STATE OF MINNESOTA
IN COURT OF APPEALS
A11-298

Amy Radford,
Respondent,

vs.

Airizes Miller,
Appellant,

Terry Roemhildt, et al.,
Defendants.

Filed April 23, 2012
Affirmed
Halbrooks, Judge

Kanabec County District Court
File No. 33-CV-09-430

Jeffrey Alan Nath, Law Office of Jeffrey A. Nath, PLLC, White Bear Lake, Minnesota (for appellant)

Amy Radford, Minneapolis, Minnesota (pro se respondent)

Considered and decided by Hudson, Presiding Judge; Halbrooks, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

After a jury trial, respondent was awarded $20,000 against appellant on her claim of invasion of privacy by intrusion upon seclusion. Appellant challenges the district court's denial of his motion for judgment as a matter of law (JMOL) or a new trial. We affirm.

FACTS

Appellant Airizes Miller held record title to property in Kanabec County. He obtained the title by quitclaim deed from Visions Real Estate Holding Co. Inc. owned by Terry Roemhildt. Miller recorded the deed with the office of the Kanabec County Recorder on July 12, 2005. Miller subsequently transferred the land back to Roemhildt by quitclaim deed on October 11, 2008, but Roemhildt never recorded the deed. On January 7, 2009, Miller sold the land to respondent Amy Radford for $39,000. Radford recorded the deed with Kanabec County.

Before buying the property, Radford checked the Kanabec County records and saw no notice of Roemhildt's interest in the property. After Radford finalized the agreement with Miller, she and her family went to the property multiple weekends to clean up the land, collect dead fall, build a driveway, and prepare the property to build a permanent home. During one of the weekends that Radford and her family were at the property, Roemhildt came onto the property and left a note in their canopy tent, stating that he owned the land and providing his phone number. After Roemhildt and Radford talked, Roemhildt faxed her the documents that he had regarding his quitclaim deed.

Radford conducted a title search on the land and confirmed that it was Miller's land to sell. Roemhildt also went to the recorder's office and ascertained that the land remained in Miller's name.

Miller tried to cancel his purchase agreement with Radford. Miller testified that the agreement included terms that Radford would obtain financing to pay the full purchase price. When she did not get a loan after five to seven months, Miller said that he no longer wanted to work with Radford and that the transaction was off because she breached the contract. But Miller continued to accept $500 monthly payments from Radford during this time. After Miller claimed that he cancelled the transaction, he went to Florida for a period of time, but subsequently learned that Radford was still developing the land. Miller testified at trial that because the land was still in his name, he told Roemhildt to put up "no trespassing" signs to make it clear that he did not want Radford on the property. Roemhildt posted two signs, one on each side of the driveway that Radford put in, and signed "Airizes Miller" on them. Radford called the Kanabec County Sheriff six times because Roemhildt continued to show up at the property. Finally, Radford filed a lawsuit.

Radford sued Miller, as well as Terry Roemhildt, Michelle Roemhildt, and Visions Real Estate. Radford asserted that (1) she is the rightful owner of the land; (2) the defendants conspired to commit fraud and deprive her of the rights to the property; (3) she is entitled to damages based on private nuisance, trespass, and invasion of privacy by intruding upon her seclusion; and (4) the damages owed by defendants offset the $36,000 she still owed on her contract for deed. Radford and Miller represented

themselves at trial; an attorney represented Terry and Michelle Roemhildt and Visions Real Estate.

After a two-day jury trial, the district court submitted to the jury the issues of invasion of privacy against Miller and Terry Roemhildt and whether Radford had prior knowledge of Roemhildt's interest in the property. The district court dismissed the claims of conspiracy to commit fraud and nuisance because Radford did not present evidence of damages for those claims, as well as the claims against Michelle Roemhildt and Visions Real Estate. The district court reserved for its own resolution Radford's quiet-title claim. The jury found that Terry Roemhildt did not intentionally intrude upon Radford's seclusion, but that Miller did, and awarded Radford $20,000 in damages. The district court found that Miller has title to the disputed land, subject to the purchase agreement with Radford. Miller brought posttrial motions for JMOL or for a new trial, which the district court denied. This appeal follows.

D E C I S I O N

I.

Miller argues that the district court erred by not granting his motion for JMOL or, in the alternative, a new trial. A district court may grant a motion for JMOL when a party "has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party." Minn. R. Civ. P. 50.01(a). The district court should not grant JMOL when reasonable jurors could draw different conclusions from the record. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009). We review a district court's JMOL decision de novo, but we examine "the evidence in a light most

favorable to the nonmoving party." *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006).

