

14-1105

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

**WILLIAM D. SMITH, Individually,
and KERRY L. SMITH, Individually,**

Plaintiffs,

v.

Civil Action No. 11-C-216

Judge J.D. Beane

REGINALD S. GRIMMETT,

Defendant.

ORDER

On the 11th day of July, 2014, came the Plaintiffs, **WILLIAM D. SMITH** and **KERRY L. SMITH**, by and through their attorneys, **ROBERT L. BAYS** and **JOHN C. HUDSON**, and came the Defendant, **REGINALD S. GRIMMETT**, by and through his attorney, **GEORGE J. COSENZA**, on the final day of the trial of the above-cited matter, which began on July 9, 2014.

Both sides having restated and given these closing arguments, the jury was given instructions by the Court after consultation with counsel and counsel's opportunity to object to proposed jury instructions which were more fully set forth on the record. The jury was provided with a verdict form agreed to by the parties and began their deliberations. After approximately one and one-half hours of deliberation, the jury convinced it had reached a verdict, to wit:

1. Have the Plaintiffs proved, by a preponderance of the evidence, that the Defendant, Reginald Grimmatt, in the development of his real property, unreasonable caused silt, dirt or other pollutants, to come upon the property of the Plaintiffs, William D. Smith and Kerry L. Smith?

YES _____ NO X

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CAROLE JONES
CLERK CIRCUIT COURT

2. Have the Plaintiffs proven, by a preponderance of the evidence, that Defendant, Reginald Grimmett, was negligent in the construction and development of his property, which caused silt, dirt, rocks, chemicals or water in unnatural quantities, to come upon the property owned by the Plaintiffs, William D. Smith and Kerry L. Smith?

YES _____ NO X

3. Have the Plaintiffs proven, by a preponderance of the evidence, that the Defendant, Reginald Grimmett, by his construction work, caused silt to accumulate in the pond owned by the Plaintiffs, William D. Smith and Kerry L. Smith?

YES _____ NO X

The jury having found in favor of the Defendant, it is hereby ORDERED that said verdict be and is hereby received by the Court and entered upon the record. Objections and exceptions are reserved to the Plaintiffs.

It is further ORDERED that this matter be and hereby is stricken from the Court's docket and dismissed with prejudice, and that the Clerk of the Wood County Circuit Court submit a true copy of the same to the attorneys of record.



J.D. BEANE, JUDGE

11-C-216

PREPARED FOR ENTRY BY:



GEORGE J. COSENZA, ESQUIRE (#833)

APPROVED FOR ENTRY BY:



ROBERT L. BAYS, ESQUIRE (#274)

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Defendant.

ORDER

On the 12th day of September 2014, came the Plaintiffs by and through their attorney, Robert L. Bays, and came the Defendant by and through his attorney, George J. Cosenza, for hearing on Plaintiffs' Motion for New Trial.

Whereupon, the Court entertained the representations and arguments of respective counsel and upon consideration of same and the record in this case, including the memoranda and written arguments previously submitted, the Court finds that the verdict returned by the jury before whom the issues were tried is against the clear weight of the evidence presented, is clearly wrong and will result in miscarriage of justice if allowed to stand.

The Plaintiffs' motion is therefore GRANTED and it is ORDERED that the jury verdict previously entered in this proceeding be and is hereby set aside and that the issues be tried anew.

The Clerk of this Court shall submit a copy of this Order to counsel of record.

Enter this 23rd day of September 2014.



J.D. BEANE, Judge

COUNTY OF WOOD, TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 23 day of Sept 2014, as fully as the same appears to me of record.

Given under my hand and seal of said Circuit Court, this the 24 day of Sept 2014

Carole Jones
Clerk of the Circuit Court of
Wood County, West Virginia

By: A. Darks Deputy

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CAROLE JONES
CLERK CIRCUIT COURT