STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC **SUPERIOR COURT**

(Filed: January 18, 2012)

SYDNEY C. WALLER AND	:	
WENDY ANN WALLER	:	
Plaintiffs	:	
	:	
v.	:	**No. NC-2010-0545**
	:	
MICHAEL J. BENES AND	:	
PATRICIA J. BENES	:	
Defendants	:	

DECISION

NUGENT, J. This matter came before the Court for a jury-waived trial held on August 18, 19, 22, and 23, 2011, after which the parties filed post-trial memoranda. The Plaintiffs, Sydney C. and Wendy Ann Waller (hereinafter collectively "the Wallers"), own certain property overlooking Mackerel Cove in Jamestown, Rhode Island. The Wallers filed a complaint against their next door neighbors, Michael J. and Patricia J. Benes (hereinafter collectively "the Beneses"), seeking injunctive relief or damages. The Wallers claim that the Beneses maliciously planted trees that stand in excess of thirty feet to obstruct the Wallers' view of the ocean. The Wallers allege that the trees constitute a spite fence in violation of § 34-10-20. See G.L. 1956 § 34-10-20. In opposition, the Beneses claim that there were several legitimate reasons for planting the trees and, therefore, the Wallers cannot show that the Beneses acted in a wholly malicious manner. Jurisdiction is pursuant to G.L. 1956 § 8-2-14., et seq.

I.

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure provides that, "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a). In a non-jury trial, "the trial justice sits as a trier of fact as well as law." Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). "'Consequently, he [or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" Id. (quoting Hood, 478 A.2d at 184). It is well established that "assigning credibility to witnesses presented at trial is the function of the trial justice, who has the advantage of seeing and hearing the witnesses testify in court." McBurney v. Roszkowski, 875 A.2d 428, 436 (R.I. 2005) (citations omitted). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" DeSimone Electric, Inc. v. CMG, Inc., 901 A.2d 613, 621 (R.I. 2006) (quoting Walton v. Baird, 433 A.2d 963, 964 (R.I. 1981)).

Furthermore, "[w]hen rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Parella, 899 A.2d at 139 (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998) (citation omitted)). The trial justice need not "categorically accept or reject each piece of evidence in his decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his rulings." Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008) (quoting Narragansett Elec. Co. v. Carbone, 898

A.2d 87, 102 (R.I. 2006)). In non-jury cases, our Supreme Court is "deferential to the trial justice's findings of fact and give[s] them great weight." Cathay Cathay, Inc. v. Vindalu, LLC, 962 A.2d 740, 745 (R.I. 2009). Accordingly, if the trial justice's decision "reasonably indicates that [he or she] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses it will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law." Now Courier, LLC v. Better Carrier Corp., 965 A.2d 429, 434 (R.I. 2009) (quoting Notarantonio, 941 A.2d at 144–45 (citation omitted)).

As a non-jury trial, resolution of the instant dispute requires the trial justice to sit "as trier of fact as well as law," to weigh and consider the evidence, to determine the credibility of witnesses, and to draw inferences from the evidence presented. Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984); see also Rodriques v. Santos, 466 A.2d 306, 312 (R.I. 1983) (holding that the question of who is to be believed is one for the trier of fact). Rule 52(a) does not necessitate "extensive analysis and discussion of all the evidence[;]" rather, "brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case." Donnelly, 716 A.2d at 747 (quoting Anderson v. Town of E. Greenwich, 460 A.2d 420, 423 (R.I. 1983)).

II.

Findings of Fact

Based on the credible evidence, the Court finds:

1. The Wallers own and reside at property at 3 Beavertail Road in Jamestown, Rhode Island further identified as Tax Assessor's Plat 9, Lot 601.
2. The Beneses own the abutting property at 16 Highland Drive in Jamestown Rhode Island further identified as Tax Assessor's Plat 9, Lot 588.

3. The Wallers' and Beneses' properties overlook Jamestown's Mackerel Cove.
4. The two properties are adjacent to each other and share a common boundary line.
5. The property located at 3 Beavertail Road is not a waterfront lot per se; rather, there is a house that sits in front of the 3 Beavertail Road property separating the property at 3 Beavertail Road from the shoreline.
6. The property that sits in front of the 3 Beavertail Road property is known as 7 Beavertail Road.
7. Plaintiff, Sydney Waller, owned the property located at 7 Beavertail Road, having inherited it from "Father John" in return for caring for him.
8. The property located at 7 Beavertail Road is a waterfront house overlooking Jamestown's Mackerel Cove.
9. At the time the property at 3 Beavertail Road was acquired by the Wallers, it had a "view corridor" of the ocean over the 7 Beavertail Road property as well as a view of Mackerel Cove and Dutch Harbor.
10. Prior to the Beneses' purchase of the property at 16 Highland Drive, there were thick woods and trees on the property.
11. These woods and trees obstructed the Wallers' "view corridor" toward the south over the Beneses' property.
12. After the Beneses purchased the property at 16 Highland Drive, they began clearing the trees and woods from their property with Sydney Waller's consent.
13. The Beneses cleared these woods because they had health concerns for their daughter, Kimberly, who is developmentally disabled and extremely sensitive to insect bites.
14. While the Beneses cleared their lot, they left a buffer of trees between the properties in

