

STATE OF MICHIGAN
COURT OF APPEALS

FREDERICK J. STINGEL, JR. and JANET
STINGEL,

UNPUBLISHED
June 7, 2005

Plaintiffs-Appellants,

v

MACKINAC ISLAND YACHT CLUB, INC.,

No. 254199
Mackinac Circuit Court
LC No. 02-005572-CZ

Defendant-Appellee.

Before: Murray, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

In this suit for damage to land caused by the cutting of trees, plaintiffs appeal as of right from a summary disposition order for defendant, and from the court's order denying their motion to amend the complaint to state a common law cause of action for damage to land. We affirm in part, reverse in part, and remand for further proceedings.

Plaintiffs lease a residential lot next to defendant's property on Mackinac Island. The lease gives plaintiffs a right of first refusal if the lessor decides to continue leasing the property, but creates no perpetual rights in the lease. Plaintiffs sued defendant for trimming and removing lilac bushes on the lot. Plaintiffs' action was based on Michigan law to recover "actual damages for injury to land," and plaintiffs sought more than \$105,000 in damages, based on treble damages. MCL 600.2919(1).

Concluding that plaintiffs were tenants rather than owners of the land, and that plaintiffs therefore could not sue under MCL 600.2919(1), the trial court granted defendant summary disposition. Further, the court denied plaintiffs' motion for reconsideration, implicitly rejecting plaintiffs' argument that even if their statutory claim for treble damages was barred, they had nonetheless properly pleaded a common law claim for actual damages. The court also denied a motion to amend the complaint, stating that "[a] new case must be filed to assert common law trespass due to the jurisdictional damage requirements."

Plaintiffs first argue that, as tenants, they were entitled to bring an action for damage to land under an 1846 statute that provides that anyone who cuts down trees on land owned by another "without the permission of the owner of the lands . . . is liable to the owner of the land . . . for 3 times the amount of actual damages." MCL 600.2919(1). Resolution of this issue turns

on the definition of owner, which presents a question of law that this Court reviews de novo. *Northville Charter Twp v Northville Pub Schools*, 469 Mich 285, 289; 666 NW2d 213 (2003).

The statute does not define the term “owner.” Plaintiffs argue that the phrase “owner of the lands” includes a tenant, citing a definition of land that was also codified in 1846: “The words ‘land,’ ‘lands,’ ‘real estate’ and ‘real property’ mean lands, tenements and real estate, and all rights thereto and interests therein.” MCL 8.3i. Plaintiffs also argue that, under *Saph v Brown*, 317 Mich 191; 26 NW2d 882 (1947), they need only to show either title or possession to have standing under MCL 600.2919(1).

However, the first rule of statutory construction in Michigan, also codified in 1846, is that statutes are normally interpreted using their ordinary meanings: “All words and phrases shall be construed and understood according to the common and approved usage of the language” MCL 8.3a. “The mission of a court engaged in statutory construction is to interpret and apply the statute in accordance with the intent of the drafter, which, in the first instance, must be determined from the plain meaning of the language used.” *Mahrle v Danke*, 216 Mich App 343, 348; 549 NW2d 56 (1996) (citation omitted). “In the face of unambiguous statutory language, the court has no further role in construing the court rule and may not, in the guise of a search for intent, engage in judicial construction.” *Id.*

Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning; technical terms are to be accorded their peculiar meanings. Nothing will be read into a statute that is not within the manifest intention of the Legislature as gathered from the act itself. The first criterion in determining intent is the specific language of the statute. If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. [*Vanderlaan v Tri-County Community Hosp*, 209 Mich App 328, 332; 530 NW2d 186 (1995) (citations omitted).]

Courts “may consult dictionary definitions” to “give undefined statutory terms their plain and ordinary meanings.” *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002) (citations omitted). Black’s Law Dictionary (8th ed) defines “owner” as:

One who has the right to possess, use, and convey something; a person in whom one or more interests are vested. An owner may have complete property in the thing or may have parted with some interests in it (as by granting an easement or making a lease).

The usage note following the bullet highlights that the owner is the one in whom all the interests in land not otherwise assigned or leased reside. Plaintiffs’ lease makes clear that they enjoy only a limited right of possession, for a specified term of years, for a specified use (single-family residence), and that plaintiffs may not convey or even sublease the property without the consent of its owner. Therefore, plaintiffs are not owners within the meaning of MCL 600.2919(1) and cannot, therefore, bring an action for damage to land under that statute.

This conclusion is consistent with the Supreme Court’s decision in *Achey v Hull*, 7 Mich 423, 429 (1859), where the Court interpreted the damage to lands statute at issue here, stating:

The statute in question is not framed to protect possessory rights, but was made to give to the owners of the fee a right to sue, in the form of trespass, for enumerated injuries to their inheritance. If the tenant in possession, whether owner or not, seeks damages for the disturbance of rights merely possessory, he is still left to his common law action. But here the damages which are allowed to be trebled, are not damages to the temporary possession, but to the freehold.

