

ORIGINAL

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
SEVENTH DIVISION  
CIVIL ACTION NO. 99-CI-2531

FILED AND ENTERED  
ATTEST: WILMA F. LYNCH, CLERK  
DEC - 7 2010  
FAYETTE CIRCUIT CLERK  
BY: *[Signature]* DEPUTY

DOUGLAS A. VESCIO and  
LEE VESCIO

PLAINTIFFS

v.

JOHN E. DARNELL and  
JANET E. DARNELL

DEFENDANTS

JURY INSTRUCTIONS

\*\*\*\*\*

INSTRUCTION NO. 1

Immediately upon returning to the Jury Room, elect a foreperson. Nine or more of you must agree upon the answers to the Interrogatories contained herein. The nine or more of you who agree to the answers to one Interrogatory need not be the same nine or more who agree to the answers to any of the other Interrogatories. If all twelve jurors agree to the answer to any Interrogatory, the answer need be signed only by the foreperson. Otherwise, the answer to each Interrogatory must be signed by the nine or more who agree.

PLEASE PROCEED TO THE NEXT PAGE.

A TRUE COPY  
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FAYETTE CIRCUIT COURT

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BY: *[Signature]* DEPUTY

*[Signature]*

EXHIBIT G

1050

**INSTRUCTION NO. 2**

Property owners are entitled to allow their property to naturally drain onto adjacent property. Natural drainage occurs where the land naturally takes the water based on its slope, grading and elevation and other natural, non-man made, factors. Natural drainage does not occur where the owner of land unreasonably diverts water from their land by altering the natural direction, flow, amount or acceleration of the water.

[Please continue to Instruction No. 3]

**INSTRUCTION NO. 3**

The Defendants, John and Janet Darnell, are under no duty to retain naturally occurring surface water to the detriment of their property. At the same time, the Defendants may not unreasonably change the natural course of water or cause it to collect and be cast upon the Plaintiffs' property in an unnatural volume or increased velocity.

[Please continue to Instruction No. 4]

**INSTRUCTION NO. 4**

You will find for the Plaintiffs if you are satisfied from the evidence that the Darnells both (1) unreasonably changed the natural flow of surface water onto and across the Plaintiffs' property or caused water to collect and be cast upon the Plaintiffs' property in an unnatural volume or increased velocity, and (2) that action was a substantial factor in causing the claimed damages to the Plaintiffs' property. Otherwise, you will find for the Defendants.

[Please continue to Interrogatory No. 1]

INTERROGATORY NO. 1

Do you believe from the evidence that the Defendants changed the natural flow of surface water onto and across the Plaintiffs' property or caused water to collect and be cast upon the Plaintiffs' property in an unnatural volume or increased velocity?

Yes   /  

No       

<u>W. G. Paul</u>	<u>M. J. S. S. S.</u>
<u>[Signature]</u>	<u>Clark R. Hahn</u>
<u>Melissa Austin</u>	<u>M. J. K. K. K.</u>
<u>Meghan Wells</u>	<u>[Signature]</u>
<u>Josh E. Neuber</u>	<u>_____</u>
<u>[Signature]</u>	<u>_____</u>

Foreperson (if unanimous)

If your answer is "No", please return to the Courtroom.

If your answer is "Yes", please proceed to Instruction No. 5.

**INSTRUCTION NO. 5**

You have found that the Defendants caused a change in the natural course of water onto the Plaintiffs' property. Such a change in the natural course of the water shall be found to be unreasonable unless all of the following four (4) elements are satisfied: (1) there was a reasonable necessity for drainage; (2) reasonable care was taken to avoid unnecessary injury to Plaintiffs' property; (3) the utility or benefit accruing to the land drained reasonably outweighed the gravity of the harm resulting to the land receiving the burden, and; (4) the drainage was accomplished by reasonably improving or aiding the normal and natural system of drainage according to its reasonable carrying capacity, or, if in the absence of a practicable natural drain, Defendants adopted a reasonable and feasible artificial drainage.

