Judgment rendered November 18, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 57,106-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

BENJAMIN LEE BIRD — Plaintiff-Appellee

versus

WILLIAM ERIC GILL,
ET. UX. — Defendants-Appellants

* * * * *

Appealed from the
Fifth Judicial District Court for the
Parish of Franklin, Louisiana
Trial Court No. 43,234C

Honorable Stephen Gayle Dean, Judge

* * * * *

PLAISANCE LAW, LLC
By: Mark David Plaisance
Marcus J. Plaisance — Counsel for Appellants, William Eric Gill and Rhonda Marie Olivo Gill

MIXON, CARROLL & FRAZIER, PLLC
By: Brian E. Frazier

JOHN SCOTT SARTIN — Counsel for Appellee

* * * * *

Before STONE, ROBINSON, and HUNTER, JJ.

ROBINSON, J.

The plaintiff, Benjamin Lee Bird ("Bird"), filed an action against the defendants, William Eric Gill ("William") and Rhonda Marie Olivo Gill ("Rhonda") (collectively, the "Gills"), for damages related to a boundary dispute. The trial court recognized Bird's ownership and awarded him total damages in the amount of $81,746.99, itemized as follows: $10,000 for tree replacement; $45,000 for dirt work to return the land to its former condition; $13,920 to construct three sheds for shade replacement; $326.99 for water trough replacement; $2,500 for fence repair; and $10,000 for mental anguish as a result of the Gills' actions and the judicial proceedings. The court assessed the $1,700 survey expense as court costs to be paid by the Gills. The Gills were also assessed over $20,000 in judicial interest as of the time appellate briefs were filed. The Gills appeal the judgment and damages amounts.

For the following reasons, we AFFIRM IN PART AND REVERSE IN PART the trial court's judgment on the merits and AMEND IN PART the judgment on damages.

FACTS AND PROCEDURAL HISTORY

Bird and the Gills own rural property in Franklin Parish adjacent to each another. Bird owns a 114-acre tract to the north, and the Gills own a 100-acre tract to the south. Bird purchased his property in 2004. At some point between 1988 – 1990, the prior owner of Bird's property installed a fence on the southern portion of the property running east to west, but it was not on the actual, surveyed boundary. There is an 18-foot strip of land totaling 0.879 acres from the fence to the Gills' northern boundary, as it was

later established by survey ("the disputed property"). The disputed property consisted of an old police jury roadbed and drainage area and included the majority of a 30-foot utility right-of-way with a power line.

The Gills purchased their property in March 2013. William inspected the property with David Fortenberry ("Fortenberry"), a farmer, prior to the purchase to determine whether it could be converted for row-crop farming. William also inspected the property with the previous owner, who told him that the property consisted of everything inside the fence. The Gills had a title search done in conjunction with their acquisition of the property, which confirmed proper ownership of the property as described in the deed. They also purchased owner's title insurance, but boundary issues were specifically excluded from the policy. No survey was done in conjunction with the Gills' purchase of their property.

Following the purchase, William entered into an oral agreement with Fortenberry to prepare the Gills' property for farming and instructed him to stay inside the fence. Fortenberry, along with Carey Williamson ("Williamson"), performed tree clearing and drainage work on the Gills' property, as well as the disputed portion that the Gills believed they owned at the time. When Bird returned home from offshore work in March 2013, he discovered the clearing work being done on the disputed portion. Bird advised Williamson that he claimed ownership of approximately 20 feet of land south of the fence. William was notified of the issue and arrived at the property shortly thereafter. William and Bird had a discussion about the boundary discrepancy, and William advised Bird that he understood his boundary to be the fence. William questioned whether Bird had a survey, to

which Bird responded that he did not. William claimed that Bird used profanity and acted aggressively, which Bird denies. Bird claims that William stated, "Let him waste his money on an attorney. I own it." There were no witnesses to the conversation.

William paused the work and spoke with his attorney, Tab Singer ("Singer"), the following day. William claimed that Singer told him that he owned the property due to the age of the fence, but he ultimately testified that Singer had simply stated that the fence was "more than likely" over 30 years old. Singer testified that he did not recall the substance of their conversation, but he would not have advised anyone regarding ownership due to acquisitive prescription without any qualifications. It is uncertain whether Singer advised William to obtain a survey. In any event, William directed that the land clearing and drainage work be resumed without any survey being done by either Bird or the Gills. William testified that he chose not to give Bird an opportunity to get a survey prior to the work resuming due to his "attitude" during their conversation.