Miller contends that Radford failed to prove the necessary components of the tort of invasion of privacy by intrusion upon seclusion. There are three elements to this claim: "an intrusion; that is highly offensive; and into some matter in which a person has a legitimate expectation of privacy." *Swarthout v. Mut. Serv. Life Ins. Co.*, 632 N.W.2d 741, 744 (Minn. App. 2001); Restatement (Second) of Torts § 652B (1977).

Miller argues that there was no intrusion because Roemhildt was the only one to go onto Radford's property, and Miller cannot be liable for the actions of a third party. An intrusion can be perpetrated by different means. It can be a physical intrusion into a physical space; it can be through a "defendant's senses, with or without mechanical aids, to oversee or overhear a person's private affairs"; or it can be through investigating a person's private affairs, such as "opening private or personal mail, searching [a] safe or wallet, [or] examining a private bank account." Restatement (Second) of Torts § 652B, cmt. b.

In response to Radford's questions during trial, Miller testified:

> I owned the land and [Roemhildt] has permission to be on the land. I'm the one who told him to write my name on [the no] trespassing sign. He had permission, my permission, to be there. . . .
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> . . . .
>
> . . . I told you that I wanted you off the property, we were done. You did not follow direct orders. I had [Roemhildt] go out there and we were contacting each other and I told him to put up those signs. And like I said earlier, I

> told the officer too that he has my permission. So therefore he does have permission to be out on the land. You did not.

When the evidence is considered in the light most favorable to Radford, it establishes a direct link between Miller's direction to Roemhildt to post the "no trespassing" signs and the physical intrusion onto Radford's land. Because Miller's actions directly caused the physical intrusion upon the seclusion of Radford, the district court did not err in denying Miller's motion for JMOL.

Next, Miller contends that Radford failed to establish that the intrusion was highly offensive. To be highly offensive, the intrusion must be substantial to a reasonable person and one to which a reasonable person would strongly object. *Swarthout*, 632 N.W.2d at 745 (quoting Restatement (Second) of Torts § 652B, cmt. d). The illustration from the Restatement provides:

> [T]here is no liability for knocking at the plaintiff's door, or calling . . . on one occasion or even two or three, to demand payment of a debt. It is only when the telephone calls are repeated with such persistence and frequency as to amount to a course of hounding the plaintiff, that becomes a substantial burden to his existence, that his privacy is invaded.

Restatement (Second) of Torts § 652B, cmt. d. Radford testified that she called the Kanabec County Sheriff six times because Roemhildt continued to show up at the property and that, as a result of the intrusions, she no longer felt safe to bring her children to the property. This evidence, when viewed in the light most favorable to Radford, is sufficient to establish that the intrusion was highly offensive.

Finally, Miller contends that Radford did not present any evidence of damages as a result of the intrusion. But Radford testified regarding her damages. In addition to

feeling that the property was no longer a safe place for her children, Radford testified that she was unable to build on the property throughout the spring and summer because the city would not issue a permit with the pending legal action. Being unable to build was significant to Radford and her family because they "purchased the property to build [their] future home, to have a place out in the country . . . to be self sufficient. This was going to be [their] permanent home." Radford had also invested time and resources in the land—she made $500 monthly payments and put in a driveway. This is sufficient evidence to support the finding of damages.

Miller also asserts that the district court erred by denying his motion for a new trial. A new trial may be granted if the "verdict, decision, or report is not justified by the evidence, or is contrary to law." Minn. R. Civ. P. 59.01(g). "Whether the verdict is justified by the evidence presents a factual question and the district court may properly weigh the evidence." *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 687 (Minn. 2004).

In weighing the evidence, the district court reasoned:

> [T]here was testimony by Defendant Miller that he directed Terry Roemhildt to write Miller's name on no-trespassing signs and place the signs on the subject property. Miller testified he owned the property and ordered [Radford] to remove herself from the property, despite the contract between Miller and [Radford] in which Miller agreed to sell the property to [her]. Miller also testified that he gave Terry Roemhildt, as well as a police officer, permission to access the property.
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> The evidence, when viewed in the light most favorable to [Radford], supports the jury's verdict that Defendant Miller intentionally intruded upon the solitude or seclusion of [Radford] and that [she] had a reasonable expectation of privacy in her solitude or seclusion. The Court is satisfied that there was no sympathy, improper motive, passion, or

> prejudice introduced at trial that would render the need for a new trial under these circumstances. As the verdict is sustained by a preponderance of the evidence, Defendant Miller's motion for a new trial is denied.

