

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

MICHAEL PINSKI and)	Case No. CI02-1574
LORRAINE PINSKI)	
)	Honorable Charles J. Doneghy
)	
Plaintiffs,)	ANSWER AND COUNTERCLAIM
)	WITH JURY DEMAND ENDORSED
vs.)	HEREIN
)	
GEORGE ZEIGLER and)	
CAROL ZEIGLER)	
)	
Defendants.)	
)	
)	
)	
)	

Now come the defendants, by and through their counsel McHugh, DeNune & McCarthy, and for their answer state as follows:

FIRST CAUSE OF ACTION

1. Defendants admit that all parties are residents of Sylvania Township.
2. Defendants admit that plaintiffs are their neighbors and deny the remainder of paragraph 2 of plaintiffs' complaint for lack of knowledge, information and belief.
3. Answering paragraph 3 of plaintiffs' complaint, defendants admit only that they are the neighbors of the plaintiffs and that defendants reside at 5753 Dennison.
4. Defendants deny the allegations contained in paragraph 4 of plaintiffs'

complaint.

5. Answering paragraph 5 of plaintiffs' complaint, defendants admit sending two amicable letters to the plaintiffs requesting the removal of their improperly installed fence that rested on the defendants' land. Defendants deny the remainder of the allegations contained in paragraph 5 of plaintiffs' complaint.

6. Defendants deny the allegations contained in paragraph 6 of plaintiffs' complaint.

7. Answering the allegations contained in paragraph 7 of plaintiffs' complaint, defendants deny the allegations therein. Furthermore, Defendants state that no response is necessary for the legal conclusions contained therein.

SECOND CAUSE OF ACTION

8. Defendants acknowledge plaintiffs' incorporation of prior paragraphs of their complaint.

9. Defendants deny the allegations alleged in paragraph 9 of plaintiffs' complaint.

10. Defendants deny the allegations alleged in paragraph 10 of plaintiffs' complaint.

11. Defendants deny the allegations alleged in paragraph 11 of plaintiffs' complaint.

THIRD CAUSE OF ACTION

12. Defendants acknowledge plaintiffs' incorporation of prior paragraphs in their complaint.

13. Answering paragraph 13 of plaintiffs' complaint, defendant George Zeigler admits that plaintiffs had a survey of their real property conducted, but denies the validity thereof and denies any interference therewith.

14. Defendants denies the allegations contained in paragraph 14 of plaintiffs' complaint.

15. Defendants denies the allegations contained in paragraph 15 of plaintiffs' complaint.

16. Defendants denies the allegations contained in paragraph 16 of plaintiffs' complaint.

FOURTH CAUSE OF ACTION

17. Defendants acknowledge plaintiffs' incorporation of prior paragraphs in their complaint.

18. Defendants admit that plaintiff Lorraine Pinski regularly uses profanity and trespasses upon their property, but denies publishing her use of profanity or trespassing to third parties.

19. Defendants deny the allegations contained in paragraph 19 of plaintiffs' complaint.

FIFTH CAUSE OF ACTION

20. Defendants acknowledge plaintiffs' prior incorporation of previous allegations in paragraph 20 of their complaint.

21. Defendants deny the allegations contained in paragraph 21 of plaintiffs' complaint.

22. Defendants deny any and all allegations not specifically so admitted herein.

AFFIRMATIVE DEFENSES

First Defense

23. Plaintiffs have failed to state a claim upon which relief may be granted.

Second Defense

24. Plaintiffs fence is improperly on defendants' land and is trespassing thereby.

Third Defense

25. Although George Zeigler denies removing any survey stakes, even he had done so, said stakes were on his land and he was within his lawful right to do so.

Fourth Defense

26. As to plaintiffs' allegations of slander or liable, defendants assert the affirmative defense of truth as to said statements, matter of fact, and fair comment.

Fifth Defense

27. By placing their fence of Defendants' land, Plaintiffs assumed the risk of injury for loss of the fence.

Sixth Defense

28. Against the false allegations of trespass, Defendants state that even if they had trespassed, the defense of necessity applies.

Seventh Defense

29. Defendants assert their right to defend their land and chattel.

Eighth Defense

30. Plaintiffs claims are barred by estoppel and waiver.

Ninth Defense

31. Plaintiffs fraudulently obtained approval through the Sylvania Zoning Board.

In fact, Plaintiffs' fence far exceeds the height and length submitted to the zoning board.