All of the trees and brush were cleared from the disputed area and burned. A new ditch was created that spanned the entire disputed area, and dirt from the new ditch along with additional dirt from the disputed area was used to fill in an existing ditch that was located on the Gills' property as well as other holes on the Gills' property. The Gills' land was then leveled and a slope was created that forced all water to flow to the north toward Bird's property and the new ditch created. Bird claimed that the leveling and new ditch resulted in flooding on his property.

Bird filed suit on August 27, 2013, alleging ownership of the disputed property and that the Gills trespassed, removed trees, altered drainage, and damaged other property. The Gills filed an answer to the petition on October 18, 2013, and a claim in reconvention alleging ownership by acquisitive prescription. A supplemental petition was filed by Bird on March 11, 2016, also alleging a mental anguish claim. The case proceeded to trial on April 3, 2018. Bird and his counsel appeared at the trial, but the Gills and their counsel were absent. The trial proceeded, and judgment was rendered in Bird's favor. The initial judgment established the boundary and ownership of the disputed portion in favor of Bird. Damages were awarded to Bird in the total amount of $64,974.99 which consisted of: $3,000 to correct the ditch; $14,850 to construct three sheds; $31,800 in treble damages for trees; $4,848 for labor to replace trees; $10,000 for mental anguish; $326.99 for a water trough; and $150 for the tree replacement estimate. The Gills were also taxed with $1,700 for the cost of the survey and court costs.

The Gills filed a motion for a new trial in June 2018. The trial court concluded that there was an honest mistake by defense counsel staff resulting in calendar confusion with another matter and granted the motion for new trial. As a result, the judgment rendered on April 2, 2018, was withdrawn in full.

After multiple motions to continue filed by both parties, the second trial was held over four days: December 9, 2020, July 2, 2021, October 21, 2021, and October 22, 2021. Following presentation of evidence and testimony, the parties were each given 60 days to file post-trial briefs. Bird

filed his brief on June 28, 2024. The Gills filed their brief on January 30, 2025. Bird filed a reply brief on July 1, 2025. The trial court issued its judgment and written reasons on January 30, 2026.

The trial court denied Bird's claims for treble damages and attorney fees under La. R.S. 3:4278.1, citing caselaw in its reasons for judgment that held that the statute was not applicable to the clearing of trees by an adjoining landowner that was not for commercial purposes. Nevertheless, the court awarded damages in favor of Bird totaling $81,746.99, consisting of: $10,000 for fair market value of the removed trees; $45,000 for the cost to properly return the property to its former condition, due to dirt removal; $13,920 for construction of three sheds to replace shade; $10,000 for mental anguish, $326.99 for a water trough, and $2,500 for fence replacement. The Gills were again taxed with $1,700 for the survey and court costs. An amount in excess of $20,000 of judicial interest was imposed on the Gills as a result of the lengthiness of the proceedings.

DISCUSSION

Special Damages – Generally

Special damages are those which either must be specially pled or have a ready market value, that is, the amount of the damages supposedly can be determined with relative certainty, such as the plaintiff's medical expenses incurred as a result of the tort. *Moody v. Blanchard Place Apartments*, 34,587 (La. App. 2 Cir. 6/20/01), 793 So. 2d 281, *writ denie*d, 01-2582 (La. 12/14/01), 804 So. 2d 647. The plaintiff bears the burden of proving special damages by preponderance of the evidence. *Enriquez v. Safeway Ins. Co. of La.*, 264 So. 3d 648 (La. App. 2 Cir. 1/16/19). The plaintiff must produce

some evidence by which that loss can be reasonably measured. *Eddy v. Litton*, 586 So. 2d 670 (La. App. 2 Cir. 9/25/91), *writ denied*, 590 So. 2d 1203 (La. 1/10/92). Proof of a *potential* special damage or loss does not meet a plaintiff's burden of proof. *Id.*

The discretion afforded the trier of fact to assess special damages is narrower or more limited than the discretion to assess general damages. *Id.* In the assessment of special damages arising out of trespass, the trial court has much discretion. *M & A Farms, Ltd. v. Town of Ville Platte*, 422 So. 2d 708 (La. App. 3 Cir. 1982). However, the damage must be certain and the discretion exercised only to the extent of the damage and ascertained from all the facts and circumstances. *Id.*; *Bentley v. Industrial Fire Protection Co.*, 338 So. 2d 1177 (La. App. 2 Cir. 1976). An award of special damages is reviewed pursuant to the manifest error standard of review. *Enriquez*, *supra*.

