

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2018-CA-01551-COA

CONSOLIDATED WITH

NO. 2016-CT-00521-COA

ALLEN L. CRONIER

APPELLANT

v.

**ALR PARTNERS L.P., AN ALABAMA LIMITED
PARTNERSHIP, AND MKAZ PARTNERSHIP
L.P., AN ALABAMA LIMITED PARTNERSHIP**

APPELLEES

DATE OF JUDGMENT:	10/01/2018
TRIAL JUDGE:	HON. JAYE A. BRADLEY
COURT FROM WHICH APPEALED:	JACKSON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	SCOTT CORLEW
ATTORNEY FOR APPELLEES:	E. FOLEY RANSON
NATURE OF THE CASE:	CIVIL - REAL PROPERTY
DISPOSITION:	AFFIRMED - 03/10/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

C. WILSON, J., FOR THE COURT:

¶1. This case involves a property dispute between Allen Cronier and two companies (ALR Partners L.P. and MKAZ Partnership L.P.) owned by brothers Marshall and Austin Rainwaters.¹ In a prior opinion, this Court affirmed the holding of the Jackson County Chancery Court that the Rainwaterses acquired title by adverse possession of 9.57 acres in

¹ ALR Partners L.P. and MKAZ Partnership L.P. own property surrounding Cronier's property, including the parcel at issue. For ease of reference, we refer to the entities and the brothers who own them collectively as the Rainwaterses.

Jackson County, Mississippi, that Cronier contended he owned. *Cronier v. ALR Partners L.P.*, 248 So. 3d 861, 864 (¶1) (Miss. Ct. App. 2017), *cert. denied*, 247 So. 3d 1264 (Miss. 2018). As part of the chancery court’s decision, the court ordered Cronier to pay the Rainwaterses’ court costs and attorney’s fees. *Id.* at 868 (¶19). Although we affirmed the chancellor’s substantive finding that the Rainwaterses owned the property at issue, *id.* at 868-71 (¶¶22-34), we reversed and remanded the award of attorney’s fees for further findings as to whether the award was in lieu of punitive damages. *Id.* at 871-72 (¶39). On remand, the chancellor clarified that the attorney’s fees were in fact awarded in lieu of punitive damages. Cronier now appeals that determination.

FACTS AND PROCEDURAL HISTORY

¶2. Cronier purchased a parcel of land in Jackson County in July 2012. *Id.* at 865 (¶¶2-3).² At the time, Cronier believed that the parcel comprised eighty acres, though he did not have the property surveyed before he purchased the property to verify that understanding. *Id.* Cronier had the property surveyed later. *Id.* at (¶3). The survey revealed that the parcel he had purchased was only about seventy acres and that there was a boundary issue with the adjoining property owned by the Rainwaterses. *Id.* at (¶¶3-5). The survey also indicated that the property corners and boundaries were marked with posts, the remains of old fences, and yellow paint blazes on trees. *Id.* At a post-survey meeting between Cronier and the Rainwaterses, before Cronier abruptly left, Cronier announced that “he had paid for eighty

² The factual and procedural background of this case is more fully discussed in our prior opinion. *Cronier*, 248 So. 3d at 865-68 (¶¶2-19). For the sake of brevity, we summarize those facts pertinent to the chancellor’s findings on remand regarding the award of attorney’s fees.

acres and said, ‘by God I’m going to get eighty acres I know what I’ve got to do.’” *Id.* at 866 (¶6). Following this meeting, the Rainwaterses went to inspect the property and found that certain old boundary markers were missing. *Id.* at (¶7). In March 2013, Cronier informed the Rainwaterses that he had conveyed the disputed property to his minor granddaughter. *Id.* at (¶8). The Rainwaterses visited the property again and discovered that more boundary markers had been removed or defaced. *Id.* at (¶9). Cronier later built a fence and gate around the perimeter of the property, including the disputed ten-acre parcel. *Id.* at (¶11).

¶3. This litigation ensued. *Id.* at (¶¶10-11). The Rainwaterses asserted claims against Cronier for trespassing, compensatory and punitive damages, and attorney’s fees. *Id.* In March 2016, the chancellor ruled in favor of the Rainwaterses on their claim of adverse possession of the 9.57 acres at issue, and the court entered a final judgment to this effect in April 2016. *Id.* at 868 (¶19). On December 12, 2017, we affirmed the court’s judgment regarding adverse possession, but we reversed and remanded in part “for clarification of whether punitive damages were awarded in the form of attorney fees.” *Id.* at 871-72 (¶39) (citing *Pursue Energy Corp. v. Abernathy*, 77 So. 3d 1094, 1102 (¶26) (Miss. 2011); *Aqua-Culture Tech. Ltd. v. Holly*, 677 So. 2d 171, 184 (Miss. 1996)).

