

FILED

APR 15 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 30827-8-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

EAGER BEAVER, INC., a Washington corporation,
and SARA GRONLUND

Appellants

v.

BULLDOG TRUCKING & EXCAVATION, LLC,
A Washington limited liability company;
CINDY and "JOHN DOE" BEAVERT, individually, and
MICHAEL and "JANE DOE" SUTTON, individually

Respondents

APPEAL FROM THE SUPERIOR COURT
FOR CHELAN COUNTY
JUDGE T. W. SMALL, JR.

BRIEF OF RESPONDENT

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A. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Do the trial court's Finding of Fact support its Conclusions of Law and Judgment?

B. STANDARD OF REVIEW

The Appellants, Eager Beaver, Inc., a Washington corporation, and Sara Gronlund, did not submit a Verbatim Transcript of the Record from the trial court. Appellants argue the facts were essentially undisputed. That assertion is far from accurate.

Division II of the Court of Appeals has stated:

By "undisputed" fact, we mean a fact disclosed in the record or pleadings that the party against whom the fact is to operate either has admitted or has conceded to be undisputed.

Heriot v. Lewis, 35 Wash.App. 496, 502, 668 P.2d 589 (1983).

The facts relating to the application of RCW 4.24.630 to the conduct of Respondents, Bulldog Trucking and Sutton, are highly disputed. That is graphically demonstrated by an examination of the Statement of the Case contained in Appellant's brief as compared to the Findings of Fact (CP 573-580) as entered by the trial court.

Respondent alleges this court's review of this case is limited to a determination as to whether the Findings of Fact (CP 573-580) support the trial court's Conclusions of Law and Judgment.

We note initially that Elledge has not submitted a verbatim transcript of the record below; nor has he assigned error to any of the trial court's findings. The findings are therefore verities and binding on appeal . . . consequently our review is limited to determining whether the findings support the trial court's conclusions of law and judgment.

Haberman v. Elledge, 42 Wash.App. 744, 745-746, 713 P.2d 746 (1986).

C. STATEMENT OF CASE

Appellants' statement of the case is of no use to this court and is inappropriate for consideration in many respects.

The Appellants attempt to reargue their case. The claims were tried to the trial court on the issues of damages and applicability of RCW 4.24.630. As reflected in the Findings of Fact, there were 11 witnesses initially sworn under oath that presented testimony to the trial court at trial. (CP 573-580).

After the court's initial decision was rendered, both sides sought reconsideration in regard to the applicability of RCW 4.24.630 to the Defendants Bulldog Trucking and Sutton. (CP 393-399 and CP 401-402). In making its determination upon reconsideration, the trial court held an additional evidentiary hearing at which both Don Eldredge, the principal of Bulldog Trucking & Excavation, LLC, and the Defendant, Michael Sutton, testified.

The trier of fact in this case, the trial court, has considered the evidence before it and has made its Findings of Fact. Appellants did not assign error to any of the court's Findings of Fact. They are therefore binding upon the Appellants.

Even more dispositive of most issues here is Appellant's failure to provide a verbatim report of proceedings. The Findings of Fact are thus verities and binding upon this court.

Morris v. Woodside, 101 Wn.2d 812, 816, 682 P.2d 905 (1984).

The Appellants in their brief referred to declarations of various parties and non-parties. Those declarations were submitted to the court in regard to preliminary matters in this case and were not admitted as evidence at trial.

D. ARGUMENT

A number of the trial court's Findings of Fact, which are verities for the purposes of this appeal, completely contradict Appellants' arguments that RCW 4.24.630 applies to the Respondents, Bulldog Trucking and Sutton. (CP 573-580). The trial court's handwritten addition to Finding of Fact No. 8 is as follows:

Defendants Bulldog and Sutton did not know or have reason to know they lacked authorization to scrap the yarder, but reasonably believed Beavert did. (CP 573-580).

