

*Wunder v Jorgensen*, Not Reported in N.W.2d, 2004 WL 3569694  
(Iowa Dist., 2004) (unpublished)

Iowa District Court, Johnson County.

Charles WUNDER and Marcia Wunder, Plaintiffs,

v.

Palle JORGENSEN and Soon Jorgensen, Defendants.

No. LACV 062983

Not Reported in N.W.2d, 2004 WL 3569694

Feb. 6, 2004.

ORDER

ROBINSON, J.

\*1 Trial to the court was held February 2, 2004. The earlier request for a jury trial was jointly withdrawn. This case epitomizes Robert Frost's adage: "good fences make good neighbors".

The parties live in an older beautifully wooded neighborhood on Iowa City's west side. Wunder's lot is about one acre in size. Jorgensen's lot, which abuts Wunder's lot to the

west, is only slightly smaller. The location of these properties is particularly desirable in that it is close to Hancher Auditorium, Carver-Hawkeye Arena, UIHC, Iowa Law School, the Iowa River, and City Park.

The Wunders and Jorgensens have lived next door to each other for almost twenty years. Regrettably, most of their communications over all that time have been through legal counsel or by registered mail.

Over the years, the Wunders and Jorgensens have been neighbors, but not neighborly. The Wunders have been continually upset about the debris, both natural and manufactured, which the Jorgensens have allowed to build up on or over their common boundary. Complaints were made to the city on several occasions.

The Jorgensens erected a lean-to next to an outbuilding. The structure was essentially built on the property line and used to keep garden tools.

The subject of the lawsuit is two trees which were on Wunders' property. They were either Scotch Pines or Canadian Hemlocks located close to the lot line. The trees' branches extended over the Jorgensen property, but the extent to which they did is unknown given the circumstances of their removal.

It is apparent the Jorgensens knew the trees were on Wunders' lot because they had their lean-to's roof built around one of the trees (the eave of the lean-to extended over Jorgensen's property line).

An unusual aspect of this case is the disparity of events as related by the parties. They cannot agree on when the trees were cut down. The Wunders testified the trees were cut down in June and September 2001. The Jorgensens insist the trees were cut down in 1995 and 1998. The parties cannot even agree on whether mature trees depicted in photographs are the ones in issue.

The court finds the trees were removed in 2001. The Jorgensens knowingly and willfully cut down two mature trees which they knew to be on Wunders' property. There was no excuse for this conduct. Jorgensens had to intentionally trespass on Wunders' property to cut down the trees and that is exactly what they did.

The trees which were cut down were mature 50-foot high Scotch Pines or Canadian hemlocks. It is more likely they were hemlocks given the fact there is another hemlock not far from the stumps. The reasonable cost of replacing the trees with as mature replacements as possible is \$4,061.40.

The measure of damages for trespass is replacement cost. See *Grell v. Lumsden*, 206 Iowa 166 (1928); *Northrup v. Cooperman*, Court of Appeals 3-275, 2- 69131 (Oct. 25, 1983)(copy attached). Treble damages are to be awarded if trees are willfully cut down on another's property. Iowa Code section 658.4. The term "willfully" falls somewhere between "accidentally" and "maliciously". *Northrup v. Cooperman*, attached p. 4. In this case, Jorgensen willfully trespassed on Wunders' property to cut down the Wunders' trees. Treble damages are appropriate. With a treble damage award, no interest is due until after the judgment is entered. *Johnson v. Tyler*, 277 N.W.2d 617 (Iowa 1979). Costs of surveys and appraisals are not items of damage.

\*2 As an aside, if trees are replanted, the parties should be aware that the general rule is that an adjoining landowner may cut off growth which intrudes on his or her property. *Harndon v. Stultz*, 124 Iowa 440 (1904); *Adjoining Landowners*, 1 Am.Jur.2d, section 22.

Judgment is entered for Charles and Marcia Wunder and against Soon and Palle Jorgensen in the amount of \$12,184.20 with interest at the legal rate from this date.