Special Damages – Ditch and Drainage

The Gills argue that the trial court's award of $45,000 for ditch and drainage claims was an abuse of discretion considering the original award of $3,000 for the same condition had been requested by Bird. At the first trial, Bird testified that he wanted to keep the ditch that Gill created on his property for drainage, and that making the necessary corrections to do so would require approximately 20 hours of work at $150 per hour, totaling $3,000. However, at the second trial, Bird was allowed to introduce evidence to support a claim for enhanced restoration damages. The Gills contest the trial court's sustaining of Bird's objection to their questions regarding Bird's change of the theory, scope, and measure of his damages.

James Stephens ("Stephens") testified that he estimated a cost of $47,000 to bring in over 5,000 yards of off-site dirt, filling in the existing ditch, and then digging a new ditch some feet away. The Gills claim that Stephens' quote was not made with knowledge of the property's original condition, was based solely on the scope of work given by Bird, would have been affected by use of on-site as opposed to off-site dirt, and would be different based on changes in the property since his 2019 inspection. They also note that Bird testified that he had the police jury clear the newly formed ditch and dig out the canal to improve drainage. Further, when given the option by the utility company, Bird chose to spray and kill the trees located in the utility right-of-way rather than pay $2,700 to move the line. The Gills argue that the trees and growth Bird claimed as damages were cut back or killed at his own request, and the strip was not maintained as an undisturbed portion of Bird's property.

Bird asserts that the Gills omit his rationale for the change in his requested relief. He explains that, due to the Gills' actions in removing the dirt and trees from the disputed strip, as well as changing the slope of their property, Bird's property now experiences more significant flooding than if the ditch were not allowed to stay on the strip. Bird claims that by the time the new trial commenced in December 2020, his position had changed. He initially believed that cleaning the ditch would have allowed it to drain the way the police jury canal formerly on the Gills' property used to drain, but the precision leveling performed by the Gills created a slope that caused more water to drain to the north, and no amount of cleaning the ditch will resolve the issue. He claims that the only way to make him whole would be

to restore the strip as it had previously been. Bird further asserts that he was not required to seek the original relief of $3,000 at the new trial, per La. C.C.P. art. 1978.

Bird also explains the issues he believes to be involved with using on-site dirt for the damage repair. He claims there are logistical problems with how much dirt would be transferred, what type of dirt would be used (topsoil, subsoil, or bedrock), and from what portion of the Gills' property the dirt would be removed. Given the parties have been engaged in such lengthy litigation, such a solution would likely only lead to further problems. There is also an issue with the compactability of the dirt that would be used. As indicated in Stephens' evidence, six years of silt that had fallen into the ditch would have to be removed, and clean, compactable dirt would have to be used to prevent erosion. Stephens stated that, due to the Gills' precision leveling, neither the Gills nor Bird had enough good compactable dirt to fill the canal.

Stephens prepared an estimate that included bringing in over 5,000 yards of off-site dirt, filling in the existing ditch, and then digging a new ditch a few feet away, which included 60 hours of dozer work and 20 hours of trackhoe work. His total estimate for the cost of dirt and labor totaled $47,000. The trial court clearly accepted as credible Stephens' extensive testimony and the evidence presented regarding the process for returning the disputed property to its original condition and correcting the drainage issues resulting from the Gills' land leveling. Furthermore, the Gills offered no expert testimony of their own to rebut Stephens' evidence. This Court also agrees with Bird's assessment of the practical issue of using on-site dirt from

the Gills' property to reconstruct the ditches, given the ongoing animosity between the parties. The trial court was well within its discretion to award $45,000 for the dirt work and drainage repair, an amount within that estimated by Stephens.

