trial was held to decide the issue of liability and past damages. Second, a separate hearing was held for the court to determine whether plaintiffs were entitled to an injunction against certain operations of the orchard and, if so, of what scope. Both the jury and the court found that plaintiffs had established defendants= liability for nuisance and trespass. Specifically, in its findings, the superior court concluded that plaintiffs= Aability to sleep, garden, do paperwork, and entertain has been substantially impacted by noise, fumes, lights and disturbances from the packing house.@ The court also found that defendants had twice emptied one of their ponds in a manner causing it to drain onto plaintiffs= property and deposit silt in plaintiffs= pond. In addition, the court noted that defendant Peter Ochs had harassed plaintiffs on at least two occasions, and that defendants were generally not receptive to making changes in their operations in response to plaintiffs= complaints.

The jury entered verdicts of $500 for trespass, $500 for nuisance, and awarded $2000 in punitive damages. At the subsequent injunction hearing, the superior court concluded that plaintiffs were entitled to injunctive relief. Accordingly, the court entered a twelve point injunction, which included limits on the orchard=s hours of operation, specific limits on the use of motorized vehicles, limits on the use of lights in excess of 100

watts, and a prohibition against discharging water onto plaintiffs= property. The court also determined, however, that some of plaintiffs= requests were Adrastic@ and would have the effect of shutting down the orchard business. For example, plaintiffs requested that the packing house either be shut down or moved beyond a 1,000 foot buffer zone within which no orchard activity would take place. In the court=s view, such measures were not necessary to address plaintiffs= concerns and the court declined to implement them.

Plaintiffs filed post-trial motions for additur, a new trial on damages, and to alter the judgment on the basis that the damages awarded were patently inadequate in light of the evidence presented at trial and the contention that the injunction did not go far enough. The superior court denied these motions, and plaintiffs filed this appeal.

On appeal, plaintiffs argue that (1) the jury=s award of damages was grossly inadequate and (2) the permanent injunction entered by the superior court failed to grant adequate relief.

We first address plaintiffs= challenge to the jury=s damages verdict. The jury=s award of damages Amust stand if the verdict can be justified on any reasonable view of the evidence.@ Trombley v. Sw. Vt. Med. Ctr., 169 Vt. 386, 398 (1999). Further, we view the evidence Ain the light most favorable to the verdict,@ and will reverse the superior court=s decision whether to grant a new trial only if the court abused its discretion. Irving v. Agency of Transp., 172 Vt. 527, 528 (2001) (mem.).

Regarding the trespass claim, plaintiffs argue that it was uncontested that defendants twice discharged water and silt onto plaintiffs property and plaintiffs spent $1000 repairing the damage from the first incident. Accordingly, in plaintiffs= view, the minimum amount of damages for trespass should be $2000. It is apparent that the jury did not accept wholesale plaintiffs= claimed damages resulting from the drainage of water onto their property. At the same time, the award of $500 is not so unrelated to the evidence presented at trial as to be patently inadequate. Plaintiffs= only evidence in support of damages resulting from the trespass was testimony regarding the approximate cost of repairing their pond after the first drainage incident. Nothing required the jury to accept that this amount was accurate or justified, that defendants were responsible for the entire amount, or that the same amount was incurred after both drainage incidents. Plaintiffs have not presented a basis for disturbing the jury=s award.

Regarding the damages for nuisance, plaintiffs have even less of a basis for challenging the verdict. Plaintiffs assert that, because the jury had to find that defendants Asubstantially interfered@ with plaintiffs= use of their property, that the damages award must be Asubstantial@ as well. This argument does not sound in logic or in law. At trial, plaintiffs declined to place a monetary value on the past impact of the nuisance.[3] This left the jury wide latitude to determine the appropriate level of damages to compensate plaintiffs for the impact of the orchard=s activities on their ability to enjoy their home. Cf. Brown, Inc. v. Vt. Justin Corp., 148 Vt. 192, 196 (1987) (distinguishing between Athose cases where damages can be measured in money and those cases which call for the trier of fact to translate inchoate qualities into dollar damages@). Under the circumstances, we cannot conclude that there was no reasonable basis for the jury=s award.

Plaintiffs also challenge the court=s injunction. A trial court has broad discretion to determine the appropriate scope of an injunction and we will not disturb the injunction on appeal absent an abuse of that discretion. See Richardson v. City of Rutland, 164 Vt. 422, 427 (1995) (discussing injunction operating between private landowners). Plaintiffs argue that the court improperly discounted the gravity of the harm based on the jury=s inadequate damages award. In fact, the superior court performed its own analysis of the gravity of the harm suffered by plaintiffs, examining the factors listed in Restatement (Second) of Torts ' 827 (1979) (the extent of the harm involved, the character of the harm involved, the social value that the law attaches to the type of use or enjoyment invaded, the suitability of the particular use or enjoyment invaded to the character of the locality, and the burden on the person harmed of avoiding the harm). In any case, for the reasons discussed above, the jury=s assessment of the harm to plaintiffs= interests is not per se inadequate.

Regarding the relative social value of the use of the two properties, plaintiffs assert that defendants= activities are not statutorily protected (in that this Court previously concluded it was not protected by the Right to Farm Act), while plaintiffs= residence has recognized historic value. This argument is to some extent a misdirection. The orchard need not be statutorily protected to have social and economic value. Plaintiffs received injunctive relief tailored to their complaints. While it is true that the court declined to implement some of the more drastic restrictions advocated by plaintiffs, plaintiffs conceded that the additional measures they requested would have forced the orchard out of business. A[I]njunctive relief should be no more burdensome to the defendants than necessary to provide complete relief to the plaintiffs.@ Richardson, 164 Vt. at 427 (quotation and citation omitted).

The superior court appropriately A[w]eigh[ed] the evidence, the parties= competing interests, the balance of hardships, the effect of injunctive relief, and the social value of the parties= activities,@ and tailored an injunction to allow plaintiffs reasonable enjoyment of their home. Plaintiffs have not shown that the court abused its discretion.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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[1] This is the second time the parties appear before this Court on appeal. In their first appeal, plaintiffs challenged the superior court=s decision dismissing the action as barred by the Right to Farm Act, 12 V.S.A. " 5751-5753, or, alternatively, by operation of collateral estoppel. We determined that neither bar applied, and reversed and remanded to the superior court for trial of plaintiffs= claims of trespass and nuisance. See Trickett v. Ochs, 2003 VT 91, &39, 176 Vt. 89.

[2] These are the facts as found by the superior court following the injunction hearing. The parties agreed that the court should base its findings on the evidence presented at the jury trial.

[3] Plaintiffs only sought to recover past damages before the jury; plaintiffs sought to have their claims for prospective damages addressed by the court through an injunction.