Achey is the only case in which our Supreme Court has directly interpreted the statute. Further, a key issue in *Achey* was the relationship between possession and standing to bring suit under the statute: the defendant, *Achey*, argued that his extensive entries onto the land had disseized the plaintiff, who therefore could not bring a trespass action against *Achey*, “except for the first entry.” *Id.* at 427. Therefore, the intent of the statute was central to the Court’s decision, even though treble damages were not assessed. *Id.* at 430. Accordingly, we conclude that the quoted statement was not dicta and is instead a central holding from the case. Thus, the court was correct in finding that plaintiffs could not bring a claim for treble damages under MCL 600.2919(1) because they were not an “owner of the lands” under the statute.¹

Plaintiffs next argue that the court, after striking the paragraphs in the complaint dealing with treble damages, should have found a claim for common law trespass in the remaining paragraphs of their complaint. This presents a question of law. “Issues of law are subject to review de novo.” *Duggan v Clare Co Bd of Comm’rs*, 203 Mich App 573, 575; 513 NW2d 192 (1994). The court did not err in finding that plaintiffs had not stated a common-law cause of action for trespass.

¹ This result is consistent with the law as stated in Dan B. Dobbs, *The Law of Torts*, § 52 (2002), which is that tenants can bring trespass claims but not claims for damage to land, which belong to owners:

Protecting possession. The right to sue for the tort of trespass was originally conceived as a means of protecting the exclusive possession of one on the land. For this reason, the owner of an easement, who has no possessory interest . . . has no claim for trespass interfering with possession. On the other hand, anyone who had possession or the right to possession of land could sue whether that person was the owner in fee or not. For instance, a tenant in possession had a claim for a trespassory entry.

* * *

Protecting physical integrity of the land; the owner’s reversionary interests. If the entry also causes harm to the land’s physical integrity that reduces the value of the owner’s interests as well as the possessor’s, today’s law will also allow the owner to recover for any actual damages he will ultimately suffer. For instance, if the trespasser enters a tenant’s apartment, the tenant has an action for trespass; if the trespasser rips the door off, the landlord who must repair it has an action for the damages resulting whether the theory is one of trespass or of case. [Citing the holding from *AmSouth Bank, NA v City of Mobile*, 500 So 2d 1072 (Ala, 1986) as “the landlord may sue for an injury to the reversion interest, even while the tenant is in possession”].]

This Court has specifically considered and rejected the claim that a complaint under MCL 600.2919 includes a count for common law trespass:

Because common law trespass places the burden of proof concerning consent on the defendant, the instant evidence might have supported a verdict on single damages under a common law theory. Plaintiff, however, did not plead such a theory. We cannot consider the common law theory as included within this statutory cause of action. Because of the difference in proof requirements and in legal origin between the two, each must be specifically pled to adequately inform the defendant of his burden at trial. [*Weisswasser v Chernick*, 68 Mich App 342, 346-347; 242 NW2d 576 (1976), rev'd on other grounds 399 Mich 653 (1977).]

Plaintiffs' single claim, whether for single or treble damages, was based on injury to land (the harm to the lilacs) rather than trespass (the harm to plaintiffs' possessory interest and right to exclude others). While a tenant can bring a simple trespass claim, only the owner of the land may bring a claim for damage to land. Plaintiffs could have pleaded both claims under MCR 2.111(A), but plaintiffs' action was for damage to land, never using the word trespass. Therefore, the court did not err in holding that plaintiffs' complaint did not state a claim for common law trespass.

Plaintiffs also argue that the court abused its discretion by denying plaintiffs' motion to amend their complaint. We agree. Although courts should be liberal in allowing pleadings to be amended and should specify reasons for denial, a court does not abuse its discretion by refusing to permit amendment of pleadings when amendments would be futile. *Jenks v Brown*, 219 Mich App 415, 419-420; 557 NW2d 114 (1996); *Terhaar v Hoekwater*, 182 Mich App 747, 751; 452 NW2d 905 (1990). In this case, plaintiffs inartfully sought to amend their complaint to allege a common law claim for trespass, seeking actual damages for the alleged lilac destruction. The trial court, however, denied the motion not on futility grounds, but because it concluded plaintiffs' proposed amendment did not satisfy the court's jurisdictional threshold. However, defendant did not argue that the court lacked jurisdiction, and there was no evidence suggesting this was the case. Instead, defendant argued that the amendment would be futile. Therefore, the court abused its discretion in denying plaintiffs' motion to amend their complaint on the basis of lack of jurisdiction. We therefore remand this matter to the trial court for further proceedings relative to plaintiffs' motion to amend the complaint.

Affirmed in part, reversed in part, and remanded. The Court does not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Pat M. Donofrio