Special Damages – Tree Replacement

The Gills claim that the trial court's award of $10,000 is not supported by the record, because the record does not establish that Bird proved either what was removed or the value with any certainty sufficient to reasonably measure the damages. They argue that Bird did not present reliable or sufficient evidence to prove the number, type, location, or value of the 130 trees he estimated were removed. The Gills also contested the determination of the replacement value for the trees removed, pointing out that Bird's witnesses never visited the property and had no personal knowledge of what trees may have existed in the property's prior condition. Rather, they only relied on a few photographs of trees in piles and stump holes to make their determinations. Instead, the Gills urge acceptance of the testimony of Fortenberry and Williamson that only 23 trees, at most, had been removed, some of which were dead.

Bird estimated that there was a tree every 15 feet on the strip, totaling approximately 130 trees, a number he claimed to be conservative. He based his estimate on a review of photographs of the property before the tree removal as well as photographs he took of the property following the Gills' actions, in which he attempted to identify trees from stumps or holes where they had been removed. Bird testified that his estimate was based on his

knowledge acquired from being involved with his father's longtime career as a logger.

Bird also argues that the argument regarding his decision to poison the trees in the right of way rather than move the power line is irrelevant and does not devalue his claim. He explains that he would have paid to move the powerline had the Gills not removed and burned all the trees, because the trees remaining on the fence line would have been to provide shade. However, the $2,700 expense would not have been worthwhile to move the line for the number of trees that were left.

Mark Lindstrom, owner of Panzico's Garden Mart ("Lindstrom"), testified as an expert on behalf of Bird. Lindstrom disagreed with the testimony of William, Fortenberry, and Williamson that the pile in the photographs was simply brush and overhanging branches. He testified that root systems were visible in the pile, and the stump holes were indicative of significant sized trees. Lindstrom's cost estimate for tree replacement was based on Bird's estimate of 130 trees, but he testified that there were "at least that many." Lindstrom identified trees of four different sizes from the pile that he estimated to be ten to twelve feet tall. He further testified that all the trees had a market value, including the tallow trees that were often considered "trash trees."

Todd Guimbellot ("Guimbellot") also testified as to the replacement value for the trees. Guimbellot had also provided a cost estimate to Bird based on Bird's estimated number of trees removed. He testified that that he could not set forth a value based solely on the pile in the photograph. He also testified that he believed many of the trees were dead, because healthy

trees should have put out their leaves by the time the photographs had been taken in April. However, Guimbellot testified that there could have been several small trees under the canopies of the larger trees that could not be seen in the aerial photographs reviewed at trial or that could be blocked from view by brush. He further testified that there was "nothing out of left field" in Lindstrom's estimate considering how many saplings could have been removed, what trees could have been in the stump holes, and generally the uncertainty with the photographs. He agreed that, taking the photographic evidence that existed and the size of the pile, the estimated 130 trees could have fit in the pile.

Lindstrom provided a tree replacement estimate of $17,900. Guimbellot provided an estimate of $15,448, although his testimony indicated it may be lower due to some of the trees possibly being dead and his inability to identify the number of trees from the pile. Consideration must be given to the fact that any lack of evidence as to the number and type of trees removed is attributable to the fact that the Gills had the trees burned. Therefore, the only alternative to providing such evidence would be photographs and any expert testimony, as was done by Bird in this case. The trial court awarded only a fraction of either cost estimate, which could be indicative of the conflicting testimony regarding the number of healthy trees removed. We find that the available evidence was sufficient to prove the damages by the applicable preponderance of the evidence standard, and the trial court was well within its discretion to award $10,000 for the tree placement.

Special Damages – Shade Replacement

The Gills also claim that the separate award for loss of shade, and to build sheds that did not previously exist, is an impermissible double recovery. They argue that shade is not a separate item of damages and necessarily flows from whatever trees may have existed, so separate compensation for the shade constitutes impermissible double recovery. In addition, the Gills assert that Bird never provided the area or size of the shade that the trees provided, the duration of daily shade, or the portion of the year his cattle supposedly relied on the shade. They point out that Bird testified that there were additional trees on his property and at least twenty acres of mature trees for available for his cattle, and the area along the fence was only one of five pastures on Bird's 114 acres where he could rotate his cattle. They also refer to Bird's choice to have the police jury clear the area, as well as his decision to have the power company cut back the growth in the right-of-way when he claimed he needed the shade.

Bird argues that the trial court's awards for the value of the lost trees and the shade were for two separate claims presented, one for the value of the trees alone and one for the shelters to be constructed to offset the lack of shade that could no longer be provided to Bird's cattle. He claims that the tree is considered an object, while the shade from the tree is considered a benefit created by the object. Bird also refers to witness testimony that it was not possible to transport trees of a certain size; therefore, there was essentially no way to replace the shade that had previously been provided by the large trees that had been removed.