Tenth Defense

32. Plaintiffs actions are illegal and they cannot therefore base claims thereon.

Eleventh Defense

33. Plaintiffs have failed to mitigate their damages.

Twelfth Defense

34. Plaintiffs come to the court with unclean hands

Thirteenth Defense

35. If the defendants trespassed onto plaintiffs land as alleged by plaintiffs, (which, in truth, no such trespasses occurred), plaintiffs failed to object to prior past alleged trespasses such that the doctrine of laches applies.

Fourteenth Defense

36. If the defendants trespassed onto plaintiffs land as alleged by plaintiffs, (which, in truth, no such trespasses occurred), plaintiffs granted permission for said trespasses.

Fifteenth Defense

37. Plaintiffs have no damages, and even if they did, such damages would be de minimus.

Sixteenth Defense

38. Defendants reserve the right to supplement its affirmative defenses as they may become known during discovery.

COUNTERCLAIM

For their counterclaim against plaintiffs, defendants state as follows:

COUNT I

(Trespass to Land)

39. Plaintiffs have caused a fence to be built upon defendants' property. Said fence was built without permission or necessity.

40. Plaintiffs' placement of a fence on defendants' land and chattels constitutes an unlawful trespass by the Plaintiffs. Said fence has damaged the land with the insertion of concrete posts and has denied the Defendants the use and enjoyment of their land.

41. After verifying that the fence resided on their land through a professional surveyor, defendants complained to the Pinski's, and getting no response, complained to the Sylvania Zoning Board. Thereafter Mr. Pinski screamed and assaulted Mrs. Zeiger before her daughter alleging that the Zeigler's "turned them in to the city." Plaintiffs further retaliated against defendants for "turning them in to the city" by waging a war of harassment. First, plaintiffs entered onto defendants' land and destroyed defendants' koi pond by pouring oil into the water and killing the fish. Shortly after the fish died from the oil, the plaintiffs gleefully told the defendants' that "like neighbors, water and oil don't mix." Second, plaintiffs threw a large bag of wet human feces (including toilet paper) onto defendants' driveway and yard. The human feces smeared across the driveway in a direct projectory from plaintiffs' property. Third, plaintiffs regularly and repeatedly toss accumulated dog feces onto the back part of defendants' property on the pathway to defendants' shed where defendants' two minor girls play. The tossing of the dog feces accentuated plaintiffs' encouragement of their two very large and dangerous dogs to go through the opened gate and to run

wild in defendants' yard and defecate there. As further encouragement of their very large dogs to trespass upon defendants' land, plaintiffs regularly and repeatedly have tossed garbage, such as chicken and stake bones, into defendants' yard. While plaintiffs' two large dogs are loose, defendants' two little girls are afraid to play in their own yard. Plaintiffs also unlawfully trespassed upon defendants' land to take defendants' firewood to fuel plaintiffs personal outdoor campfires. While defendants vacationed at Hidden Lake during the weekends of the fall months, on several occasions they would come home to find their brand new grill had been used by plaintiffs without permission to do so. Plaintiffs thus left large messes of barbeque sauce for defendants to come home and clean with a wire brush. After defendants told the plaintiffs not to use their grill, the plaintiffs trespassed upon defendants' land and stole defendants' propane tank. After defendants replaced the propane tank, plaintiffs trespassed onto defendants' land and opened the valve of the new replacement tank such that all the gas emptied out. Plaintiffs also trespassed and stole the keys to defendants' riding loan mower, rendering it unusable. Plaintiffs returned the keys in January 2002 by placing them under the grill cover. Plaintiffs also trespassed onto defendants land and poisoned defendants' small seven year old beagle. Furthermore, upon information and belief, plaintiffs dug out the original metal rod surveying stakes in an attempt to misappropriate defendants' land. Recently, plaintiffs trespassed into defendants garage, and in doing so, broke the lock. As defendants were repairing the lock, plaintiffs loudly exclaimed that defendants were cleaning *their* garage (as if defendants' garage belonged to plaintiffs). Finally, plaintiffs destroyed defendants' rail road tie border along their driveway.

42. As a direct and proximate cause of plaintiffs' unlawful trespass, plaintiffs have injured defendants in excess of \$100,000, costs of suit, attorney fees, and appropriate punitive

damages.

COUNT II

(Trespass to Chattel)

43. Defendants incorporate the prior paragraphs of their complaint as if fully restated herein.

44. Plaintiffs poisoned defendants' koi fish and destroyed their pond by pouring oil into the water. Shortly after the fish died from the oil, the plaintiffs gleefully told the defendants' that water and oil don't mix.