order to provide privacy.

15. This buffer included several old growth black cherry trees that were between thirty-five and sixty feet tall.

16. Despite this buffer, the clearing of the Beneses' property enhanced the water views from the 3 Beavertail Road property over the Beneses' property—providing the Wallers with views that did not exist when they acquired the property.

17. In or about 2005, the Wallers wanted to place a buffer in between the 3 Beavertail Road Property and the Beneses' property. Indeed, the Wallers put up a fence to serve as a barrier as the Beneses' completed construction on their home.

18. In their first years as neighbors, the Beneses and the Wallers had been "cooperative" and even "friendly."

19. Over the years, prior to the construction of the new home at 3 Beavertail Road and the planting of the disputed trees, the parties (usually Sydney Waller and Mr. Benes) would often amicably discuss issues relating to plantings and landscaping in the area of the parties' common boundary line.

20. The parties often used email to discuss the landscaping issues at their mutual property line.

21. In June of 2007, the parties discussed landscaping ideas that would provide a privacy buffer between the properties and would be mutually agreeable to the parties.

22. In an email from Sydney Waller to Mr. Benes dated June 25, 2007, Sydney Waller indicated that she would not be opposed to having a privacy buffer, and she agreed to plant some trees and/or shrubs along her fence line, kennel, and shed.

23. However, she indicated that she would be opposed to having trees standing in excess of

five or six feet in height in between the fence and the "big tree." (Ex. L; Ex. 2; Ex. 3.)

24. Therefore, she suggested that the Beneses plant "shrubs or dwarf trees with a maximum growth height of five to six feet in height" after the edge of the fence, and she even agreed to contribute financially to accomplish that end. (Ex. L.)

25. In addition, Sydney indicated that she wanted "ALL the cedars between [the fence] and the big tree moved" and suggested that at least one of the cedar trees be moved "closer to the fence." (Ex. L.)

26. Later in 2007, Sydney Waller and Mr. Benes agreed to use landscaper Nicholas DiGiando to accomplish some plantings between the two properties.

27. On November 12, 2007, Mr. Benes wrote an email to Sydney Waller and carbon copied it to Mr. DiGiando, stating: "This is my understanding of what Sydney and I agreed to." The email contained a picture that Mr. Benes had prepared using computer software in which he digitally added several plants that would serve as a buffer between the properties.

28. In 2006 or 2007, Sydney Waller informed Mr. Benes that the property at 3 Beavertail Road was having moisture and mold problems.

29. Sydney Waller asked Mr. Benes to cut down some of the remaining old-growth cherry trees that were standing between their homes because she thought they were contributing to the moisture problem at 3 Beavertail Road.

30. Sydney Waller testified credibly that Mr. Benes simply agreed to cut down the trees. Mr. Benes testified that, in return for agreeing to cut down the trees, the Wallers agreed not to add a second floor to the 3 Beavertail Road property. The Court accepts Sydney Waller's testimony on this issue and rejects Mr. Benes' testimony.

31. In 2008, the Wallers sought a modification from the Jamestown Zoning official to put a deck on the home at 3 Beavertail Road.
32. The Wallers sent an email to Mr. Benes regarding the proposed deck.
33. Mr. Benes replied that he was opposed to the deck because he would be able to see it from his property.
34. Assuming that a single objection from an abutter would result in an automatic denial of any modification sought for the deck, the Wallers abandoned their plans for the deck.
35. In the summer of 2009, the Wallers informed Mr. Benes that they intended to rebuild the property located at 3 Beavertail Road because it continued to have moisture and mold problems.
36. On August 11, 2009, Sydney Waller emailed Mr. Benes a copy of the preliminary plans and asked him if he was free to talk about the plans in person.
37. Mr. Benes responded on August 11, 2009 that he would be available until August 20, and he also asked whether Sydney had any "vertical elevation" depictions.
38. Sydney replied on that same date stating that, while she had no vertical elevation plans to share at that time, the new home could not and would not exceed thirty-five feet in height. Sydney further stated that the new home "[would] be 2 stories."
39. Mr. Benes did not reply to this last email sent by Sydney Waller on August 11, 2009.
40. The Wallers met Mr. Benes in person, at his home, to review the plans for their new home.
41. All plans that the Wallers reviewed with Mr. Benes contained a proposed two-story home.
42. Mr. Benes expressed his concerns about the proposed construction and its effect on his

daughter's health.

