NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0809

ALAN BRAUD AND CHRISTY BRAUD

VERSUS

KI YOON

Judgment rendered June 8, 2007.

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Appealed from the
23rd Judicial District Court
in and for the Parish of Ascension, Louisiana
Trial Court No. 75,995
Honorable Pegram Mire, Judge

J.D.P.

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RICKY BABIN GONZALES, LA	ATTORNEY FOR PLAINTIFFS-APPELLEES ALAN BRAUD AND CHRISTY BRAUD
ERICK MIYAGI BATON ROUGE, LA	ATTORNEY FOR DEFENDANT-APPELLANT KI YOON

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BEFORE: GUIDRY, PETTIGREW, DOWNING, HUGHES, AND WELCH, JJ.

Downing, J. dissents and assigns reasons.

J.E.W. by J.D.P. Welch, J. dissents for reasons assigned by Judge Downing

Hughes, J., concurs with reasons.

Guidry, J. concurs in the result.

PETTIGREW, J.

In this case, defendant challenges the trial court's judgment finding he committed trespass on plaintiffs' property and awarding plaintiffs damages totaling $38,400.00. For the reasons that follow, we affirm as amended.

FACTS AND PROCEDURAL HISTORY

On November 21, 2002, plaintiffs, Alan Braud, Jr. and his wife, Christy Braud, acquired the property in question (hereinafter referred to as Tract A-2) from his father, Alan Braud, Sr., through an Act of Donation. According to the record, Tract A-2 was subdivided from a larger 21-acre tract of land (Tract A) that had been in the Braud family for over 40 years. Alan, Sr. (who lives on Tract A-1) testified that the property always had two fences on it, an older "outside" fence and a newer interior fence that Alan, Jr. built. Alan, Sr. indicated his family ran cattle on the property, grew corn, possessed, and openly maintained the property to the outside fence line.

Alan, Jr. also testified about his family's possession of Tract A and, more specifically, his possession of Tract A-2. Alan, Jr. (who was 33 years old at the time of trial) indicated he had been living on the property since he was 18 years old. With regards to his "acts of possession" on Tract A-2, Alan, Jr. acknowledged he had mowed grass, raked grass, run livestock, built and repaired fences, drove trucks over it, drove four wheelers over it, drove tractors over it, trimmed trees, paid the taxes, had family barbecues there, performed grading work, and his children played on the grounds. Alan, Jr. stated he and his family did these acts up to the fence lines of his property.

In November 1982, defendant, Ki Yoon, purchased a parcel of land lying north of Tract A-2. At the time, Mr. Yoon did not have a means of ingress or egress. He later brought suit against the adjoining property owners of plaintiffs, the Whites, to gain access to a public road known as White Road. In a Consent Judgment dated February 6, 1999, Mr. Yoon obtained a 30-foot right-of-way along the western boundary of Tract A-2. Soon after the Consent Judgment was signed, Mr. Yoon began clearing trees and brush from the right-of-way by hand. Mr. Yoon subsequently hired two people who used heavy equipment to complete the clearing, install a culvert, and create a bed for the access

road. In September 2001, Mr. Yoon had 60 tons of limestone spread out over the dirt road bed and began using the road to access his property.

On August 23, 2003, plaintiffs filed the instant suit against Mr. Yoon seeking damages for alleged acts of trespass and an injunction to prevent Mr. Yoon from further acts of trespass.[1] On December 1, 2003, Mr. Yoon filed an answer, generally denying that he had trespassed on plaintiffs' land and further asserting that all of his activities were on property he either owned or on property he possessed pursuant to the February 6, 1999 Consent Judgment whereby he was granted a 30-foot right-of-way along the western boundary of Tract A-2.[2] Mr. Yoon also filed a reconventional demand, asserting plaintiffs had "engaged in various activities upon property owned and possessed by [him], including but not limited to, erecting a fence." Mr. Yoon sought injunctive relief ordering plaintiffs to "remove any portion of their fence encroaching upon property owned by [him] and to otherwise refrain from encroaching or trespassing on property owned by [him]."

