DOCKET NO. CV-23-5017206-S : SUPERIOR COURT

JULIE N. CAINES : J.D. OF TOLLAND

v. : AT ROCKVILLE

SUSAN E. PARKS and WILLIAM C. NETOLICKY JR. : JUNE 12, 2024

MEMORANDUM OF DECISION

The plaintiff, Julie N. Cains, commenced the present action against the defendants, Susan E. Parks and William C. Netolicky, on August 1, 2023. The plaintiff's complaint contains two counts: **(1)** negligence, and **(2)** trespass under our state's tree cutting statute, General Statutes § 52-560. The plaintiff alleges, generally, that the defendants acted illegally by trimming approximately thirty-eight large arborvitae trees located near certain common property lines dividing their two adjacent parcels. (Complaint, pp. 1–2.) The defendants subsequently filed separate answers, leaving the plaintiff to her proof with respect to the former and expressly denying the latter. (Docket Nos. 101 & 102.) Following the close of pleadings, the case was tried to the court on May 28, 2024. (Docket No. 110.00.)

I. FACTUAL FINDINGS

On the basis of the credible testimony and evidence presented during the course of trial, the court makes the following specific factual findings relevant to this matter:

- The plaintiff owns and resides at 328 Lake Street in the town of Vernon, Connecticut.
- The plaintiff planted a total of approximately thirty-eight arborvitae trees along the southern and eastern edges of her property about twenty years ago in order to create a privacy screen.

STEVEN PAPPAS
ASSISTANT CLERK

Notice of memorandum sent on 6-12-24 to:
- Reporter of Judicial Decisions
- Julie N. Caines, Susan E. Parks, and William C. Netolicky – US mail

received
6-12-2024

- For the purposes of the present action, the parties do not dispute that the trunks of these arborvitae trees are located entirely on the plaintiff's property.

- After the trees were planted, the defendants purchased an adjacent parcel located at 332 Lake Street and began residing there.

- Over the course of the last two decades, many of the arborvitae trees planted by the plaintiff—in both the southernly and easternly hedges—have grown past the borders of the plaintiff's property and now overhang onto the defendants' land.

- Several of the trees planted in the plaintiff's southern hedge, in particular, continued to grow to such an extent that they also began encroaching upon the defendants' driveway.

- On multiple occasions from 2022 to 2023, the defendants trimmed back overhanging branches from the trees along the plaintiff's southern hedge a short distance in order to keep their driveway clear.

- On at least one occasion in 2023, the defendants also trimmed back overhanging branches from the plaintiff's eastern hedge to facilitate the installation of a fence.

- The defendants' trimming to both the southerly and easterly hedges was exclusively limited to branches located on their side of the common property line. The court finds no credible evidence suggesting that the defendants ever intruded upon the plaintiff's property in connection with such work.

- The defendants' trimming did not impact the health of the arborvitae trees in any meaningful way and did not result in large gaps or holes in their canopy as the alleged in the complaint.

In making these factual findings, the court expressly credits the testimony provided by Parks and the defendants' expert witness, a consulting arborist named Scott Cullen.[1]

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[1]The court has considered Cullen's testimony, written report, and resume. The court finds that Cullen, by nature of his training and experience as a consulting arborist, is qualified to testify as an expert witness in this proceeding. His written

The court further notes that the plaintiff's own expert witness, a consulting arborist named Matt Weibel, concluded that "[d]espite the pruning, all of these trees remain in good health" and individually assessed each and every plant to be in "[e]xcellent" condition.

II. DISCUSSION

The plaintiff's complaint contains two counts: **(1)** negligence, and **(2)** trespass under § 52-560. In support of the first claim, the plaintiff alleges that the defendants had "randomly hacked" her trees with a long-handled pair of bypass loppers in both 2022 and 2023, making large holes in the screening surrounding her home. In support of the second claim, the plaintiff alleges that the defendants trespassed on her property in 2023 while trimming the trees and, in doing so, caused harm to them. As relief, the plaintiff seeks monetary damages, costs, and a permanent injunction prohibiting the defendant from conducting any further trimming of the trees. In response, the defendants argue broadly that their trimming to date has been relatively minor and that, as landowners, they had the right to undertake such work. The defendants further point to the absence of evidence suggesting that they conducted any trimming upon the plaintiff's land. Finally, the defendants claim that, in any event, the plaintiff has