It is a "well-settled premise that Louisiana law does not allow for double recovery of the same element of damages." *Albert v. Farm Bureau Ins. Co.*, 05-2496 (La. 10/17/06), 940 So. 2d 620, 622. Double recovery would be in the nature of exemplary or punitive damages which are not allowable under Louisiana law unless expressly provided for by statute. *Id.*, *citing Gagnard v. Baldridge*, 612 So. 2d. 732, 736 (La. 1993).

The trial court awarded $10,000 for the fair market value of the trees as of the time they were removed by the Gills. It is clear from the record that this award constituted a value for the *replacement* of the trees. Had those trees been actually replaced, the shade they provided would also have been replaced. Therefore, the award for tree replacement encompasses any value for shade replacement. An additional award for loss of shade constitutes impermissible double recovery.

However, Bird testified during the second trial that he had constructed one of the three sheds referred to in the estimate during the period of ongoing litigation, because it was necessary for his cattle to have some shade pending the tree replacement. As a result, he was only requesting the amount for two sheds. Although we do not agree Bird is entitled to the value of shed construction as a separate award of shade in addition to a tree replacement award, we do find he is entitled to reimbursement of his out-of-pocket expense for his construction of one shed in the amount of the uncontradicted estimate of $4,640. These damages fall outside of the scope of a shade award that would be embedded within the tree replacement award.

Therefore, we find that it was error for the trial court to award shade replacement damages in the amount of $13,920, which was representative of the cost to construct three sheds. Rather, we amend the award to an amount of $4,640 for shade replacement, as reimbursement of the actual out-of-pocket expense incurred by Bird to provide shade for his cattle during the pending litigation.

Special Damages – Trough Replacement

The Gills argue that Bird's entitlement to any damages awarded for the trough was not proven. They refer to Bird's testimony that he had placed a water trough on the Gills' property but did not know what had happened to it and merely believed that it had been destroyed during the Gills' trespass. Bird refutes the Gills' argument and refers to Williamson's testimony that he dug up a trough while doing work for the Gills on Bird's property.

Williamson testified regarding a trough found on the disputed property, though he claimed it was rusted out and did not believe it was usable. Bird provided an estimate to replace the trough. The trial court made a credibility determination and was within its discretion to award damages for replacement of the trough.

Special Damages – Fence Replacement

The Gills argue that the damage award for fence replacement was unsupported by the record. They claim there was no evidence that the fence was damaged, and the photographs produced by Bird prove the fence remained after the 2013 events. Bird admits in his post-trial memorandum that there was no evidence regarding the value of the fence; however, he asserts that multiple photographs were introduced demonstrating damage to

the fence during the process of the Gills removing trees from Bird's property.

Although Bird argues that the photographs support his claim of damage to the fence, there is nothing in the record to otherwise support those assertions. There was no testimony or evidence indicating any difference in the fence's condition before the Gills' actions versus afterwards. There was also no evidence presented regarding the replacement value of the fence. We find the trial court committed reversible error in its award of $2,500 for fence repair/replacement.

General Damages – Mental Anguish

The standard of review for a general damage award is abuse of discretion by the trial court, while the standard of review for a special damage award is manifest error. *Enriquez*, *supra*. An abuse of trial court discretion must be clearly demonstrated by the record before an appellate court will tamper with an award of general damages. *Id*. Only after finding that the trier of fact abused its great discretion may the appellate court resort to prior awards, and then only to determine the highest or lowest point reasonably within that discretion. *Id*.

Since the question of whether an owner experiences trauma is a factual determination, the manifest error rule applies to the fact finder's review of the issue. *Enriquez*, *supra*. The mental anguish which gives rise to a claim for damages must be real mental injury. *Id.* The usual worry or inconvenience over the consequences of property damage will not justify an award for mental anguish. *Id.*; *Kemper v. Don Coleman, Jr., Builder, Inc.*, 31,576 (La. App. 2 Cir. 7/29/99), 746 So. 2d 11, *writs denied* 99-2954-2955

