

STATE OF MICHIGAN
COURT OF APPEALS

GERALD KEYES and TAMARA KEYES,

Plaintiffs-Appellants,

v

JACKSON HOUSING CENTER, INC., EDDY L.
ROGERS and RAY MOORE,

Defendants-Appellees.

UNPUBLISHED

June 25, 1999

No. 204089

Jackson Circuit Court

LC No. 95-015982 CM

Before: Griffin, P.J., and McDonald and White, JJ.

WHITE, J. (concurring).

I agree with the majority's determination to affirm. However, because I read the record concerning the testimony of the expert horticulturist somewhat differently, I would affirm on this issue for slightly different reasons.

The measure of damages is as set forth in the majority opinion - - the difference between the value of the land before and after the harm, or, if the property has unique value, the cost of replacement or restoration, but not to exceed the value of the land.¹

The horticulturist testified that he examined the property, examined the remains of the trees, the stumps of which were in piles, and concluded that twelve trees were removed, and that it could take up to one hundred years for the largest trees that defendants removed to grow back. In light of this testimony, the trial court could properly determine that the damage to plaintiffs' property, i.e., the removal of the trees, was not reparable, and thus that the proper measure of damages was the difference in the market value of the property before and after the alleged damage. Because the witness presented no evidence regarding the difference in the value of the property before and after the injury, and offered testimony that focused on the value of the trees, rather than the cost of replacement or restoration, I conclude that the trial court did not abuse its discretion by limiting the horticulturist's testimony.

¹ In *Szymanski v Brown*, 221 Mich App 423; 562 NW2d 212 (1997), this Court upheld the following jury instruction:

. . . . Generally damages in trespass to land are measured by the difference between the value of the land before the harm and the value of the land after the harm, but there is no fixed, inflexible rule for determining with mathematical certainty what sum shall fairly compensate plaintiff. That's for you to decide. You may consider the cost of repairing the damage done provided that a cost of repair award may not exceed the value of the property before the [in]jury. . .

This Court noted:

Damages in an action for trespass to land generally are measured by the difference between the value of the land before the harm and the value after the harm. . . .

Where, as here, the property destroyed has a unique value of its own, it is appropriate to consider the value of the trees themselves to the contemplated or existing uses of the land, including the cost of replacement or restoration. The measure of damages under this theory, however, must not exceed the value of the property before the injury. The trial court's instruction to the jury properly included this limitation. [*Id.* at 429-430.]