43. Mr. Benes expressed his concerns about the location of the garage and stated that he would oppose any variance, if the Wallers sought one, regarding relief from the setback requirements.
44. In the winter of 2009, the Wallers began construction on the home located at 3 Beavertail Road.
45. The Wallers sought to enlarge the existing one-story home by, among other things, adding a second story.
46. In the late winter of 2010, the Wallers sought a "Modification" from the Town of Jamestown in order to construct a seven-foot deck on their new home.
47. Mr. Benes formally objected to this "Modification," stating that he was "vehemently against granting this request" because it "will totally eliminate our privacy[,]" which he believed to be necessary for his handicapped child. Mr. Benes further stated that the loss of privacy caused by the construction "will also greatly reduce the value of our home."
48. Mr. Benes thought that the second-story of the home located at 3 Beavertail Road would be detrimental to his daughter's health.
49. Mr. Benes believed that the increased amount of light coming from a larger home on the Waller property would have a negative effect on his daughter's health.
50. Mr. Benes was also concerned with a dog kennel that the Waller's placed on their property near the boundary line after the Wallers finished construction on 3 Beavertail Road.
51. Mr. Benes was concerned about the barking and the close proximity of the dogs.
52. He believed that an unexpected contact between one of the dogs and his daughter could

adversely affect his daughter's health. For instance, he testified that if a dog jumped on his daughter, it may cause a grand mal seizure or dislodge her vagus nerve simulator.

53. On February 20, 2010, Mr. Benes, through Eric Archer, Esq., caused an email to be sent to Wendy Waller discussing the objections the Beneses had to the new Waller home.

54. This email, dated February 20, 2010, stated that, "[i]f you elect to build the balconies and decks facing south, I am certain that another attorney will be entering an appearance to block your zoning board approval, and if the approval is granted anyway, the Beneses will feel the need to plant a deep line of trees and plantings that will comfortably exceed the height of the balcony to shield any view whatsoever of your house." (Ex. 20.)

55. The Wallers ultimately constructed the new two-story home at 3 Beavertail without the need for any type of zoning relief and built the home so as to maximize their views of the water.

56. The property at 3 Beavertail Road has a terrace facing the southwest toward Mackerel Cove which, but for the trees, would provide a view south to the Atlantic Ocean. The home also contains a recessed deck on the second floor facing the same way, and a small balcony off the rear portion of the second floor bedroom.

57. Mr. Benes testified that, in the summer of 2010, he consulted with a local real estate broker, Virginia Prichett, to inquire about ways to make his house more marketable.

58. Both Mr. Benes and Ms. Prichett testified that Ms. Prichett made a series of recommendations including planting trees or shrubs to create a privacy buffer between the Beneses' property and the property at 3 Beavertail Road.

59. Both Mr. Benes and Ms. Prichett testified that Ms. Prichett informed Mr. Benes of the importance of privacy to high-end buyers.

60. Mr. Benes testified that he got the idea to plant the large trees from Ms. Prichett in the summer of 2010 and acted on that advice.

61. In October of 2010, the Beneses planted nineteen large twenty-five to forty foot eastern red cedar trees along the mutual property line between the Beneses' property and the property at 3 Beavertail Road.

62. These cedar trees were planted in relatively close proximity to each other in a line east to west.

63. The cedar trees were large enough to require a spade truck to install them.

64. Prior to the cedar trees being planted, the Wallers enjoyed a view from their property not only of Mackerel Cove but also southerly to the ocean over the Beneses' property.

65. Most of the cedar trees only obstruct the Wallers' view of the Beneses' home and vice versa.

66. The Wallers continue to have unobstructed views of Mackerel Cove to the West and Dutch Harbor to the North.

67. However, some of these cedar trees extend beyond the parties' homes close to the water's edge (hereinafter "disputed trees"). The disputed trees are those cedar trees that begin after the Wallers' fence, but before the "big tree"[1] that stands near the shoreline. (Ex. 2; Ex. 3; Ex. L.)

68. The disputed trees that stand beyond the fence and near the shoreline obstruct the Wallers' southern "view corridor" of the Atlantic Ocean.