(La. 1/7/00), 752 So. 861; *Blache v. Jones*, 521 So. 2d 530 (La. App. 4 Cir. 1988). An owner of damaged property may not recover for mental anguish unless he or she proves a psychic trauma in the nature of or similar to physical injury, directly resulting from the property damage. *Elston*, *supra*; *Kemper*, *supra*; *Evans v. B.R. Bedsole Timber Contractors, Inc.*, 521 So. 2d 837 (La. App. 2 Cir. 1988). In a trespass action, minimal and normal worry and inconvenience is not compensable. *Vial v. S. Cent. Bell Tel. Co.*, 423 So. 2d 1233 (La. App. 5 Cir. 1982), *writ denied*, 432 So. 2d 265 (La. 1983); *Farr v. Johnson*, 308 So. 2d 884 (La. App. 2 Cir. 1975).

The Gills argue that Bird failed to prove any real mental injury directly resulting from the property damage, because he did not testify to the extent of his state of mind, nor did he seek or receive any sort of mental health treatment. They claim that Bird testified about watching his cattle and the alleged heat stress from lack of shade, but he never mentioned that he actually suffered anguish himself. Further, they point out the trial court's basis, in part, of the mental anguish award as, "the lengthy and mentally exhausting judicial proceedings" and argue that such grounds are improper.

Bird refers to this Court's ruling in *Enriquez*, *supra*, which permitted an award for mental anguish as a result of damage to property in the following instances: (1) the property was damaged by an intentional or illegal act; (2) the property was damaged by acts for which the tortfeasor will be strictly or absolutely liable; (3) the property was damaged by acts constituting continuing nuisance; and (4) the property was damaged at a time in which the owner thereof is present or situated nearby and the owner experiences trauma as a result. Bird argues that Gill made an intentional,

unilateral decision to continue with his project without a survey over the advice of counsel and after Bird informed him that he owned the disputed strip. Further, Bird was present and continuously witnessed Gill's ongoing actions of continuing to clear his property, burn his trees, and remove dirt from his property. He claims he experienced ongoing stress witnessing Gill's actions and dealing with the consequences for years to follow.

Bird cites *Boswell v. Roy O. Martin Lumber Co., Inc.*, 363 So. 2d 506 (La. 1978), in which the Louisiana Supreme Court found that the trial court did not abuse its discretion in awarding damages for mental anguish to the plaintiff, when the defendant had improperly applied herbicide to approximately 5,000 trees on plaintiff's 50-acre tract that were not included in their timber contract, since they were under 8 inches in diameter, ultimately killing 99% of the injected trees. Walking through the property became hazardous and plaintiff lost the ability to squirrel hunt on his property. *Id.* One witness testified that the plaintiff frequently complained about "injustice done to him" and loss of his hunting ground. *Id.* The trial court awarded $5,000 for mental damages, citing "the amount of acres involved, the denuded condition of the land, and the effect the situation has on a sole proprietor who is obviously over fifty years of age." *Id.* The Supreme Court found that "undoubtedly, the plaintiff suffered considerable mental pain and anguish," and the trial court's award fell within the range of its discretion. *Id.*

The Supreme Court's holding in *Boswell* is distinguishable from this case. In *Boswell*, approximately 5,000 larger trees were wrongfully removed from a 50-acre tract. In this case, approximately 130 mostly small trees

were removed from an 18-foot boundary strip totaling a .879 acre. The plaintiff in *Boswell* offered third-party testimony of his state of mind, particularly considering his use of the property as a hunting ground. Here, no testimony was offered concerning Bird's state of mind other than his statement that "he was anguished pretty bad about it." Bird also testified, "I'm asking for my stress, but I'm talking about the cattle that had to put up with it." The record was mildly supportive of the stress of the *cattle*, but it failed to prove any real mental injury of *Bird* resulting from the property damage.

Therefore, we find that the trial court committed reversible error in its finding of a psychic trauma. Given that the record is devoid of support for the claim, we reverse in full and award no damages for the claim of mental anguish.

Judicial Interest

The Gills argue that they should not be cast with over $20,000 of judicial interest accrued by post-trial delays they did not cause. They claim that judicial interest compensates an injured party for delay in receiving money owed, and it should not reward a plaintiff for delaying submission of his own case after trial or punish defendants forced to wait years for a judgment the trial court did not timely render. They assert Bird received a windfall and request this Court to reduce the judicial interest to remove the delay periods attributable to Bird and the trial court.

