

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION [Division No.]

THE THREE BEARS,

Plaintiffs and Respondents,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal No. B_____

Superior Court No. _____

Appeal from a Judgment [or Order]
of the Superior Court, County of [County Name]
Hon. [Judge's name], Judge

[BRIEF NAME]

[Attorney or Party Name]
State Bar No. [if any]
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Attorney for Appellant
GOLDILOCKS

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APPELLANT'S OPENING BRIEF

STATEMENT OF THE CASE

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. The complaint alleged that Baby Bear had suffered physical and mental damages as a result of being frightened upon discovering Goldilocks. (CT 1-4.) After a civil trial on the matter over a period of two days, the court found that Goldilocks had committed trespass.

(CT 25.) The court entered a final judgment in favor of the Three Bears in the amount of \$50,000. (CT 27.)

STATEMENT OF APPEALABILITY

This appeal is from the judgment of the Los Angeles County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

STATEMENT OF FACTS

Papa Bear lives in Los Angeles, California with his wife, Mama Bear and son, Baby Bear. (RT 1.) Appellant Goldilocks lives a few miles away on the other side of the forest. (RT 25.) The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (RT 15.)

Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (RT 17.)

The Bears testified that when they returned from the walk, they saw they had left the front door open. (RT 3.) Food was missing from the dining room table. (RT 4.) Baby Bear found Goldilocks asleep in his bed. (RT 6.) Terrified, Baby Bear screamed and woke up Goldilocks. (RT 9.) Startled and confused, Goldilocks ran from the Bears' house. (RT 30.)

An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring

therapy. (RT 21-24.)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". (RT 25-26.) She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. (RT 27-28.) She sat down on a bed and fell asleep. (RT 29.)

SAMPLE

ARGUMENT

I. **GOLDILOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"**

A. The Standard of Review.

The trial court erred in finding that Goldilocks trespassed on the Bears' property as there is no substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132.)

B. The Elements of the Action.

A trespass occurs when a person intentionally, recklessly or negligently enters land in the possession of another. (*Gallin v. Poulou* (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (*Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (*Williams v. General Elec. Credit Corp.* (1946) 159 Cal.App.2d 527, 532; 5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706; Rest.2d Torts, § 167.)

C . No Evidence of Wrongful Entry.

Here, Goldilocks did not intend to enter on private property. She thought the Bears' house was a public, commercial boarding house. Although her actual intent is not a legal defense, her actual intent reinforces her argument that she had consent to enter the building. The door was open, the WELCOME mat was out, the food was on the table, and there were many beds and chairs about. All of this points to the conclusion the Bears were prepared for and awaiting the arrival of numerous persons and supports Goldilocks' belief this was a boarding house and there was no reason for her not to enter. At a minimum the house was prepared and open for an "open house". No evidence points to any indication the house was closed, off-limits to outsiders, or limited in the types of persons who would be admitted. There is no evidence to support a finding Goldilocks' entry was wrongful. The judgment must be reversed.

CONCLUSION

Goldilocks submits the Three Bears have failed to meet their burden of proving that her entry into their house was wrongful and, thus, a trespass. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

Respectfully submitted,

[Attorney Name]

Attorney for Appellant
GOLDILOCKS

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains _____ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By _____
[Name]

PROOF OF SERVICE

SAMPLE