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FILED
Dec 09 2009, 9:36 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

ELIZABETH BAUMGARDNER	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A01-0905-CV-227
	)	
JERRY L. HAMBAUGH and	)	
MADONNA HAMBUAGH,	)	
	)	
Appellees-Plaintiffs.	)	
	)	

APPEAL FROM THE CLARK CIRCUIT COURT
The Honorable Daniel F. Donahue, Special Judge
Cause No. 10C01-0706-PL-224

December 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Elizabeth Baumgardner appeals the trial court's award of treble damages, costs, and attorney's fees to Jerry L. and Madonna Hambaugh pursuant to the Indiana Crime Victim's Relief Act in a case in which Baumgardner removed trees and a fence located on the Hambaughs' property. Specifically, Baumgardner contends that the trial court's findings do not support its conclusions that she had the requisite *mens rea* to commit the criminal offenses of trespass and conversion, and thus, the Crime Victim's Relief Act is inapplicable and the trial court was without authority to award treble damages, costs, and attorney's fees. Concluding that the trial court found that Baumgardner had the requisite *mens rea*, we affirm.

Facts and Procedural History

A chain-link fence and trees were located along the boundary line between Baumgardner's property and the Hambaughs' property. Jerry spoke with Baumgardner after finding "stakes in [his] yard." Tr. p. 92. Baumgardner told him that she had a survey done, the stakes marked the proper boundary line between the two properties, and she was planning on cutting down the trees and constructing a new fence. Jerry told Baumgardner that her survey was wrong, the stakes did not mark the proper boundary line, and he would get his own survey showing the correct boundary line. Jerry thereafter obtained a survey from David Blankenbeker. When asked if there was any portion of the fence that was located exclusively on Baumgardner's property, Blankenbeker responded, "You know we would be splitting hairs down to the inch or so. It was so close to the

line." *Id.* at 13. Blankenbeker also discussed the survey done for Baumgardner by Robert Isgrigg:

> We found his pins that he had set on the, what he contended, I guess, was the Baumgardner's rear property corners, which would be also Mr. Hambaugh's line, and we found those pins, measured them, and found them to be one point two feet off in one case, and one point seven feet off in another over onto the Hambaugh property.

Id. at 15. When Jerry provided Baumgardner with a copy of Blankenbeker's survey, Baumgardner responded that she was going to cut the trees down regardless of what his survey indicated. Within a couple of weeks after Jerry presented Baumgardner with his survey, Baumgardner had removed the fence and eleven trees.

The Hambaughs filed a multiple-count complaint against Baumgardner and sought to enhance damages under the Crime Victim's Relief Act, which provides in pertinent part:

> If a person suffers a pecuniary loss as a result of a violation of IC 35-43, IC 35-42-3-3, IC 35-42-3-4, or IC 35-45-9, the person may bring a civil action against the person who caused the loss for the following:
>
> (1) An amount not to exceed three (3) times the actual damages of the person suffering the loss.
>
> (2) The costs of the action.
>
> (3) A reasonable attorney's fee.

Ind. Code § 34-24-3-1. Criminal trespass and conversion are within the ambit of the Crime Victim's Relief Act. A person commits criminal trespass when he or she:

> (1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent; [or]
>
> * * * * *
>
> (4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent.

Ind. Code § 35-43-2-2(a). A person commits criminal conversion when he or she:

> knowingly or intentionally exerts unauthorized control over property of another person.

Ind. Code § 35-43-4-3(a).

Pursuant to the Hambaughs' request before trial, the trial court made findings of fact and conclusions of law. Among its conclusions of law were the following:

> 21. Baumgardner did not have a contractual interest in the Hambaugh Property, including without limitation, the chain link fence and any trees growing in the line of such fence.
> 22. Baumgardner knowingly and intentionally interfered with the Hambaughs' use of the Hambaugh Property by removing the chain link fence, trees growing in the line of the fence, and trees on the Hambaugh side of the fence, all without consent of the Hambaughs.

Appellant's App. p. 19. It further concluded that Baumgardner had committed criminal trespass and conversion and consequently entered judgment for the Hambaughs. The damages, which constituted the value of the removed fence and trees and the cost of removing the remaining stumps, were tripled by the trial court for a total damage award of $20,019. It also awarded the Hambaughs costs and attorney's fees, for a total judgment of $24,569. Baumgardner now appeals.

Discussion and Decision

Baumgardner contends that the trial court's findings do not support its conclusions that she had the requisite *mens rea* to commit the criminal offenses of trespass and

conversion, and thus, the Crime Victim's Relief Act is inapplicable and the trial court was without authority to award treble damages, costs, and attorney's fees.[1]

Where a trial court makes findings of fact and conclusions of law pursuant to Indiana Trial Rule 52, we engage in a two-tiered standard of review. *Mueller v. Karns*, 873 N.E.2d 652, 657 (Ind. Ct. App. 2007), *reh'g denied*. We determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will not reverse the trial court's findings or the judgment unless clearly erroneous. Ind. Trial Rule 52(A); *Mueller*, 873 N.E.2d at 657. In conducting this review, we neither reweigh evidence nor judge witness credibility, and we consider the evidence in the light most favorable to the judgment. *Id.* If a trial court mischaracterizes findings as conclusions or vice versa, we look past these labels to the substance of the judgment. *Fraley v. Minger*, 829 N.E.2d 476, 482 (Ind. 2005).

The *mens rea* of both criminal trespass and conversion is "knowingly or intentionally." In its conclusions of law, the trial court found that "Baumgardner knowingly and intentionally interfered with the Hambaughs' use of the Hambaugh Property by removing the chain link fence, trees growing in the line of the fence, and trees on the Hambaugh side of the fence, all without consent of the Hambaughs." Appellant's App. p. 19 (Conclusion No. 22). As we are not bound by the trial court's characterization of findings as conclusions, we decide that the conclusion section of the

[1] The trial court's order concluded that the Hambaughs were the legal owners of the fence and that even if any portion of the fence was on Baumgardner's property, "the Hambaughs were the legal owner of the fence and any trees growing within such fence row by adverse possession." Appellant's App. p. 18. Baumgardner does not contest this conclusion.

trial court's order set forth specific findings that Baumgardner had the requisite *mens rea* for criminal trespass and conversion.[2] The Crime Victim's Relief Act is thus applicable and the trial court had the authority to award treble damages, costs, and attorney's fees.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.

[2] To the extent Baumgardner contends the evidence is insufficient to support the findings that she had the requisite *mens rea*, we note that Baumgardner removed the fence and trees even after Jerry contested the accuracy of her survey and presented his survey showing that the stakes did not mark the property line. Although Baumgardner points out that Madonna voiced no objection when she informed her of plans to install a new fence, Madonna testified that she had no recollection of any such conversation. To the extent that Baumgardner and Madonna offered differing accounts, it was within the province of the trial court as factfinder to decide whom to believe.