

Lampi v. Speed (decision)

MONTANA SUPREME COURT

RESTORATION DAMAGES: Judgment as a matter of law should have been granted on claim for restoration damages for burned trees where Plaintiff presented undisputed evidence of temporary nature of injury and “reasons personal” for seeking to restore property and Defendant only argued that damage to trees will naturally restore . . . \$250,000 verdict reversed, remanded for new trial on claim of \$1,050,000 to restore . . . Jones reversed.

Rohnn Lampi owns 40 acres near Red Lodge. His neighbor, Allen Speed, dumped ashes that caused a fire that burned Lampi’s trees & vegetation. The house was saved. Lampi had purchased the land for a vacation and retirement home, carefully selecting it for its aesthetic beauty and wild setting. He intends to pass it to his children and grandchildren. He testified that he intends to take every measure he can to restore it to its pre-fire condition. 481 pines and 687 aspens were destroyed. He was particularly fond of the aspen grove behind the house. His estimated cost to replace the trees exceeded the decline in monetary value to this property. He requested summary judgment that restoration damages were the appropriate measure under Sunburst (Mont. 2007) which approved a jury award for restoration cost that exceeded by 7 times the diminution in market value of the property, arguing that he should be allowed to recover damages to replace the trees and restore the land because he had no plans to ever sell and the loss in monetary value should be deemed irrelevant. Judge Jones denied the motions. Lampi’s expert, Tom Yelvington, testified that it would cost \$1,050,000 to replant all the trees and restore the property. Speed’s expert, Jim Cancroft, testified that it would cost \$550,000. Both testified to less expensive options which did not attempt to restore the property to original condition. Cancroft testified that the vegetation, especially the aspens, would naturally restore within a reasonable time. Speed’s property expert, Tom Wicks, valued the property at \$646,000 not including the house, with \$193,800 lost value as a result of the fire. Lampi also moved for judgment as a matter of law at the close of trial asking Jones to establish the cost of restoration as the appropriate measure of damages. Jones denied the motion. He presented the jury the question of whether the usual diminution in market value or restoration damages to restore the trees was the appropriate measure of damages. He instructed that it could award “the difference in the market value of the property immediately before and immediately after the damage occurred,” or, based on its own consideration of the evidence, award reasonable restoration costs with the allowance for natural regeneration if it found that diminution in market value failed to fully compensate Lampi. The Red Lodge jury awarded \$250,000. (MLW 3/13/10.) The verdict did not specify whether it awarded diminution in market value, restoration damages, or some combination. Lampi appeals.

Jones wrongly declined to establish restoration damages as the measure of damages. Lampi argues that the Sunburst rule entitled him to restoration damages as a matter of law because he established that he suffered a temporary injury, had “reasons personal” to restore the property, and genuinely intends to restore it, and the cost of restoration is not disproportionate to the pre-tort value. Speed argues that the vegetation will naturally restore, unlike the toxic contamination in Sunburst, and suggests that Sunburst applies only to toxic contamination cases. The Court rejects both interpretations. Other courts have concluded that damage to trees or loss of trees can be restored and therefore the injury is temporary under Restatement of Torts §929. §929 allows Lampi to elect restoration damages for his temporary injury. However, whether his loss qualifies as an “appropriate case” for restoration damages in excess of diminution of market value hinges on whether he presented sufficient evidence of reasons personal to restore the property. §929 cmt. (b); Sunburst. A judge should grant summary judgment to establish restoration damages as the appropriate measure if reasonable minds could not differ as to whether a temporary injury and reasons personal exist. Hill (Wash. 2002). Speed did not dispute Lampi’s personal desires to restore his property, but placed little import on those reasons, likely because of his position that restoration damages should not apply to his destroyed vegetation claim – a tactical decision leaving him without a response to Lampi’s claims. We emphasize that these issues normally present fact questions for the jury. Osborne (Alaska 1997). However, Lampi presented undisputed evidence of the temporary nature of the injury and his “reasons personal” for seeking to restore the property, and Speed opted not to challenge his claims on these points and instead argued unsuccessfully that damage to vegetation should not be susceptible to restoration damages. These unusual circumstances entitled Lampi to judgment as a matter of law on his claim for restoration damages. Jones’s failure to denote the property measure of damages shaped the parties’ trial strategies and presentations of evidence. Remanded for a new trial.

Morris for the full Court.

Lampi v. Speed, DA 169, argued 2/16/11, decided 9/14/11.

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