Prior to the trial of this matter, Mr. Yoon filed an exception raising the objection of prescription. Mr. Yoon argued that plaintiffs' claims of trespass arose more than one year prior to the date of filing suit and were thus prescribed. The exception was referred to the merits by the trial court, and the matter proceeded to a bench trial on December 16, 2005. After hearing from several witnesses, the court took the matter under advisement. On January 23, 2006, the trial court rendered judgment in favor of plaintiffs and against Mr. Yoon as follows:

> **IT IS ORDERED ADJUDGED AND DECREED** that a Judgment is hereby entered in favor of the plaintiffs, ALAN BRAUD and CHRISTY BRAUD, and against the defendant, KI YOON. The defendant is ordered to pay $4,228.00 to replace the fences which were torn down, $4,272.00 to

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[1] Mr. Yoon originally responded to plaintiffs' petition with an exception raising the objection of non-joinder of party pursuant to La. Code Civ. P. art. 641, arguing that in order to address plaintiffs' trespass claims, the trial court would have to determine the boundary between the property owned by the Whites, who were not parties to this litigation, and the property owned by plaintiffs. Following a hearing, the trial court rendered judgment January 23, 2004, denying Mr. Yoon's exception.

[2] In a "First Supplemental and Amended Answer" filed October 13, 2005, Mr. Yoon plead the negligence of plaintiffs' surveyor, R.L. Bennett, in failing to adhere to the applicable standards of care and diligence in surveying the property in question and thereby causing or contributing to the damages allegedly suffered by plaintiffs arising from the alleged disturbance/relocation of the survey markers on the property in question.

repair the drainage problems, $20,000.00 for the loss of the trees, loss of buffer zones, pain and suffering and inconvenience, $9,900.00 for the cost of survey, for a total award of $38,400.00 plus interest and court costs from the date of judicial demand.

It is from this judgment that Mr. Yoon has appealed, assigning the following specifications of errors:

1. The evidence overwhelmingly shows that the work performed by Mr. Yoon on property allegedly possessed by plaintiffs occurred more than one year before this lawsuit was filed. As such, the Trial Court erred in finding that Mr. Yoon's Peremptory Exception of Prescription was "without merit."

2. Plaintiffs failed to prove possession within visible boundaries and failed to institute this lawsuit within one year of the alleged disturbance by defendant. Therefore, the Trial Court erred in finding that plaintiffs met their burden of proof under La. Code Civ. Proc. art. 3658.

3. The evidence established that plaintiffs were evicted from any possession they may have had more than one year before they filed suit. Therefore, the Trial Court was clearly wrong in finding that plaintiffs had not lost their right to possess the property in question.

4. The evidence established that plaintiffs had to have a survey performed of their property in order to gain ownership of the property and obtain financing for the construction of a home. Therefore, the Trial Court erred in finding that Mr. Yoon is responsible for $9,900 in survey costs.

5. The undisputed evidence shows that plaintiff constructed a fence based on a survey that was incomplete and did not meet minimum standards. Consequently, the Trial Court erred in finding that Mr. Yoon must pay the costs associated with relocating the fence and failing to apportion any fault to the negligent surveyor.

6. The Trial Court erred in awarding the plaintiffs $20,000.00 for loss of trees, buffer zone, pain and suffering and inconvenience.

7. The undisputed evidence shows that the "buffer zone" immediately north of White Road was cleared by the Ascension Parish Department of Public Works. Therefore, the Trial Court clearly erred in finding that Ki Yoon was responsible for this loss of "buffer zone."

PRESCRIPTION
(Assignment of Error No. 1)

A suit seeking damages for trespass is an action in tort. **Perrilloux v. Stilwell**, 2000-2743, p. 3 (La. App. 1 Cir. 3/28/02), 814 So.2d 60, 62. Tort actions are subject to a liberative prescription of one year, which commences to run from the day injury or damage is sustained. La. Civ. Code art. 3492. When damage is caused to immovable property, the one year prescription commences to run from the day the owner of the

immovable acquired, or should have acquired, knowledge of the damage. La. Civ. Code art. 3493.

Louisiana jurisprudence draws a distinction between damages caused by continuous operating causes and those caused by discontinuous operating causes. If the operating cause of the injury is continuous, giving rise to successive damages, prescription begins to run from the day the damage was completed and the owner acquired, or should have acquired, knowledge of it. **Perrilloux**, 2000-2743 at 3, 814 So.2d at 62. On the other hand, if the operating cause of the injury is discontinuous, there is a multiplicity of causes of action and of corresponding prescriptive periods. See La. Civ. Code art. 3493, Revision Comment (c).