69. When designing and constructing their new home at 3 Beavertail Road, the Wallers built the house so as to maximize the southerly and southwesterly views.

[1] The "big tree" existed before the time when the Beneses planted the cedar trees, and it is not in dispute.

70. The Beneses' home has one high bathroom window on its northerly side that faces the Wallers' home.
71. Prior to the planting of the disputed trees, there was a buffer between the Wallers' property at 3 Beavertail Road and the Beneses' property, which included a stone wall and a double row of juniper trees approximately twelve to fifteen feet in height that run parallel to the stone wall along the property line.
72. In addition to the large cedar trees that are in dispute, the Beneses also planted four smaller cedar trees in the spaces between the trunks of the larger trees.
73. This had the effect of "filling" in the gaps between the trees and effected a complete obstruction of any southerly view of the ocean from the Wallers' property over the Beneses' property.
74. Peter Scotti testified, as an expert real estate appraiser, that the new home at 3 Beavertail Road has a positive effect on the overall value of the Beneses' property.
75. Mr. Scotti further opined that there is no privacy concern for the Beneses' home because there are virtually no windows from which the 3 Beavertail Road property can be seen.
76. Mr. Scotti also confirmed that the Beneses' home is oriented in a south/southwesterly direction so as to enjoy the views of Mackerel Cove and the open ocean.
77. Mr. Scotti also testified that there is no empirical data to support the notion that the disputed trees were necessary to provide privacy and maintain the value of the Beneses' property as a result of the construction of the two-story home at 3 Beavertail Road.
78. Finally, Mr. Scotti testified that, while he could understand the reason for planting trees between the two homes to provide privacy, he thought that the disputed trees that extend beyond the fence to the water are "certainly unusual" and not necessary to maintain

privacy.

III.

Applicable Law

Under the common law, a landowner generally "has no right to light and air coming across the land of his neighbor." Musumeci v. Leonardo, 77 R.I. 255, 75 A.2d 175 (1950) (citing Trustees Mathewson Street M. E. Church v. Shepard, 22 R.I. 112, 46 A. 402 (1900)). However, if the obstruction to light and air qualifies as a spite fence, there is an exception to this general rule. See id.; see also Dowdell v. Bloomquist, 847 A.2d 827, 835 (R.I. 2004) (Flanders, J. dissenting). The spite fence statute creates a private nuisance action for those who fall victim to "a fence or other structure" that was "maliciously erected." G.L. 1956 § 34-10-20. The spite fence statute, or § 34-10-20, provides as follows:

> "[a] fence or other structure in the nature of a fence which unnecessarily exceeds six feet in height and is maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance, and any owner or occupant, who is injured, either in the comfort or enjoyment of his or her estate thereby, may have an action to recover damages for the injury." Id.

In Rhode Island, the seminal case involving spite fences is Dowdell v. Bloomquist, 847 A.2d 827 (R.I. 2004). In Dowdell, our Supreme Court upheld the Superior Court's finding that a row of arborvitae constituted a spite fence in violation of the statute. Id. at 830-31. In that case, the parties lived on adjoining lots in a subdivision in Charlestown. Id. at 828-29. The plaintiff's home sat at a higher elevation than the defendant's allowing plaintiff a view of the ocean. Id. at 829. In the fall of 2000, a dispute arose between the neighbors when the defendant petitioned for a zoning variance in order to build a second-story addition to his home. Id. The plaintiff opposed the defendant's petition, arguing that the additional story would compromise her view

of the Atlantic Ocean. Id. The parties litigated over the matter for six months and, as a result, their once neighborly relationship turned bitter. Id. Shortly thereafter, the defendant planted four forty-foot high arborvitae trees on the shared boundary line between the two properties. Id.

The plaintiff complained that the trees obstructed her view of the ocean and blocked light from passing through her second- and third-story picture windows. Id. The plaintiff alleged that the trees were planted solely to exact revenge for opposing defendant's variance. Id. at 828. In response, the defendant alleged that the trees were planted to serve a useful purpose of privacy for the defendant. Id. at 830. The defendant argued that, when a fence is erected for a useful purpose, despite a spiteful motive, no relief may be granted under the statute. Id. at 830-31.