[Please continue to Interrogatory No. 2]

INTERROGATORY NO. 2

State whether you are satisfied from the evidence as follows:

(3) That Defendants had a reasonable necessity in boring the hole or holes in the wall.

YES

1

NO

\_\_\_\_\_

Walter Carroll

See. Peters

[Signature]

M. J. [Signature]

Missus [Signature]

[Signature]

Earl E. Miller

Doris P. [Signature]

Rosa [Signature]

Foreperson (if unanimous)

If you answered "no" to Interrogatory number 2, skip to Interrogatory number 6.

However, if you answered "yes" to Interrogatory number 2 then proceed to Interrogatory number 3.

INTERROGATORY NO. 3

State whether you are satisfied from the evidence as follows:

(4) That Defendants, in diverting the water from their property to Plaintiffs' property, took reasonable care to avoid unnecessary injury to the Plaintiffs' property.

YES \_\_\_\_\_

NO   /  

W. R. Ramm \_\_\_\_\_  
\_\_\_\_\_  
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Foreperson (if unanimous)

If you answered "yes" to Interrogatory No. 2, but answered "no" to Interrogatory No. 3, skip to Interrogatory number 6. However, if you answered "yes" to this Interrogatory, then proceed to Interrogatory number 4.



**INTERROGATORY NO. 4**

State whether you are satisfied from the evidence as follows:

(5) That the utility or benefit accruing to Defendants' property reasonably outweighs the gravity of harm that resulted to the Plaintiffs' property by the diversion of water from Defendants' to Plaintiffs' property.

YES \_\_\_\_\_

NO \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Foreperson (if unanimous)

If you answered "yes" to Interrogatories 2 and 3 but answered "no" to Interrogatory number 4, skip to Interrogatory number 6. However, if you answered "yes" to this Interrogatory, then proceed to Interrogatory number 5.

**INTERROGATORY NO. 5**

State whether you are satisfied from the evidence as follows:

(6) That Defendants' diversion of water from their property to Plaintiffs' property, created by boring the hole or holes in the wall, was accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity or, if in the absence of a practicable natural drain, Defendants adopted a reasonable and feasible artificial drainage.

YES \_\_\_\_\_

NO \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Foreperson (if unanimous)

If you answered "yes" to Interrogatories No. 2, 3, and 4 but answered "no" to Interrogatory number 5, skip to Interrogatory number 6. However, if you answered "yes" to this Interrogatory then you have found for the Defendants and your verdict is complete. Return it to the Court.

INTERROGATORY NO. 6

Do you believe from the evidence that this change in the natural course of water, if any, was a substantial factor in causing the claimed damages to the Plaintiffs' property?

Yes   /  

No           

    *W. L. Smith*     \_\_\_\_\_

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Foreperson (if unanimous)

If your answer is "No", please return to the Courtroom.

If you answer is "Yes", please proceed to Instruction No. 6.

INSTRUCTION NO. 6

If you answered "No" to Interrogatory No. 2, 3, 4 or 5 and "Yes" to Interrogatory No. 6, you will determine from the evidence and award Plaintiffs a sum of money that will reasonably compensate them for:

- (a) Such decrease in the value of their property as they have suffered during the existence and directly by reason of the unreasonable condition, not to exceed \$49,200.

\$ 25,000

- (b) The decrease in the value of the use and enjoyment of their property as they have suffered during the existence and directly by reason of the unreasonable condition and nuisance, not to exceed \$50,000.

\$ 5,000

- (c) The cost of repairing the garage, not to exceed \$11,626, or the cost of tearing down the current garage and building a new garage, not to exceed \$34,580

\$ 0

- (d) The cost of constructing the berm and French Drain in Plaintiffs' backyard and repairing the backyard area, which includes the cost to replace the shrubbery and perform replacement landscaping work, not to exceed \$27,907.18.

