

Circuit Court for Frederick County  
Case No. 10-C-17-000614

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 37

September Term, 2018

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DIANNA KEMP

v.

DOUG HOWELL, ET AL.

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Berger,  
Arthur,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: June 6, 2019

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Frederick County, Dianna Kemp, the appellant, sued Doug Howell, the appellee, and his wife, Linda Howell, for trespass to real property and trespass to personal property, seeking \$70,000 in compensatory and punitive damages. The circuit court granted, in part, the Howells’ motion for summary judgment, entering judgment in favor of Ms. Howell on all claims and granting judgment on Ms. Kemp’s claim for punitive damages. The trespass claims against Mr. Howell were tried to a jury over one day. The jurors found that Mr. Howell did not trespass.<sup>1</sup> Ms. Kemp’s motion for a new trial was denied. Ms. Kemp appeals, arguing that the jury’s verdict is “contrary to law.” Because her argument is not preserved for appellate review, we shall affirm the judgment.

The lawsuit stemmed from a dispute over landscaping stones lining the bottom of a white picket fence parallel to the side property line dividing the parties’ properties, but entirely on the Howells’ side of that line. Mr. Howell lined the interior of his fence with chicken wire and placed red bricks on the ground between the fence posts along the exterior of the wire to deter small rodents from entering his backyard. In the fall of 2016, someone in Ms. Kemp’s household removed the red bricks, which were easily accessible to her as they were on her side of the fence, replaced them with white paving stones more

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<sup>1</sup> When this appeal was noted, no judgment had been entered, pursuant to Rule 2-601(a), memorializing the verdict in favor of Mr. Howell. On May 8, 2019, this Court ordered a limited remand to permit the circuit court to enter a judgment. That same day, the circuit court entered judgment in favor of Mr. Howell. Pursuant to Rule 8-602(f), we shall treat Ms. Kemp’s notice of appeal as having been “filed on the same day as, but after, the entry on the docket” of the judgment.

in keeping with her landscaping décor, and deposited the bricks on the Howells' property. Thereafter, while Ms. Kemp was away for Thanksgiving in 2016, Mr. Howell entered Ms. Kemp's property, moved the white paving stones off his property along the fence line, and replaced his red bricks. Mr. Howell left the paving stones on Ms. Kemp's property about "a foot and a half from the fence." After Ms. Kemp returned after Thanksgiving, she stubbed her toe on one of the white paving stones while conducting a routine inspection of her property.

At the one-day jury trial, Mr. Howell admitted having entered Ms. Kemp's property, but testified that he felt justified in doing so because the bricks had been removed from his property without his permission and the white paving stones had been placed on his property, along the bottom of his fence. Ms. Kemp's attorney did not move for judgment at the close of all the evidence (or at the close of her case) pursuant to Rule 2-519. The court instructed the jurors that trespass was entering onto the land of another without "authority, privilege, or permission" and that justification, also known as privilege, was a defense to trespass. The court further instructed that justification could arise from "consent or the existence of a legal right." Ms. Kemp's attorney did not except to the jury instructions before or after they were given. The case was sent to the jury on a special verdict sheet, asking whether Mr. Howell had committed a trespass and, if yes, what amount, if any, of economic and non-economic damages it awarded. The jury answered "no" to the first question and did not reach the issue of damages.

Having failed to make a motion for judgment prior to submission of the case to the jury, Ms. Kemp has not preserved for our review her argument on appeal that Mr. Howell's admission that he entered Ms. Kemp's property without her consent made him liable for trespass as a matter of law. *See Waters v. Whiting*, 113 Md. App. 464, 474-75 (1997) (where no motion for judgment was made at the close of all the evidence, this Court was "precluded from reaching any of the substantive questions that the appeal raises," including the propriety of the jury's verdict). Her one-page motion for a new trial, which argued in a conclusory fashion that the "verdict in this matter is not supported by the actual evidence," also did not preserve this issue as "one may not preserve an issue *nunc pro tunc*" by raising it in post-trial motions. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 483 (2002).

**JUDGMENT OF THE CIRCUIT COURT  
FOR FREDERICK COUNTY AFFIRMED.  
COSTS TO BE PAID BY THE  
APPELLANT.**