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report concludes, inter alia, that: **(1)** "any pruning of encroaching arborvitae branches . . . in 2022 or 2023 did not damage, harm, injure, or reduce the health of the arborvitae trees"; **(2)** there was "no photographic or physical evidence that any pruning of arborvitae trees by [the defendants] was not of encroaching branches on [the defendant's] property"; and **(3)** "[he] found no photographic or physical evidence that any pruning of the arborvitae trees . . . resulted in any significant gaps or holes in [their] canopy . . . ." The court finds these specific conclusions—and Cullen's analysis and testimony more generally—to be both credible and persuasive.

failed to adequately demonstrate harm. For the reasons that follow, the court agrees with the defendants.

A. Negligence

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." *RK Constructors, Inc.* v. *Fusco Corp.*, 231 Conn. 381, 384, 650 A.2d 153 (1994). Because the parties are neighbors, they do owe certain basic duties of care toward one another. See *Pestey* v. *Cushman*, 259 Conn. 345, 352, 788 A.2d 496 (2002) ("[i]t is the duty of every person to make a reasonable use of [their] own property so as to occasion no unnecessary damage or annoyance to [their] neighbor" [internal quotation marks omitted]). "Determining unreasonableness is essentially a weighing process, involving a comparative evaluation of conflicting interests .... Unreasonableness cannot be determined in the abstract, but, rather, must be judged under the circumstances of the particular case." (Citations omitted; internal quotation marks omitted.) Id., 352–53.

Even if the court was to assume that this general duty of care extends to the specific context of hedge trimming, the plaintiff's negligence claim would necessarily falter on the element of breach. After consideration of all of the evidence and testimony presented at trial, it is apparent that the defendants have, thus far, only trimmed the trees in the plaintiff's southern hedge to the extent reasonably necessary to prevent encroachment upon their own driveway.[2] Because that driveway is the sole method the

[2]At various points during this proceeding, the defendants have suggested that they might, at some undetermined future date, cut all branches up to the existing

defendants have to access their home, the court concludes that the limited trimming conducted by the defendants was reasonable in the totality of the surrounding circumstances. The court likewise concludes that the defendants' trimming of overhanging branches extending from the plaintiff's eastern hedge was also limited in both scope and purpose and, therefore, reasonable. Because the defendants' actions were reasonable, the plaintiff's negligence claim must fail.

Furthermore, the plaintiff has also failed to produce any credible evidence upon which this court could fashion an appropriate award of damages. Although the plaintiff's expert, Weibel, offered an opinion in relation to the total value of the trees as they existed at the time of his inspection, neither his testimony nor his written report attempted to estimate a decrease in value attributable to the defendants' trimming. Likewise, although the plaintiff testified generally that the defendants' trimming had a negative effect on her property value, she offered absolutely no evidence from which a reasonable finder of fact could quantify that particular impact without resorting to speculation.[3] A prima facie case of negligence requires a plaintiff to prove the existence of ascertainable damages by a preponderance of evidence. See *RK*

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property line in order to install a fence there. Because the present action seeks relief for damages occasioned by the defendants' previous trimming, the court expresses no opinion as to that future course of action.

[3]As discussed subsequently, this latter form of argument, if proven by competent and credible evidence, would have provided a legally cognizable measure of damages in a tree cutting case at common law. See *Caciopoli* v. *Lebowitz*, 309 Conn. 62, 81, 68 A.3d 1150 (2013).

Constructors, Inc. v. *Fusco Corp.*, supra, 231 Conn. 384. By any measure, the plaintiff has failed to meet that standard here.