Bird points out that the Gills could have filed their brief at any time or filed a motion stating both parties had missed their briefing deadlines and requested that the case be submitted, but they did neither. He alleges that all

parties and the trial court were aware and in agreement regarding the delays. Bird also asserts that he is not obtaining an interest windfall, nor is the award of judicial interest punitive in nature.

Bird refers to La. C.C.P. art. 1921's mandate that "the court shall award interest in the judgment as prayed for or as provided by law." He argues that there is no jurisprudence that authorizes the suspension of judicial interest, referring to the Louisiana Supreme Court's holding in *Bilalis v. Drennan*, 25-00453 (La. 12/18/25), 424 So. 3d 684, that in tort actions, the operative date when legal interest attaches is the date of the judicial demand. A judicial demand is commenced by the filing of a pleading presenting the demand to a court of competent jurisdiction. *Id.* It is designed to compensate a plaintiff for the loss of the use of money to which he is entitled, the use of which a defendant had during the pendency of litigation. *Id.*

The jurisprudence is clear that the statutory accrual period is not tied to the trial date or the judgment date. It runs from judicial demand until the judgment is paid. The delays until judgment are included in the calculation of judicial interest. Furthermore, as argued by Bird, the Gills could have filed their brief at any time and/or a motion requesting that the case be submitted but chose not to do so. This Court would also note that, according to the record, the multiple continuances in these proceedings were agreed upon by both parties. The trial court was correct in its award of judicial interest from the date of judicial demand to be paid by the Gills to Bird.

Judgment Against Rhonda Gill

The Gills argue that the award against Rhonda was made without any evidence whatsoever and requests this Court to reverse and vacate the award against her. They claim that there was no testimony that Rhonda was negligent, committed any intentional act, or was at fault in any way. They also assert that Rhonda's marriage to William does not impute any negligence or fault, nor does their co-ownership of their property.

Bird agrees that the only testimony in the record concerning Rhonda was Williamson's statement that he was working for both William and Rhonda. He also notes that the Gills' post-trial memorandum always referenced William and Rhonda collectively when discussing the action leading to the property damage but agrees that Rhonda's direct involvement in any damages that occurred was minimal compared to William.

This Court acknowledges that the negligence of William is not imputed to Rhonda solely by reason of their marriage or co-ownership of property. *See Lewis v. Till*, 395 So. 2d 737 (La. 1981). We also agree that the record lacks references to the actions of Rhonda in particular. Only William testified at trial, and the evidence supported that William directed the actions of Fortenberry and Williamson. On the other hand, the basis for the claims is that the actions of removing the trees, dirt removal, and drainage work were done *on behalf of the Gills*, not solely William. Williamson testified that he was working for "the Gills." Rhonda was not only named as a defendant in the proceedings – she signed off on the answer to Bird's petition and as a *plaintiff in reconvention*. There is no evidence that Rhonda was isolated from any involvement in the wrongful actions.

Further, at no point during the proceedings did the Gills ever file an exception of no cause of action as to claims against Rhonda. While there may be merit to the argument that Bird is not legally entitled to relief sought as to Rhonda, that determination should have been made by the trier of fact by a properly filed exception. It is improper for this Court to consider the issue *de novo* on appeal.

CONCLUSION

For the foregoing reasons, we AFFIRM the trial court's judgment on the merits and accompanying special damage awards in favor of Bird regarding the drainage repair/dirt work, tree replacement, and trough replacement. We AMEND the trial court's special damage award in favor of Bird regarding shade replacement. We REVERSE the trial court's special damage award in favor of Bird regarding fence replacement as well as the general damage award in favor of Bird as to the mental anguish claim.

As a result, the trial court's judgment is hereby AMENDED IN PART to include a total damage amount of $59,966.99, itemized as follows:

Drainage Repair/Dirt Work (affirmed):	$45,000.00
Tree Replacement (affirmed):	$10,000.00
Shade Replacement (amended):	$4,640.00
Trough Replacement (affirmed):	$326.99
Fence Replacement (reversed):	$0.00
Mental Anguish (reversed):	$0.00

We further AFFIRM the trial court's award of judicial interest to Bird from the date of judicial demand. We also AFFIRM the trial court's judgment against Rhonda Gill.

All costs of this proceeding are to be split 50% to Bird, 50% to the Gills.

AFFIRMED IN PART, AMENDED IN PART, REVERSED IN PART