In the instant case, plaintiffs alleged Mr. Yoon's acts of trespass involved three different areas of Tract A-2; namely, the southwest corner, the western boundary immediately adjacent to the 30-foot right-of-way granted to Mr. Yoon, and the northern boundary. The trial court heard testimony from several witnesses and considered documentary evidence concerning when Mr. Yoon's alleged acts of trespass occurred. After considering same, the court found plaintiffs' claims were timely, providing the following reasons for judgment:

> The defendant argued at trial that the petitioners claim is prescribed because they did not file suit within one year of the alleged trespass. According to the defendant, the work he did which Petitioners allege to be a trespass, began in early 1999 and ended in 2001. The instant suit was not filed until August of 2003. The petitioners do not contest that the defendant began his work in early 1999. However, they contend that the defendant continued this work into 2003. The defendant even admitted at trial that he performed work on the property at issue in 2003. Therefore, the Court finds that the prescription claim is without merit.

Although we agree with the trial court that some of plaintiffs' claims of trespass survive Mr. Yoon's prescription exception, we find that some claims have prescribed. Because our decision on the prescription issue will ultimately affect other issues raised by Mr. Yoon on appeal, we find it necessary to separate our discussion of the prescription issue as it relates to plaintiffs' trespass claims into the three areas where the alleged acts of trespass occurred.

Southwest Corner

In oral reasons for judgment, the trial court found that "trespass occurred and is still occurring today." The trial court noted as follows concerning the southwest corner of Tract A-2:

> The defendant also trespassed along the southwest corner of Tract A-2 by crossing over it in order to access his property. Corners were set on this part of the property by a surveyor, Bob Bennett. Mr. Bennett testified that the White Road right-of-way abuts Tract A-2 and that he set the corners accordingly. Alan Braud, Jr., testified that he saw the defendant on several occasions crossing beyond the survey corners to access his property.

To reverse a fact finder's determination of fact, an appellate court must review the record in its entirety and (1) find that reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993). Further, on review, an appellate court must be cautious not to re-weigh the evidence or to substitute its own factual findings just because it would have decided the case differently. **Ambrose v. New Orleans Police Dept. Ambulance Service**, 93-3099, p. 8 (La. 7/5/94), 639 So.2d 216, 221. The manifest error standard demands great deference to the trier of fact's findings; for only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Thus, where two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Id.*

According to the record, White Road dead ends at Tract A-2. Mr. Yoon's 30-foot right-of-way lies just west of Tract A-2 but does not align with the end of White Road. Although Mr. Yoon denied ever driving onto plaintiffs' property to access his right-of-way, there is testimony to suggest otherwise. In fact, the record supports plaintiffs' allegations that Mr. Yoon has continuously accessed his right-of-way by crossing over their property. Thus, we find no manifest error by the trial court concerning the

continuing trespass at the southwest corner of Tract A-2. This particular cause of action is not prescribed. See **Perrilloux**, 2000-2743 at 3, 814 So.2d at 62.

Northern Boundary

With regard to the northern boundary, the trial court made the following findings:

> The northern boundary of the Brauds' property adjoins the defendant's property. A barbed wire fence divided the Brauds' property from the defendant's until the defendant tore it down. Alan Braud, Jr., and his father Alan Braud Sr., both testified that this area of the property had been used for farming and to run cattle. They both testified at trial to cutting the grass, repairing the fence, driving on the property, walking on the property, planting grass and planting crops up to the northern boundary. They also lived on the property in excess of forty years. The defendant disturbed their peaceful possession by clearing the tree line along the northern boundary, which had served as a natural buffer between the Brauds' house and Interstate 10. The defendant also cut down a hill with a bulldozer which had drained the water from the property into a large slough at the bottom of the hill. The petitioners had to rebuild the fence that the defendant tore down in order to keep their livestock from escaping. Because the defendant cut down this fence, the petitioners also had to hire a surveyor, Mr. Bob Bennett to set the boundary lines.