In reaching this conclusion, the court rejects the plaintiff's apparent contention that the defendants were foreclosed, as a matter of law, from trimming or otherwise maintaining overhanging branches in any manner simply because the trunks of those trees were not located on their property. The law governing that question is, as the defendants aptly observe, well settled. See *Robinson* v. *Clapp*, 65 Conn. 365, 380, 32 A. 939 (1895) ("where the branches of a tree extend over an adjacent owner's land, he may lop them off up to the line, even though that were practically to the trunk of the tree"); see also *McCrann* v. *Planning & Zoning Commission*, 161 Conn. 65, 75, 282 A.2d 900 (1971) ("[w]here trees are located on the property of one party and their roots or branches extend onto the property of a second party, the latter may lop off the branches or roots up to the line of his land"); *Lyman* v. *Hale*, 11 Conn. 177, 185 (1836) ("It is urged, that land comprehends [everything] in a direct line above it; and therefore, where a tree is planted so near the line of another's close that the branches overhang the land, the adjoining proprietor may remove them. . . . Now, if these branches were a nuisance to the defendant's land, he had clearly a right to treat them as such, and as such, to remove them."). Under the law of this state, the defendants have a right to conduct basic maintenance on portions of the plaintiff's hedges that extend onto their property. Cf. *Cooke* v. *McShane*, 108 Conn. 97, 142 A. 460 (1928).[4]

[4]The court does, however, disagree with the defendants to the extent they suggest that this right is absolute and unqualified in all circumstances. See, e.g.,

B. Trespass & General Statutes § 52-560

At common law, a landowner may recover monetary relief for damages to their trees resulting from the trespass of another. See *Caciopoli* v. *Lebowitz*, 309 Conn. 62, 82, 68 A.3d 1150 (2013). The appropriate measure of damages in such common-law actions is either the "reasonable value of the trees as timber or the diminution in the value of [the] property as a result of the trespass . . . ." Id. Our state's tree cutting statute, § 52-560,[5] affords injured landowners with additional relief by allowing an injured party to "recover three times the reasonable value of the tree as timber in situations where the trespasser did not persuade the court that [they] mistakenly believed that the trees were situated on [their] property . . . ." Id.

McCrann v. *Planning & Zoning Commission*, supra, 161 Conn. 75 ("[t]his does not mean, of course, that complete disregard for the welfare of the trees is permitted"); *Cooke* v. *McShane*, supra, 108 Conn. 97 ("[h]e may cut so much of it as extends over the land of one party down to such a height as would leave a sufficient fence should the whole be trimmed to that height . . . *provided he can do so without the destruction or unreasonable injury to the main stalks of the shrubs composing it.*" (Emphasis added.)); *Massey* v. *Jordan*, Superior Court, judicial district of New Haven, Docket No. CV-06-5005288-S (November 29, 2007, *Robinson, J.*). Because this court has concluded, as a factual matter, that the defendants' trimming has to date not resulted in any adverse impacts to the health of the plaintiff's trees, the nuances of such qualifications are legally irrelevant here.

[5]General Statutes § 52-560 provides, in relevant part, as follows: "Any person who cuts, destroys or carries away any trees, timber or shrubbery, standing or lying on the land of another . . . without license of the owner, and any person who aids therein, shall pay to the party injured . . . three times the reasonable value of any other tree, timber or shrubbery; but, when the court is satisfied that the defendant was guilty through mistake and believed that the tree, timber or shrubbery was growing on his land, or on the land of the person for whom he cut the tree, timber or shrubbery, it shall render judgment for no more than its reasonable value."

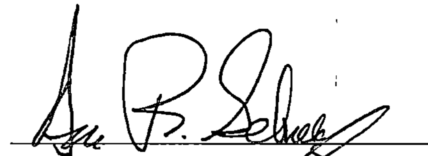
"The [elements] of an action for trespass are: (1) ownership or possessory interest in land by the plaintiff; (2) invasion, intrusion or entry by the defendant affecting the plaintiff's exclusive possessory interest; (3) done intentionally; and (4) causing direct injury." (Internal quotation marks omitted.) *Bristol* v. *Tilcon Minerals, Inc.*, 284 Conn. 55, 87, 931 A.2d 237 (2007). Because this court has found that the plaintiff failed to prove by a preponderance of the evidence that the defendants ever physically intruded upon her land, any common-law or statutory claim of trespass must fail.[6]

III. CONCLUSION

On the basis of the foregoing, the court finds in favor of the defendants on all counts of the complaint. Judgment shall enter accordingly.

SO ORDERED

BY THE COURT



SCHIBLEY, J.

[6]As with the count alleging negligence, the court notes that the plaintiff's trespass claim also fails because she has failed to submit adequate evidence with respect to damages. Repetition of that discussion here would, however, serve no useful purpose.