

11-0254

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

DAN RYAN BUILDERS, INC.,  
a Maryland Corporation,  
RAYMOND ENRIGHT, and  
JACQUELYN ENRIGHT,

Plaintiffs,

v.

RODNEY MILLS,

Defendant.

Civil Action No. 09-C-982  
Judge Groh

2011 JAN 11 AM 11:18  
VIRGINIA M. SIVE, CLERK  
BERKELEY COUNTY  
PROBATE CLERK

**JUDGMENT ORDER AND ORDER GRANTING PERMANENT INJUNCTION**

On December 14, 15, and 16, 2010, this matter came on for a jury trial on the issue of damages.<sup>1</sup> The Plaintiffs, Dan Ryan Builders, Inc. and Raymond and Jacquelyn Enright, were present in person, and by their counsel, Tracey A. Rohrbaugh and Julie R. Shank; and the Defendant, Rodney Mills, was present in person and by his counsel, Kenneth J. Ford.

Whereupon, the court did empanel a jury of six (6) persons and one (1) alternate juror to hear the evidence and try this case.

The parties gave their opening statements to the jury. Then, the Plaintiffs presented testimony of Timothy Cowan, Alexandra Mulvey, Shawn Stuck, Raymond Enright, and Jacquelyn Enright. The Defendant presented testimony of Rodney Mills, Mary Mills, Sarah Mills, Ron Spiker, and Timothy Cowan. The Plaintiffs presented rebuttal evidence by calling Jacquelyn Enright.

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<sup>1</sup> Liability was previously determined by this Court with an Order granting summary judgment on July 27, 2010.

The jury received the jury charge from the Court and heard counsel's closing arguments. At the conclusion of instructions and closing arguments, and after other proceedings which are reflected in the record, the alternate juror was excused and the jury retired to the jury room for deliberations.

In answer to the questions set forth in the Verdict Form, the jury rendered its verdict as follows:

1. State the amount of damages, if any, that Raymond and Jacquelyn Enright have proven by a preponderance of the evidence to have been caused by Rodney Mills in the following categories:

A.	Property Damage	\$ <u>2,100.00</u>
B.	Annoyance and Inconvenience	\$ <u>6,500.00</u>
C.	Emotional Distress	\$ <u>10,000.00</u>
D.	Apartment Rent	\$ <u>1,872.00</u>
E.	Parking Pad	\$ <u>0.00</u>

TOTAL: \$ 20,472.00

*(If you awarded Raymond and Jacquelyn Enright money damages, please proceed to Question 2, where you may or may not award punitive damages. If you did not award Raymond and Jacquelyn Enright money damages, please proceed to Question 3)*

2. We award the following punitive damages to Raymond and Jacquelyn Enright:

\$ 25,000.00

*(Please proceed to Question 3)*

3. State the amount of damages, if any, that Dan Ryan Builders, Inc. has proven by a preponderance of the evidence to have been caused by Rodney Mills in the following categories:

A.	Property Damage	\$	<u>5,370.00</u>
B.	Lost Profits	\$	<u>9,720.00</u>
C.	Annoyance and Inconvenience	\$	<u>7,500.00</u>
D.	Trespass	\$	<u>0.00</u>
	TOTAL:	\$	<u>22,590.00</u>

*(If you awarded Dan Ryan money damages, please proceed to Question 4, where you may or may not award punitive damages. If you did not award Dan Ryan money damages, please have the foreperson sign and date this form and notify the bailiff that you have reached a decision)*

4. We award the following punitive damages to Dan Ryan Builders, Inc.:

\$ 15,090.00

Dated this 16th day of December, 2010.

/s/ S. Rowe  
FOREPERSON

WHEREUPON, the Court ascertained that this was the true and correct verdict of six jurors, read and accepted the verdict from the jury, and polled the jury as to its verdict. The Court then thanked and excused the jurors.

The Court accordingly ORDERED that judgment be entered for the Plaintiff, Dan Ryan Builders, Inc. and against the Defendant, Rodney Mills, in the amount of \$37,680.00, and the Plaintiffs Raymond and Jacquelyn Enright, and against the Defendant, Rodney Mills, in the amount of \$45,472.00, plus pre-judgment interest on the special damages from the date of the beginning of the Defendant's misconduct, June 20, 2009, through December 16, 2010, at a rate

of 7% per annum. This equates to a total judgment of \$45,886.39 for the Enrights, and \$39,254.32 for Dan Ryan Builders, Inc.

The Court inquired as to whether the Defendant was advised of his appellate rights. Both counsel for the Defendant and the Defendant indicated that he was informed of his appellate rights.

It is ADJUDGED and ORDERED that the Defendant shall pay the court costs of this civil action and the jury fees, as taxed by the Court's Clerk.

It is FURTHER ADJUDGED and ORDERED that the parties shall have ten (10) days from the date of entry of this Order to file post-trial motions, in accordance with the West Virginia Rules of Civil Procedure.

#### **PERMANENT INJUNCTION**

The Court finds that the Plaintiffs have met their burden of proof by establishing certain admissions of the Defendant, and the Court GRANTS the permanent injunction which was requested by both the Enrights and Dan Ryan Builders, Inc. in the Complaint. Accordingly, Rodney Mills is hereby directed to cease and desist from destroying any property along the easement, including sod or personal property of Dan Ryan Builders, Inc. (or the subsequent owners of Lot 2), the Enrights, the residents living in the Enrights' home, or their guests, or any subsequent purchaser. Furthermore, Rodney Mills is directed to cease and desist with interfering with any improvements which the Plaintiffs or others may make to their property or the easement. Rodney Mills is enjoined from assaulting, provoking, and/or intimidating the Plaintiffs or their guests, including, but not limited to, making threatening gestures, taking

pictures of the Enrights' property or the Enrights, or driving with only a portion of the vehicle on the pavement with another portion in the gravel, with the intention of provoking or harassing the Enrights or destroying their property. He is further enjoined from directing others to assault, provoke, and/or intimidate the Plaintiffs or their guests.

If there is any violation of this Order, any person may report said violation to the police, in addition to notifying the Court.

In regard to plowing of snow, the Court orders that Mr. Mills may plow the paved portion of the easement, but not the gravel or sod next to the easement; except, however, that the Court will permit the Defendant to clear a small gravel section at the entrance to Salvation Road, so that he and other persons who use Salvation Road can park on the gravel shoulder and access their mail boxes, which line the county road. The Court instructs the Defendant to use care in plowing the road, so that the gravel and sod inside the easement are not disturbed.

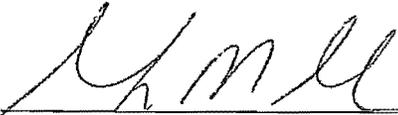
If Mr. Mills violates the Court's Order, he shall pay the costs and attorney fees of any further action instituted by the Plaintiffs to enforce this Order or to seek sanctions for its violation.

The Court's Clerk shall enter this Order as of the date set forth below and shall transmit an attested copy to all counsel of record as follows:

Tracey A. Rohrbaugh, Esq.  
Julie R. Shank, Esq.  
Bowles Rice McDavid Graff & Love LLP  
101 South Queen Street  
Post Office Drawer 1419  
Martinsburg, West Virginia 25402

Kenneth J. Ford, Esquire  
100 Mahogany Court  
Martinsburg, West Virginia 25404

ENTERED this 10<sup>th</sup> day of January, ~~2010~~ <sup>2011</sup>

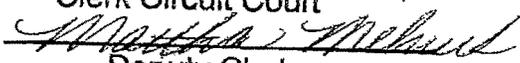
  
GINA GROH, CIRCUIT JUDGE

Prepared by:

  
Tracey A. Rohrbaugh, Esquire (WV Bar #6662)  
Julie R. Shank, Esquire (WV Bar #10675)  
Bowles Rice McDavid Graff & Love LLP  
101 S. Queen Street  
P.O. Drawer 1419  
Martinsburg, West Virginia 25402-1419  
304-264-4202

A TRUE COPY  
ATTEST

Virginia M. Sine  
Clerk Circuit Court

By:   
Deputy Clerk