¶4. On January 29, 2018, before the mandate issued from this Court,³ the chancery court entered a final judgment on remand, finding that “Cronier acted with actual malice” and

³ Cronier filed a motion for rehearing with this Court on December 22, 2017. After this Court denied his motion on April 10, 2018, Cronier also filed a petition for writ of certiorari with the Mississippi Supreme Court, which the supreme court denied on July 19, 2018.

ordering Cronier to “pay the Rainwaters[es’] attorney’s fees in the amount of \$10,790.00 in lieu of punitive damages.” Cronier filed a motion to set the judgment aside based on the chancery court’s lack of jurisdiction pending the final disposition of his appeal. On February 14, 2018, the chancery court entered an agreed order setting aside its January 29, 2018 final judgment.

¶5. On October 1, 2018, after the appeal was final, the chancery court entered its final judgment. In it, the chancellor adopted and incorporated the findings contained in the January 29, 2018 final judgment. Specifically, the chancellor found that Cronier had “acted with actual malice, and [Cronier] shall pay the Rainwaters[es’] attorney’s fees in the amount of \$10,790.00 in lieu of punitive damages.” Relying on *Pursue Energy* and *Holly*, the chancellor clarified that attorney’s fees were awarded in lieu of punitive damages “due to [Cronier’s] actions, which included erecting a fence around the property in clear disregard of the Rainwaters[es’] rights and conveying property to his minor granddaughter when he knew there was a serious claim for the subject property.” Cronier now appeals from this judgment.

STANDARD OF REVIEW

¶6. “A chancellor’s findings will not be disturbed unless [she] was manifestly wrong, clearly erroneous or an erroneous legal standard was applied.” *Ferrara v. Walters*, 919 So. 2d 876, 881 (¶8) (Miss. 2005). “Otherwise, this Court has no authority to disturb the chancellor’s factual conclusions when supported by substantial evidence.” *Check Cashers Exp. Inc. v. Crowell*, 950 So. 2d 1035, 1040 (¶9) (Miss. Ct. App. 2007) (citing *Sanderson v.*

Sanderson, 824 So. 2d 623, 625 (¶8) (Miss. Ct. App. 2002)). However, we review conclusions of law de novo. *Id.* (citing *Ferrara*, 919 So. 2d at 881 (¶8)).

DISCUSSION

¶7. On appeal, Cronier contends that the chancellor erred in awarding attorney’s fees in lieu of punitive damages. Specifically, he contends that the evidence is insufficient to support the chancellor’s finding that he acted with “actual malice,” such that the award of attorney’s fees in lieu of punitive damages was improper.

¶8. “Mississippi follows the general rule that, in the absence of a contractual agreement or statutory authority, attorney’s fees may not be awarded except in cases in which punitive damages are proper.” *Tunica County v. Town of Tunica*, 227 So. 3d 1007, 1027 (¶49) (Miss. 2017) (citing *Grisham v. Hinton*, 490 So. 2d 1201, 1205-06 (Miss. 1986)). Generally, punitive damages may only be awarded when a plaintiff proves “by clear and convincing evidence that the defendant against whom punitive damages are sought acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud.” Miss. Code Ann. § 11-1-65(1)(a) (Rev 2014); *see also Wise v. Valley Bank*, 861 So. 2d 1029, 1034 (¶15) (Miss. 2003) (“[T]he plaintiff must demonstrate a willful or malicious wrong, or the gross, reckless disregard for the rights of others.”). “[A]n actual award of punitive damages is not a prerequisite for an award of attorney’s fees; rather, attorney’s fees are warranted where ‘the awarding of punitive damages would have been justified,’ even if punitive damages are not awarded.” *Tunica County*, 227 So. 3d at 1029 (¶54) (quoting *Holly*, 677 So. 2d at 185). Thus, “attorney fees

may be awarded instead of punitive damages.” *Cronier*, 248 So. 3d at 871 (¶39).

¶9. On remand, the chancellor found that Cronier acted with actual malice based on Cronier’s actions, “which included erecting a fence around the property in clear disregard of the Rainwaters[es’] rights and conveying property to his minor granddaughter when he knew there was a serious claim for the subject property.” Cronier responds that attorney’s fees are not proper and that the “conduct or conditions” required to award punitive damages are not present in this case. After reviewing the record, we find no manifest error in the chancellor’s finding of actual malice.

¶10. The record thus supports the chancellor’s finding that Cronier’s conduct justified an award of punitive damages. After Cronier’s surveyor revealed that the property Cronier purchased was only seventy acres, the parties met to discuss the issue. Cronier declared that he had paid for eighty acres and said, “[B]y God I’m going to get eighty acres I know what I’ve got to do.” Thereafter, the Rainwaterses discovered that boundary markers had been removed or defaced, and Cronier informed the Rainwaterses that he had conveyed the parcel, including the disputed land, to his minor granddaughter. Cronier also proceeded to erect a fence and gates around the property despite the dispute over title. The chancellor’s findings that Cronier acted with “actual malice” and in “clear disregard of the Rainwaters[es’] rights” are thus supported by substantial evidence, and the chancellor did not err in awarding attorney’s fees in lieu of punitive damages.

¶11. **AFFIRMED.**

BARNES, C.J., CARLTON AND J. WILSON, P.JJ., GREENLEE, WESTBROOKS, McDONALD, LAWRENCE AND McCARTY, JJ., CONCUR.

TINDELL, J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION.