

STATE OF MICHIGAN
COURT OF APPEALS

TERRA ENERGY, LTD.,

Plaintiff/Counter-Defendant-
Appellant,

v

WHITE PINE ENTERPRISES, LLC and STAR
ENERGY, INC.,

Defendants/Counter-Plaintiffs-
Appellees.

UNPUBLISHED

May 26, 2005

No. 254159

Antrim Circuit Court

LC No. 99-007582-CK

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

PER CURIAM.

Plaintiff appeals as of right from an order of the circuit court on remand which amended its previous judgment. We reverse and remand.

This is the second time this matter is before this Court. Previously, we issued an opinion affirming in part, reversing in part, and remanding the case to the trial court for further proceedings. *Terra Energy, Ltd v White Pine Enterprises, LLC, and Star Energy*, unpublished opinion per curiam of the Court of Appeals, issued December 3, 2002 (Docket No. 231429). On remand, defendants filed a motion to amend the trial court’s judgment. The trial court granted defendants’ motion, ordering defendants to convey their interest in mineral rights upon plaintiff’s payment of the original judgment less treble conversion damages that were reversed by this Court in its December 3, 2002, opinion.

Plaintiff asserts that by amending its judgment rather than conducting a new trial on damages, the trial court acted inconsistently with this Court’s prior opinion. We agree. Whether the trial court erred by failing to follow an appellate ruling on remand is a question of law that we review de novo. See *Kalamazoo v Dep’t of Corrections (After Remand)*, 229 Mich App 132, 134-135; 580 NW2d 475 (1998).

In our prior opinion in this case, we clearly instructed the trial court to conduct a new trial on the issue of damages. Specifically, in the final paragraph of our previous opinion, we reversed the award of damages against plaintiff and remanded “for a new trial on the issue of damages.” *Terra Energy, supra*, slip op at 17. “A ruling by this Court binds the trial court on remand, pursuant to the law of the case doctrine.” *Sumner v General Motors Corp (On*

Remand), 245 Mich App 653, 661; 633 NW2d 1 (2001). Under the law of the case doctrine, “a trial court may not take any action on remand that is inconsistent with the judgment of the appellate court.” *Kalamazoo, supra* at 135. Rather, “[i]t is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court.” *Rodriguez v General Motors Corp (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). We conclude that on remand, the trial court acted inconsistently with this Court’s prior opinion and did not strictly comply with our instructions in that opinion. Notwithstanding our explicit instructions to conduct a new trial on damages, the trial court amended its judgment to convey the mineral rights to plaintiff on remand rather than conducting a new trial on the issue of damages.

In Section III of our previous opinion, we stated:

If on remand the parties cannot settle the issue, then the trial court should either amend the current judgment to grant plaintiff rights to future profits from the project, for which plaintiff is presently being forced to pay, or conduct a new trial to resolve factual questions concerning the future profitability of the site for the purpose of ensuring that plaintiff will not be obliged to pay for lost profits that are not in fact lost. [*Terra Energy, supra*, slip op at 11-12.]

The trial court apparently relied on this portion of our previous opinion in amending the judgment on remand. Giving the trial court the benefit of the doubt, we concede that at first blush, this sentence appears to be inconsistent with the portion of the opinion remanding for a new trial on the issue of damages and may appear to authorize the trial court to amend the judgment on remand. However, we observe that this sentence appears in Section III of the previous opinion, and Section III of the previous opinion did not concern whether a new trial was warranted on the issue of damages. Rather, Section III of our previous opinion addressed plaintiff’s claim that the trial court gave an erroneous jury instruction on damages which permitted the jury to award damages that were duplicative of profits that defendants could earn from extracting and selling the remaining gas. Section V of our previous opinion addressed plaintiff’s claim that the trial court abused its discretion in denying plaintiff’s motion for judgment notwithstanding the verdict and new trial. Therefore, the issues involved in Sections III and V of our previous opinions, while clearly related, were not the same.

An opinion of the Court of Appeals constitutes its judgment. MCR 7.215(E)(1); *Johnson v White*, 261 Mich App 332, 347; 682 NW2d 505 (2004). The entire opinion constitutes the judgment, and it is improper for a trial court to read certain portions of an opinion in isolation and ignore other portions of the opinion. Rather, the opinion must be read in its entirety. To the extent that the trial court apparently relied exclusively on the sentence in Section III in amending its previous judgment rather than conducting a new trial on the issue of damages, it erred. In Section V of the previous opinion, we ruled that the trial court erred in denying plaintiff’s motion for new trial, stating: “For the reasons discussed in Issue III, the award of damages constitutes a substantial and undeserved windfall for defendants. The reasons warranting reversal and remand on appeal likewise warrant the granting of a new trial on the issue of damages below.” *Terra Energy, supra*, slip op at 13. Moreover, in the final paragraph of our previous opinion we explicitly ordered a new trial on the issue of damages. Thus, we find that the trial court, in amending its judgment, improperly limited its consideration of our opinion to Section III, failed to consider our instruction regarding the trial court’s denial of plaintiff’s motion for new trial in

Section V, and wholly ignored the final paragraph of the opinion, which clearly and explicitly ordered a new trial on the issue of damages.

Reversed and remanded to the trial court for a new trial on the issue of damages. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Pat M. Donofrio