

Commonwealth Of Kentucky

Court of Appeals

NO. 2000-CA-001926-MR

BILLY GENE GINTER
and HAZEL GINTER

APPELLANTS

v.

APPEAL FROM POWELL CIRCUIT COURT
HONORABLE LARRY MILLER, JUDGE
ACTION NO. 96-CI-00289

RUSSELL C. WARE

APPELLEE

OPINION

AFFIRMING

** ** * * * **

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND PAISLEY, JUDGES.
EMBERTON, CHIEF JUDGE. Billy Gene and Hazel Wanda Ginter appeal from the trial court's denial of their motion to set aside a jury verdict based on the alleged perjury of the appellee, Russell Ware. We affirm.

The Ginters filed an action against Ware demanding that he be enjoined from allowing a culvert on his property from draining water onto Ginter's adjoining property. Ware answered

and filed a counter-claim for trespass and destruction of his property. A jury found in Ware's favor awarding him \$1,350 on his counter-claim, and judgment was entered on June 7, 2000. The Ginters moved for a new trial alleging that the verdict was contrary to the law and the evidence. The motion was unsuccessful, and the Ginters filed a notice of appeal and pursued perjury charges against Ware. On August 23, 2000, Ware was indicted. The civil case was held in abeyance pending the resolution of the criminal charges. After investigation, on February 20, 2002, the perjury charges were dismissed.

Although the Ginters allege on appeal that the trial court permitted the jury to consider the perjured testimony of Ware, there is no such allegation in the motion for a new trial, which was based on claims of bias, prejudice, and that the jury disregarded the evidence. At no time did the Ginters file a motion pursuant to CR¹ 60.02. We find no merit, factually or legally to the Ginters' appeal. The judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Robert O. King
Stanton, Kentucky

BRIEF FOR APPELLEE:

Richard L. Fain
Stanton, Kentucky

¹ Kentucky Rules of Civil Procedure.