Although Mr. Yoon testified that this work was done in 2000, he acknowledged that he did some additional work on the property in May 2003, stating as follows: "I build a road to here to there and there, to -- this is low lands right here, so I have to pass through, build a road -- build a bridge (indicating)." Just prior to this testimony by Mr. Yoon, counsel for Mr. Yoon introduced Exhibits D-9 and D-10 into evidence, both of which were referred to as "demonstrative exhibits, that [Mr. Yoon's] drawn on." Moreover, plaintiffs maintained that the work on the northern boundary that included tearing down their fence, clearing the tree line that had served as a natural buffer zone, and cutting into the side of a hill causing water to drain on the property was done after they acquired Tract A-2 in November 2002.

Our review of Exhibits D-9 and D-10 does not reveal any reference to the road or bridge that Mr. Yoon referred to in his testimony or any markings that represent same. However, the trial court found that Mr. Yoon continued to work on the property in 2003. Based on our exhaustive review of the record before us, and mindful of the great

deference we must afford the trier of fact, we find no manifest error in this finding. Thus, plaintiffs' trespass claims concerning the northern boundary are not prescribed.

Western Boundary

The trial court made the following findings with regard to the western boundary and the alleged trespass of Mr. Yoon:

> The defendant had obtained a predial servitude to access his property from White Road from another nearby property owner whose property runs to the west of Tract A-2. The Brauds also had a barbed wire fence to contain their livestock and a line of trees which served as a buffer zone on this western boundary. The defendant tore down this fence and cleared the trees on this boundary as well. The defendant also constructed a driveway based on the servitude which encroached on petitioners' property. The petitioners also testified to running livestock, cleaning the property, cutting grass and trimming vegetation on their property up to the western boundary.

While we agree with the trial court that Mr. Yoon's acts of tearing down this barbed wire fence and clearing the trees along the western boundary constituted acts of trespass, we are not convinced that plaintiffs' claim with regard to same was timely. Mr. Yoon offered the testimony of several witnesses and numerous exhibits to establish the time frame of the clearing work he did along the western boundary of Tract A-2. According to the record, Mr. Yoon did some of the clearing by hand and later rented commercial equipment to clear the road and install a culvert. All of the invoices that Mr. Yoon introduced into evidence were dated from 1998 through 2001, with the latest invoice dated September 21, 2001, representing the delivery/spreading of the limestone for the completion of the road. Plaintiffs did not file the instant suit until August 23, 2003, well over the liberative prescription of one year allowed by Article 3492. Thus, plaintiffs' allegations of trespass with regard to the western boundary are prescribed, and plaintiffs are not entitled to any damages associated with same.

POSSESSION
(Assignments of Error Nos. 2 and 3)

On appeal, Mr. Yoon contends plaintiffs failed to meet their requisite burden of proof under La. Code Civ. P. art. 3658. Article 3658 provides as follows with regard to a possessory action:

> To maintain the possessory action the possessor must allege and prove that:
>
> (1) He had possession of the immovable property or real right therein at the time the disturbance occurred;
>
> (2) He and his ancestors in title had such possession quietly and without interruption for more than a year immediately prior to the disturbance, unless evicted by force or fraud;
>
> (3) The disturbance was one in fact or in law, as defined in Article 3659; and
>
> (4) The possessory action was instituted within a year of the disturbance.

After considering extensive testimony and documentary evidence concerning the Braud family and Tract A, and more specifically plaintiffs' acts of possession with regard to Tract A-2, the trial court made the following findings in its reasons for judgment:

> The Court finds that the petitioners have met their burden of proof as required by Article 3658. Clearly they have had possession of Tract A for over forty (40) years as evidenced by the testimony presented to the Court that the land was cut, driven on, farmed, lived on and used to run livestock on. The defendant never presented any evidence to rebut this testimony. The Court finds that the petitioners had possession of the entire tract at the time of the trespass by the defendant. Furthermore, the Court finds that the disturbance was one in fact since the defendant tore down fences, cut down a hill and traversed Tract A. The instant suit, which was filed in August of 2003, was also filed within a year of the disturbance by the defendant since the defendant continued to do work on the property into 2003.

We have thoroughly reviewed the record before us and find no manifest error in the court's findings in this regard. The evidence clearly supports the court's findings that plaintiffs' family possessed the land in question for over 40 years -- they ran cattle on the property, grew corn, and openly maintained the property and the fences. Moreover, as previously discussed, plaintiffs' suit was timely with respect to Mr. Yoon's acts of trespass on the northern boundary and the southwest corner of Tract A-2. These assignments of error are without merit.

REPAIRS TO FENCE
(Assignment of Error No. 5)

According to the record, plaintiffs installed a fence along the northern boundary of Tract A-2 after they acquired the property from Alan, Sr. In order to insure the fence followed the property line, they relied on the original survey performed by Mr. Bennett on October 16, 2002. Plaintiffs subsequently learned that the property lines were "out of whack," alleging that Mr. Yoon's relocation of the northwest survey marker caused

the October 16, 2002 survey that they relied on to be incorrect. Thus, plaintiffs maintained, they were entitled to $4,228.00 in damages for removing and relocating the fence.

In response to this claim, Mr. Yoon alleges on appeal that the fault of Mr. Bennett in failing to comply with sound surveying principles was an intervening cause of plaintiffs' damages in this regard, or at the very least, should serve to reduce plaintiffs' recovery against him in proportion to any such fault. We find no merit to Mr. Yoon's argument on this issue.

As with other factual determinations, the trier of fact is vested with much discretion in its allocation of fault; therefore, an appellate court should only disturb the trier of fact's allocation of fault when it is clearly wrong or manifestly erroneous. **Bergeron v. Williams**, 2005-0847, p. 12 (La. App. 1 Cir. 5/12/06), 933 So.2d 803, 812. Based on the evidence presented to the trial court and our review of same, we cannot say the assessment of 100 percent of the cost for the repair of the fence to Mr. Yoon was erroneous.

COST OF SURVEY
(Assignment of Error No. 4)

On appeal, Mr. Yoon asserts that the trial court's award of $9,900.00 to cover the cost of the surveying services provided to plaintiffs by Mr. Bennett in October 2002, and January 2003, finds no support in the record and must be reversed. Mr. Yoon maintains that even if his replacement of the survey marker or movement of the fence had caused Mr. Bennett to perform additional work beyond that which was required to produce an accurate boundary survey of Tract A-2, it was incumbent upon plaintiffs to establish the cost of this additional work and they failed to do so at trial. At trial, Mr. Yoon testified that when he was clearing his property in March and April of 2000, he found the survey marker lying on the ground. He did not know who had "disturbed it" but just tried to place it back in the place where he thought it went.

In response to this argument, plaintiffs point out that they were originally required to retain the services of Mr. Bennett because they wanted to build a new

house on their property and they needed a survey in order to obtain a loan from the bank. The problems began when they discovered what they believed to be an encroachment on the western boundary by plaintiffs' existing house onto their neighbors' property. To resolve this dispute, plaintiffs acquired a small strip of property from their neighbors. Plaintiffs later discovered there was no encroachment problem but that the marker on the northwest corner of their property had been moved and replaced in the wrong location, causing the property lines to be incorrect. Thereafter, Mr. Bennett was required to create a second map and reset the corners. Plaintiffs contend this survey work was necessitated by the actions of Mr. Yoon disturbing the northwest corner survey marker.

According to the record, Mr. Bennett submitted two invoices for his survey work on Tract A-2. The first invoice is dated November 6, 2002, and totals $1,250.00. Under "WORK PERFORMED," it simply says "SURVEY & RESUBDIVID INTO TRACT A-1 & A-2." The second invoice is dated April 18, 2005, refers to a January 9, 2003 survey, and totals $9,900.00. Under "WORK PERFORMED," the invoice is itemized as follows: "BOUNDRY [SIC] LINE SURVEY" $8,500.00; "RE-SUBDIVID TRACT A" $850.00; "RE-LOCATE PROPERTY CORNERS ON WEST P.L. AND RE-SET 4 OUT 6 THAT WERE MISSING" $550.00. We note that although Mr. Bennett had already charged for re-subdividing Tract A in the November 6, 2002 invoice, he again charged for this service in the April 18, 2005 invoice, and the trial court included same in its award below. This was error by the trial court. Thus, we must amend the judgment to reduce the $9,900.00 award by $850.00, for a new award of $9,050.00.

$20,000.00 GENERAL DAMAGE AWARD
(Assignments of Error Nos. 6 and 7)

It is well settled that the trier of fact has much discretion in awarding damages. La. Civ. Code art. 2324.1. The standard for appellate review of general damages is set forth in **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994), wherein the Louisiana Supreme Court stated that "the discretion vested in the trier of fact is 'great,' and even

vast, so that an appellate court should rarely disturb an award of general damages." The appellate court's first inquiry should be "whether the award for the particular injuries and their effects under the particular circumstances on the particular injured person is a clear abuse of the 'much discretion' of the trier of fact." **Youn**, 623 So.2d at 1260.

Mr. Yoon argues on appeal that the trial court's award of $20,000.00 for pain and suffering, inconvenience, loss of trees, and loss of buffer zone is excessive and should be either reversed or substantially reduced. Mr. Yoon notes that plaintiffs offered no evidence to support an award for mental pain and suffering or inconvenience, adding that "mere worry and inconvenience should not be compensated." Concerning the loss of trees and buffer zones, Mr. Yoon points out that plaintiffs offered no evidence to establish the type or number of trees involved and no evidence of the fair market value of any of the trees that were allegedly removed. Without such evidence, Mr. Yoon contends, the trial court had no support for this award.

In response, plaintiffs argue that based on the facts and circumstances of this case, the award of $20,000.00 is appropriate. Plaintiffs assert that they endure Mr. Yoon's trespass every day and that the rows of natural vegetation that once separated their home from a view of the interstate are no longer there because of the actions of Mr. Yoon. With regard to the issue of the "market value of the timber that was cut," plaintiffs note that they neither plead this issue nor were they awarded such damages. Rather, they contend, the court simply awarded them "general damages for the inconvenience and loss of enjoyment of the seclusion this configuration offered" them prior to Mr. Yoon's actions. While we agree with plaintiffs' argument concerning the loss of trees and buffer zone, our analysis does not end here. The amount of general damages awarded must be reduced based on our resolution of the prescription issue addressed earlier in this opinion.

According to the record, the trial court's $20,000.00 general damage award was a lump sum award that was neither itemized nor attributed to any specific acts of trespass. However, as previously indicated, Mr. Yoon's acts of trespass involved three

different areas of Tract A-2; namely, the southwest corner, the western boundary, and the northern boundary. We have already concluded that plaintiffs' trespass claims as to the western boundary are prescribed. Thus, there can be no damages awarded for Mr. Yoon's actions along the western boundary. Moreover, although we agree with the trial court that Mr. Yoon trespassed on the southwest corner of Tract A-2, we find plaintiffs failed to prove any damages associated with same. There was evidence in the record that others, besides Mr. Yoon, also trespassed in this area of plaintiffs' property. Thus, the only acts of trespass by Mr. Yoon that warranted damages were those associated with the northern boundary. Accordingly, we amend the judgment to reduce the general damage award to $10,000.00.

CONCLUSION

For the above and foregoing reasons, the judgment is amended to (1) reduce the award for the cost of Mr. Bennett's survey to $9,050.00, and (2) reduce the award for the loss of the trees, loss of buffer zones, pain and suffering, and inconvenience to $10,000.00. In all other respects, the judgment is affirmed. All costs associated with this appeal are assessed equally against the parties.

AFFIRMED AS AMENDED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0809

ALAN BRAUD & CHRISTY BRAUD

VERSUS

KI YOON

HUGHES, J., concurring.

I respectfully concur for the following reasons. References are to plaintiffs' property (Tract A-2):

1. Southwest Corner: The right of way obtained by Mr. Yoon does not square up with the public road. It intersects at a single point. I agree that no damages are due, but would grant injunctive relief.

2. Western Boundary: Plaintiffs acknowledge work was done originally within the right of way, but then claim that the work was expanded, which resulted in an old fence line and trees being torn down. I would defer to the fact-finder here.

3. Northern Boundary: Again, there is conflicting evidence as to when the fence was torn down and the trees cut. I would again defer to the fact-finder.

4. Survey: I am strongly opposed to forcing Mr. Yoon to pay for an admittedly faulty survey that was ordered by the plaintiffs. However, in consideration of the reduction of damages, I will concur in the result reached.

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Downing, J., dissents.

The trial court should have granted the exception of prescription and dismissed the petition.