45. Plaintiffs' killing of defendants' koi fish and destroying their pond constitutes a trespass to chattel. Similarly, plaintiffs' theft of defendants' firewood, unlawful use of defendants' grill, theft of a propane tank, destruction of another propane tank, and theft of the riding lawn mower keys constitute further unlawful trespasses to chattel.

46. As a direct and proximate result of plaintiffs' trespass to chattel, plaintiffs have injured defendants in excess of \$10,000 in monetary damages, costs of suit, attorney fees, and punitive damages.

COUNT III

(Assault)

47. Defendants incorporate the prior paragraphs of their complaint as if fully restated herein.

48. Mr. Pinski trespassed onto the Zeigler land and menacingly approached Carol Zeigler as she sat helping her younger daughter with homework on the outdoor deck. Mr. Pinski, after leaning over Carol Zeigler, holding his survey papers within inches of

Carol's face with one hand, and furiously punching the survey with his other hand, began screaming a tirade falsely accusing Mrs. Zeigler of turned him in to the City of Sylvania.

49. By menacingly leaning over Carol Zeigler as she sat with her young daughter, furiously punching his survey in close proximity to Carol Zeigler and screaming at her, Mr. Pinski intended to place her in fear of bodily harm and to intimidate her. Carol Zeigler did indeed fear great bodily harm and possible harm to her children. She therefore stood motionless as to not provoke him further and gestured the children towards safety. Mr. Pinski later admitted his attack and apologized to the Zeiglers for his actions.

50. As a direct and proximate result of Mr. Pinski's assault, Carol Zeigler experienced great fear and emotional distress in excess of \$15,000. She is further entitled to attorney fees and punitive damages therefore.

COUNT IV
(Intentional Infliction of Emotional Distress)

51. Defendants incorporate the prior paragraphs of their complaint as if fully restated herein.

52. Plaintiffs' trespass upon defendants' land, unlawful placement of a fence thereon, refusal to remove same fence after adequate notice and proper request, pouring oil into defendants' koi pond to kill the fish, throwing human feces onto defendants' driveway, tossing weekly accumulated dog feces onto defendants' land, the frequent loosing of plaintiffs two large dogs onto defendants land to further defecate and scare defendants' children, the poisoning of defendants' dog, Mr. Pinski's assault on Mrs. Zeigler and the previously described activity in Paragraph 41 of this counterclaim all constitute outrageous behavior.

53. Plaintiffs' outrageous behavior has caused severe emotional distress to defendants.

54. As a direct and proximate cause of plaintiffs' intentional infliction of emotional distress due to outrageous conduct, plaintiffs have injured defendants in excess of \$100,000, costs of suit, attorney fees, and punitive damages.

COUNT V

(Conversion)

55. Defendants incorporate the prior paragraphs of their complaint as if fully restated herein.

56. Plaintiffs placement of the fence unlawfully deprives the defendants of the use and enjoyment of their land such as to constitute conversion. Plaintiffs further converted defendants' s koi pond, firewood, new grill, two of its propane tanks, and a riding loan mower as previously pled herein.

57. As a direct and proximate result of plaintiffs' conversion, Defendants have been injured in excess of \$100,000, costs of suit, attorney fees, and punitive damages.

WHEREFORE, defendants request this court to dismiss plaintiffs' complaint as is proper and just and to further award defendants damages in excess of \$125,000, attorney fees, and punitive damages in the amount of \$250,000 for plaintiffs' trespass to land, trespass to chattels, assault, intentional infliction of emotional distress, and conversion. Defendants further pray to this court for an Order removing plaintiffs' fence from defendants' land at plaintiffs' expense and a restoration of defendants' land. Defendants also request an injunction preventing Plaintiffs from further trespassing and harassing Defendants in any way, including but not limited to Plaintiff's

intentional loosing of their large dogs onto Defendants' property. Finally, defendants request any further relief, equitable or otherwise, that the court deems proper and just.

Respectfully submitted,

Mark A. Davis
Attorney for Defendants

JURY DEMAND

Defendants request a trial by jury on all issues so triable.

Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served via ordinary U.S. Mail upon George R. Royer, Esq., attorney for plaintiffs, at his office located at 316 North Michigan, Suite 416,k Toledo, OH 43624 on this _____ day of February, 2002.

Attorney for Defendants