

NEBRASKA SUPREME COURT

Helzer Farms, LLC v. Jason Allington and Allington Farms, LLC

320 Neb. 953 (2026) · No. S-24-826 · Decided March 13, 2026

SUMMARY

The Nebraska Supreme Court affirmed the district court’s affirmance of a county court judgment awarding Allington damages for Helzer Farms’ trespass and destruction of trees and vegetation on Allington’s property. The court addressed the applicable measure of damages for restoration of residential or recreational land and held that restoration cost damages may be distinct from replacement cost or diminution in market value. The court upheld the \$83,157 award based on the cost of functionally replacing the destroyed trees.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Per Curiam; Chief Justice Funke; Justice Miller-Lerman; Justice Cassel; Justice Stacy; Justice Papik; Justice Freudenberg; Justice Bergevin
JURISDICTION	Nebraska Supreme Court
DECIDED	March 13, 2026
DOCKET	S-24-826
DISPOSITION	affirmed
PROCEDURAL POSTURE	Helzer Farms appealed to the Nebraska Supreme Court from the district court's affirmance of the county court's judgment awarding Allington restoration-cost damages on a trespass counterclaim.
STANDARD OF REVIEW	In an appeal from a district court sitting as an appellate court, the Nebraska Supreme Court reviews whether the district court erred in reviewing the county court's decision, which necessarily involves consideration of the county court's decision. A county court general-civil-docket judgment is reviewed for error appearing on the record: whether the decision conforms to law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable. Questions of law are reviewed independently for a correct conclusion. Factual findings in a bench trial have the effect of a jury verdict and are not disturbed unless clearly erroneous.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Helzer Farms, LLC v. Jason Allington, Allington Farms, LLC

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QUESTIONS PRESENTED

1. Whether the district court erred in affirming the county court under the error-appearing-on-the-record standard.
2. Whether restoration-cost damages were available for the destruction of natural-growth trees and vegetation on land used for recreational purposes.
3. Whether restoration-cost damages were limited to the fair market value of only the specific portion of land where the trees were destroyed.
4. Whether the county court's admission of testimony concerning tree costs and the related expert testimony prejudiced Helzer Farms.
5. Whether the county court clearly erred in finding that functional replacement required 200 saplings costing \$200 each and in awarding \$83,157.
6. Whether the county court committed reversible error by failing to make a specific finding concerning the size of the affected area when no such finding was requested.

HOLDINGS

1. An owner of residential or recreational land may recover the reasonable cost of restoring trees and vegetation to their preexisting condition or to a condition as close as reasonably feasible, rather than being limited to diminution in market value or commercial timber value.
2. The limitation in *Keitges v. VanDermeulen* does not limit restoration-cost damages to the market value of only the specific portion of land where the trees and vegetation were destroyed.
3. Functional replacement, rather than direct replacement of each destroyed tree, may be used when it is the reasonably feasible method of restoring the property's prior use or function.
4. The \$83,157 restoration-cost award was supported by competent evidence and was not clearly erroneous, arbitrary, capricious, or unreasonable.
5. Admission of the testimony concerning the cost of cedar trees did not affect a substantial right and did not constitute reversible error.
6. The county court did not commit reversible error by failing to make a specific finding concerning the size of the affected area because no party requested such a finding and the judgment could be read as

implicitly adopting the 1.38-acre calculation.

KEY QUOTATIONS

“One person’s unsightly jungle may be another person’s enchanted forest; certainly, the owner of such land should be allowed to enjoy it free from a trespasser’s bulldozer.” (320 Neb. at 969-70)

“The purpose of restoration cost damages is to restore the property to its preexisting condition or to a condition as close as reasonably feasible.” (320 Neb. at 974)

“Restoration cost damages are distinct from replacement cost damages. The purpose of restoration cost damages is to restore the property to its prior use, not to compensate for a direct replacement.” (320 Neb. at 974)

FACTUAL BACKGROUND

Helzer Farms' contractors crossed onto Allington's adjoining property while clearing vegetation for a division fence and road, removing trees and other vegetation. The affected property was used for recreational activities and wildlife habitat, and the parties disputed the size of the affected area and the number and maturity of the removed trees. Allington's valuation expert calculated a functional restoration cost of \$83,157 based on planting 200 saplings and accounting for the time required for them to mature. The county court awarded \$83,157, and the district court affirmed.

PROCEDURAL HISTORY

Helzer Farms filed a statutory action for contribution relating to construction of a division fence, and Allington counterclaimed for trespass based on the removal of trees and vegetation from Allington's property. After a bench trial, the county court entered judgment for Allington and awarded \$83,157 in restoration-cost damages. The district court affirmed, and the Nebraska Supreme Court moved the appeal to its docket and affirmed the district court.

DISPOSITION

affirmed

CASES CITED

- Keitges v. VanDermeulen, 240 Neb. 580, 483 N.W.2d 137 (1992)
- "L" Investments, Ltd. v. Lynch, 212 Neb. 319, 322 N.W.2d 651 (1982)
- Sedighi v. Schnackel Engineers, 317 Neb. 890, 12 N.W.3d 507 (2024)
- Peterson v. Brandon Coverdell Constr., 318 Neb. 342, 15 N.W.3d 698 (2025)
- Hunt v. Trackwell, 262 Neb. 688, 635 N.W.2d 106 (2001)
- Perkins v. RMR Building Group, 30 N.W.3d 148 (2026)
- Koyen v. Citizens Nat. Bank, 107 Neb. 274, 185 N.W. 413 (1921)
- Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 623 S.E.2d 373 (2005)

- *McEwen v. Nebraska State College Sys.*, 303 Neb. 552, 931 N.W.2d 120 (2019)
- *Osborne v. Hurst*, 947 P.2d 1356 (Alaska 1997)
- *Klingshirn v. McNeal*, 239 Ga. App. 112, 520 S.E.2d 761 (1999)
- *Ringneck Farms LLC v. Steuwe*, No. 121,879, 2020 WL 5268234 (Kan. App. Sept. 4, 2020)
- *Roman Catholic Church v. Louisiana Gas*, 618 So. 2d 874 (La. 1993)
- *Trinity Church in the City of Boston v. John Hancock Mutual Life Ins. Co.*, 399 Mass. 43, 502 N.E.2d 532 (1987)
- *The Rector Etc. of St. Christopher's v. C. S. McCrossan, Inc.*, 306 Minn. 143, 235 N.W.2d 609 (1975)
- *Sunburst School Dist. No. 2 v. Texaco, Inc.*, 338 Mont. 259, 165 P.3d 1079 (2007)
- *Denoyer v. Lamb*, 22 Ohio App. 3d 136, 490 N.E.2d 615 (1984)
- *Morabit v. Hoag*, 80 A.3d 1 (R.I. 2013)
- *Brooks v. City of Huntington*, 234 W. Va. 607, 768 S.E.2d 97 (2014)
- *Davenport v. Intermountain R. L. & P. Co.*, 108 Neb. 387, 187 N.W. 905 (1922)
- *Joiner v. Pound*, 149 Neb. 321, 31 N.W.2d 100 (1948)

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