In Finding of Fact No. 14, the court specifically found that neither

Bulldog Trucking & Excavation, LLC nor Michael Sutton was aware the yarder at issue was parked on United States Forest Service Land. (CP 573-580). The court found they believed the yarder was parked on Cindy Beavert's property and it is undisputed that Cindy Beavert was the party asking Bulldog Trucking and Michael Sutton to remove the yarder. The trial court also, in Finding of Fact No. 14, found that Michael Sutton was given a key to a locked gate by Cindy Beavert which locked gate led to the location of the yarder. Therefore, the court determined that Bulldog Trucking and Sutton were justified in their belief the yarder was located on Cindy Beavert's property. (CP 573-580). If the yarder had been parked on Cindy Beavert's property, the parties agree RCW 4.24.630 would not apply (see Appellants' Brief, Section V(B), Page 9).

In Finding of Fact No. 18, the trial court described the condition of the yarder in July of 2008 when the yarder was cut up for scrap.

The court attached an additional Conclusion of Law which Respondents suggest contains additional Findings of Fact relevant to this inquiry. That Exhibit "A" provides:

Mr. Eldredge had no reason to know his company lacked authorization. The yarder was accessed through Ms. Beavert's locked gate, no indicia of ownership were present, and the yarder's condition suggested it had been abandoned. (CP 573-580).

The trial court in Finding of Fact No. 8 and the Exhibit "A" attached as additional Conclusions of Law (CP 573-580) clearly and unequivocally found the Respondents, Bulldog Trucking and Sutton, did not know, nor should they have known they lacked authorization to scrap the yarder. Appellants' entire appeal is premised on their arguments to the contrary. See Appellants' brief.

Sutton knew or should have known he lacked authorization to destroy it.

See Appellant's Brief, Section V(B) at page 9.

Further:

Each acted wrongfully, as each knew or should have known they lacked authorization to destroy the yarder.

See Appellants' Brief, Section V(B) at Page 11.

Lastly:

Bulldog and Sutton each entered the land of another, and each knew they lacked authorization to destroy the yarder.

See Appellants Brief, Section V(B) at Page 14.

The Respondents submit RCW 4.24.630 is a treble damage statute designed to penalize parties who trespass on the land of another and commit the wrongful acts that are enumerated in the statute.

The Standing Rock Homeowners Association v. Misich, 106

Wash.App. 231, 23 P.3d 520 (2001), relied upon by the Appellants and cited by the trial court involved trespass by the wrongdoer. The headnote to that case specifically relating to the part of the case dealing with RCW 4.24.630 is entitled "Trespass." In that particular case, the wrongdoers trespassed on property of a third party and intentionally committed damage to personal property. The trial court found that neither Bulldog Trucking nor Sutton knew or had reason to know the yarder was not parked on Cindy Beavert's property and in fact reasonably believed it was parked on her property, particularly since she provided the key to the locked gate to access the yarder's location.

Under any set of circumstances, this case did not involve a trespass. The yarder was parked on United States Forest Service property and there was therefore no trespass.

RCW 4.24.630(1) imposes treble damages and authorizes an award of reasonable attorney's fees against persons who "wrongfully" go on to the land of another and cause damage or injury. The statute specifically provides:

For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act.

In this case, the trial court specifically found that Defendants

Bulldog Trucking and Sutton did not know and had no reason to know they lacked authorization to act. (CP 573-580).

The Appellants argue in their brief that the Defendants Bulldog Trucking and Sutton either knew or should have known they had no authorization to act. However, that is simply not finding of the trial court which is now a verity on appeal and binding upon this court. Based upon the trial court's Finding of Fact, the court entered a Conclusion of Law determining that RCW 4.24.630 did not apply to the Respondents, Bulldog Trucking or Michael Sutton:

6. Since neither Mr. Sutton nor Bulldog Trucking knew who owned the yarder, and reasonably believed the yarder was on the property owned by Cindy Beavert, their actions were not wrongful. (CP 573-580 – Conclusions of Law).

Therefore, RCW 4.24.630 would not apply to either Bulldog Trucking or Sutton and the court's Conclusions of Law and Judgment are supported by the Findings of Fact.

CONCLUSION

Appellants failed to file a verbatim transcript of the trial court's proceedings, and the law is quite clear that the court's Findings of Fact are accepted as verities on this appeal and are binding upon this court. The Findings of Fact by the trial court clearly establish the Respondents

Bulldog Trucking and Sutton did not violate RCW 4.24.630(1) and there can be no conclusion other than the trial court's judgment should be affirmed.

RESPECTFULLY SUBMITTED this 12th day of April, 2013.

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AYLWARD, P.S.

By



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