\$ 15,000

PLEASE PROCEED TO THE NEXT PAGE

(e) The cost or value of the personal property damaged or destroyed, not to exceed \$26,711.64

\$ 5,000

(f) The reasonable cost of remedying or correcting the unreasonable condition, not to exceed \$18,000

\$ 0

W. S. Family \_\_\_\_\_  
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\_\_\_\_\_

Foreperson (if unanimous)

PLEASE PROCEED TO INSTRUCTION NO. 7

**INSTRUCTION NO. 7**

If you find for Plaintiffs and award them a sum or sums in damages under Instruction No. 6 above, and if you are further satisfied by clear and convincing evidence that Defendants' acted grossly negligent, recklessly, intentionally, and/or oppressively towards Plaintiffs lives, safety or property, you may in your discretion award punitive damages against Defendants in addition to the damages awarded under Instruction No. 6.

- Gross negligence: means the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.

- Reckless: means to evidence a disregard of, or indifference to, consequences, under circumstances involving the danger to life, safety or property of others, although no harm was intended.

- Oppression: means conduct which is specifically intended by the defendant to subject the plaintiff to cruel and unjust hardship.

- Intentionally: means where a person desires to cause consequences of his act or he believes consequences are substantially certain to result.

PLEASE PROCEED TO INSTRUCTION NO. 8

**INSTRUCTION NO. 8**

Punitive damages are awarded against Defendants for the purpose of punishing Defendants for their misconduct in this case and deterring it and others from engaging in similar conduct in the future.

If you award punitive damages, they must be fixed with calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of any sympathy, bias, or prejudice with respect to any party in the case.

If you award punitive damages, you will state the amount separately from the sum or sums awarded under Instruction No 6.

PLEASE PROCEED TO INSTRUCTION NO. 9

**INSTRUCTION NO. 9**

Your discretion to determine and award an amount, if any, of punitive damages is limited to the following factors:

- (a) The harm to Plaintiffs as measured by the damages you have awarded under Instruction No. 6 and the potential of further harm to Plaintiffs caused by Defendants' failure to comply with their duties and in considering Defendants' conduct towards Plaintiffs';
- (b) The degree, if any, to which you have found from the evidence that Defendants' conduct toward Plaintiff or their failure to comply with their duties was reprehensible, considering;
  - (i) the likelihood at the relevant time that serious harm would arise from the Defendants' misconduct; the degree of the Defendants' awareness of that likelihood; the profitability of misconduct to the Defendants; the duration of the misconduct and any concealment of it by the Defendants; and any actions by the Defendants to remedy the misconduct once it became known to the Defendants.
- (c) The total amount of punitive damages shall not exceed the lesser of \$1,000,000 or 9 times the total (\$) dollars of damages you awarded in Instruction No. 6.

PLEASE PROCEED TO INTERROGATORY NO. 7



INTERROGATORY NO. 7

State whether you are satisfied by clear and convincing evidence as follows:

That the Defendants acted grossly negligent, recklessly, intentionally, and/or oppressively towards Plaintiffs' lives, safety or property.

YES   /  

NO \_\_\_\_\_

If you answered "yes" to Interrogatory number 7, then proceed to Interrogatory number 8.

If you answered "no" then your verdict is complete. Return it to the Court.

**INTERROGATORY NO. 8**

Determine from the evidence a sum or sums you find fair and reasonable in punishing Defendants for their grossly negligent, reckless, intentional, and/or oppressive conduct and to deter such future conduct by others. However, the amount of punitive damages should not exceed **the lesser of** one million dollars (\$1,000,000) or nine (9) times the total amount of damages you awarded Plaintiffs in Instruction number 6.

\$ 75,000

W. G. Smith \_\_\_\_\_  
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Foreperson (if unanimous)

Your deliberations are complete. Please inform the bailiff and he will instruct you on when you may return to the courtroom.