Because the district court weighed the evidence and has broad discretionary power to order a new trial, it did not err in denying Miller's motion for a new trial.

II.

Miller contends that the district court erred by allowing the claim of invasion of privacy against him go to the jury. Minn. R. Civ. P. 41.02(a) provides, "The court may upon its own initiative, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court." The purpose of the rule is to enforce the rules of procedure. *Lampert Lumber Co. v. Joyce*, 405 N.W.2d 423, 425 (Minn. 1987). We review a district court's application of rule 41.02 for an abuse of discretion. *Zuleski v. Pipella*, 309 Minn. 585, 586, 245 N.W.2d 586, 587 (1976).

Miller claims that Radford abandoned her invasion-of-privacy claim against him at the end of trial when the district court was determining which jury instructions to give. When the district court was clarifying the claims that Radford wanted to pursue, it asked, "Your demand for damages for invasion of privacy for whom?" She responded, "Against Terry Roemhildt only." But the district court still submitted the invasion-of-privacy claim against Miller to the jury with no objection from any of the parties.

The conditions that might warrant the dismissal of a complaint under rule 41.02 are not present. First, Radford offered evidence to support the claim of invasion of

privacy against Miller through testimony that Miller did intrude into her seclusion when he instructed Roemhildt to post the "no trespassing" signs. Second, there were no allegations that Radford failed to abide by the rules of civil procedure or did not follow an order from the district court. Finally, Miller did not bring a motion to dismiss, and the district court has broad discretion to dismiss the case on its own initiative, as it "may" do so. *See* Minn. Stat. § 645.44, subd. 15 (2010) (defining "may" as permissive). Because the district court has broad discretion under rule 41.02 and because Radford did not violate any rules of procedure or fail to make her case, the district court did not err by submitting the claim to the jury.

III.

Miller contends that the district court erred by not submitting to the jury the issue of the validity of the vacant-land purchase agreement and the amendment to the purchase agreement. A party who disagrees with a jury instruction, or the failure to give a jury instruction, must make a proper objection before the district court instructs the jury. Minn. R. Civ. P. 51.03. A party cannot assign error to the district court for the failure to give an instruction unless it was properly requested under rule 51.01. Minn. R. Civ. P. 51.04(a)(2). Nevertheless, if a party fails to object, this court can still consider plain error if it affected substantial rights. Minn. R. Civ. P. 51.04(b); *see also H Window Co. v. Cascade Wood Prods., Inc.*, 596 N.W.2d 271, 275 (Minn. App. 1999), *review denied* (Minn. Aug. 17, 1999). To constitute plain error, the omission must be "with respect to a fundamental law." *Anderson v. Ohm*, 258 N.W.2d 114, 118 (Minn. 1977). And a party's rights are substantially affected when the correctness of an entire claim is destroyed, the

result is a miscarriage of justice, or it causes substantial prejudice to a party. *Lindstrom v. Yellow Taxi Co. of Minneapolis*, 298 Minn. 224, 229, 214 N.W.2d 672, 676 (1974).

Because Miller failed to object to the jury instructions, there must be a plain error of law that substantially affected his rights. The district court opted to determine the issue of quiet title (the issue associated with the validity of the purchase agreement) because of the equitable issues involved and the complexity of the issues. The district court reasoned that an action to quiet title involves equitable remedies when used to determine adverse claims, relying on *Gabler v. Fedoruk*, 756 N.W.2d 725, 730 (Minn. App. 2008) (stating that an action to quiet title and an action to determine adverse claims are equitable actions). The district court stated, "It is within the court's discretion whether to submit an equitable action, such as an action to quiet title or determine adverse claims, to the jury." The district court cited to *Denman v. Gans*, 607 N.W.2d 788, 793-94 (Minn. App. 2000), *review denied* (Minn. June 27, 2000), which held that "[b]ecause appellant's action was fundamentally to quiet title or to determine an adverse claim, the action is one that would traditionally be considered equitable. Accordingly, appellants were not entitled to a jury trial as a matter of right." Because the district court correctly applied the law by using its discretion to resolve the issue of quiet title, there was no plain error of law.

Affirmed.