

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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EDDA BOWLDS,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16-SC-2861
	)	
ALFREDO OCAMPO and MONICA	)	
OCAMPO,	)	Honorable
	)	Theodore S. Potkonjak,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Burke and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* Because plaintiff's trespass claim did not require her to prove actual damages, the trial court erred in ruling against her on the ground that she had not done so; thus, we vacated the judgment and remanded the cause for the court to find whether she had proven the actual elements of trespass and to enter judgment accordingly.

¶ 2 *Pro se* plaintiff, Edda Bowlds, filed a small-claims complaint against *pro se* defendants, Alfredo and Monica Ocampo, for trespass. She requested \$1,600 in damages, plus costs. After a bench trial, the trial court entered a judgment for defendants, holding that plaintiff had failed to prove actual damages. Plaintiff moved to vacate or reconsider the judgment, then filed a notice of appeal. The court later denied her motion. On appeal, she contends that the court erred in

ruling for defendants on the basis that she did not prove damages. We vacate and remand with directions.

¶ 3 We note that plaintiff's notice of appeal was premature, because, on the date that she filed it, the trial court had not yet disposed of her motion to vacate or reconsider. However, after the trial court resolved her postjudgment motion, the notice of appeal became effective. See Ill. S. Ct. R. 303(a)(2) (eff. Jan. 1, 2015). Thus, we have jurisdiction.

¶ 4 We also note that we have no transcript of the trial. Under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005), if no verbatim transcript exists, the appellant may prepare a proposed bystander's report; any other party may serve proposed amendments or an alternative proposed bystander's report; and the trial court shall settle, certify, and order filed an accurate bystander's report. Absent stipulation, only the so-certified report shall be included in the record on appeal. (The parties may also submit an agreed statement of facts and file it without certification. Ill. S. Ct. R 323(d) (eff. Dec. 13, 2005). That was not done here, however.) The trial court never certified a bystander's report. Thus, the parties' proposed reports are not properly before us, and we disregard the briefs' citations to them.

¶ 5 The limited record discloses the following. On August 11, 2016, the court entered judgment for defendants. On September 9, 2016, plaintiff filed her postjudgment motion. On September 12, 2016, she filed a notice of appeal. On October 7, 2016, the court denied her motion. Its order stated in part, "[T]he plaintiff's motion is denied in that the judgment against the Plaintiff in trial [*sic*] was due to the fact that the Plaintiff failed to provide sufficient admissible evidence and proof as to damages, and failed to even address said issue in her Motion to Reconsider."

¶ 6 Also on October 7, 2016, the court allowed plaintiff to file a proposed bystander's report; gave defendants 14 days to file proposed amendments or an alternative bystander's report; and set a hearing for October 28, 2016, later continued to November 9, 2016. On November 9, 2016, the court entered a written order granting both parties' motions "to submit their bystander[']s reports." It also stated that the court had entered judgment for defendants because "Plaintiff-Appellant failed to provide sufficient admissible evidence as to her monetary damages."

¶ 7 Plaintiff argues that the trial court erred in failing to recognize that she could recover for trespass even absent proof of actual damages. She is correct. Moreover, although defendants argue that the court correctly held that plaintiff did not prove actual damages, they essentially concede that she did not need to do so in order to recover.

¶ 8 "Every trespass to real property is considered to result in legal injury, entitling [the] plaintiff to at least nominal damages." *First National Bank of Des Plaines v. Amco Engineering Co.*, 32 Ill. App. 3d 451, 455 (1975). Thus, the court's finding that plaintiff proved no actual damages could not support its judgment against her: it meant only that she could receive no more than nominal damages. See also *Wilson v. DiCosola*, 352 Ill. App. 3d 223, 228 (2004) (although trial court in breach-of-contract case erred in awarding plaintiff actual damages, appellate court affirmed judgment but reduced damages to \$1). Moreover, plaintiff's failure to raise the error in her postjudgment motion did not forfeit the issue here: in a civil nonjury case, no postjudgment motion is necessary to preserve an issue on appeal. See Ill. S. Ct. R. 366(b)(3)(ii) (eff. Feb. 1, 1994); *In re Merrilee M.*, 409 Ill. App. 3d 983, 986 (2011).

¶ 9 The trial court's error of law affected more than the amount of damages. Plaintiff's complaint requested both damages and costs. Under section 5-108 of the Code of Civil Procedure (Code), if any person sues in any action for damages personal to the plaintiff, and

recovers in the action, “then judgment shall be entered in favor of the plaintiff to recover costs against the defendant.” 735 ILCS 5/5-108 (West 2014). Under section 5-109 of the Code, however, if judgment is entered against the plaintiff, “then judgment shall be entered in favor of [the] defendant to recover [the] defendant’s costs against the plaintiff.” 735 ILCS 5/5-109 (West 2014). Here, in entering judgment for defendants, the court also awarded them their costs. However, if judgment should have been entered for plaintiff, even for nominal damages, then, as section 5-108 is mandatory (*Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill. 2d 295, 301 (2003)), she would be entitled to recover her costs.

¶ 10 In sum, the record establishes that the trial court found only that plaintiff had not established actual damages; the court made no finding of fact as to whether she had established the actual elements of trespass. As whether she did so was a question of fact, and as defendants contend that she did not do so, we must vacate the judgment for defendants and remand the cause for the court to make the required finding. If the court finds that plaintiff did prove the proper elements of trespass, it should award her nominal damages and costs. If it finds otherwise, it should reenter the judgment for defendants.

¶ 11 Vacated and remanded with directions.