The Superior Court found that the defendant's privacy objective was "no more than a subterfuge for his clear intent to spite his neighbors by erecting a fence of totally out of proportion trees." Id. at 829. On appeal, our Supreme Court acknowledged that "some useful purpose for a fence may render the victim of one even maliciously erected without a remedy." Id. at 831. Indeed, the Court explained that a fence erected with a purpose that was not wholly malicious was not a violation of the spite fence statute. Id. (citing Musumeci, 77 R.I. at 258-59, 75 A.2d at 177). However, the Supreme Court upheld the Superior Court's finding of fact regarding the defendant's true objective. Id. at 829-30. As a result, the Court held that the defendant needed to provide more than just privacy as a justification for the fence, especially when a smaller row of trees already stood at the boundary line between the two homes.[2] Id. at 830-31. The Supreme Court went on to find that a row of western arborvitae trees that were aligned closely beside one another and spanned sixty feet across constituted a "fence" under the

[2] "What makes a spite fence a nuisance under § 34-10-20 is not merely that it blocks the passage of light and view, but that it does so 'unnecessarily' for the malicious purpose of 'annoyance.' This is a notable distinction." Dowdell, 847 A.2d at 833. (quoting Wilson v. Handley, 119 Cal. Rprt. 2d 263, 270 (Cal. Ct. App. 2002)).

spite fence statute. Id. at 830. Finally, the Supreme Court held that a violation of the statute provides a spite fence victim with the ability to recover damages or injunctive relief. Id. at 832-33.

IV.

Conclusions of Law

A.

Spite Fence

1.

The Trees Between the Parties' Homes

The Beneses have planted nineteen large cedar trees along the boundary line between the two properties. However, the Court is satisfied that the cedar trees that stand between the two houses and do not extend beyond the edge of the Wallers' fence do not constitute a spite fence in violation of § 34-10-20. The Court finds that the Dowdell case is distinguishable as to those trees for several reasons. 847 A.2d at 827.

To begin with, in Dowdell, the entire row of arborvitae obstructed the plaintiff's view of the ocean. Id. at 829-30. In this case, however, only those disputed trees that extend past the fence and to the shoreline block the Wallers' "view corridor" of the Atlantic Ocean. The cedar trees between the two homes serve as a privacy buffer—they only block the Wallers' view of the Beneses' house and vice versa. They do not block the Wallers' water views and, even with this privacy buffer, the Wallers continue to have unobstructed views of Mackerel Cove and Dutch Harbor.

More importantly, the trees that stand before the edge of the Wallers' fence do not constitute a spite fence under Dowdell because they were not planted for a wholly malicious

purpose. Id. at 829-31. These trees do not "block the passage of light and view . . . 'unnecessarily' for the malicious purpose of 'annoyance.'" Id. at 833 (quoting Wilson, 119 Cal. Rprt. 2d at 270). The Court finds that all of the parties were in favor of having a privacy buffer between the two properties. Indeed, the Wallers did not object to the planting of the cedar trees until the Beneses extended the line of trees to the water. Sydney Waller even offered to plant her own trees and shrubs between the properties to provide a buffer.

While they may be large and obstruct the Wallers' view of the Beneses' house, there was a useful and legitimate purpose for planting them and cannot constitute a spite fence. See id. These cedar trees provide privacy and block light and noise, thereby protecting Kimberly Benes' health. Consequently, the Court is satisfied that the cedar trees standing between the parties' homes prior to the edge of the Wallers' fence do not constitute a spite fence because they were not planted for a wholly malicious purpose. See id.

Accordingly, the following analysis is limited only to those cedar trees that extend beyond the homes and stand between the fence and the "big tree" near the water's edge—the disputed trees.

2.

The Disputed Trees

In the case at bar, this Court must first determine whether the Plaintiffs proved, by a preponderance of the evidence, that the disputed trees constitute a fence in the context of the spite fence statute. The statute states, in relevant part, that a spite fence may consist of "[a] fence **or other structure in the nature of a fence**[.]" Sec. 34-10-20 (emphasis added). In Dowdell, the Supreme Court upheld the Superior Court's determination that a row of arborvitae that blocked plaintiff's view of the water constituted a spite fence. 846 A.2d at 830. The Supreme

Court noted that the trial justice properly reasoned that the trees constituted a fence by finding that the proximity of the trees to one another and the span of property that the trees covered blocked plaintiff's view of the ocean. Id.

The present case involves several large, mature, cedar trees, which were planted in a line east to west to the water with smaller trees planted in between. The trees were planted along the shared boundary line of the Beneses' property and the property at 3 Beavertail Road near the water; they extend beyond the Wallers' fence and continue to the shoreline. These trees were planted in close proximity to one another so that they touch and appear to be in the nature of a fence. See id. at 830. In addition, there are smaller trees that fill in the remaining gaps between the large cedars. The disputed trees near the water are planted closely to one another and obstruct the Wallers' "view corridor" of the Atlantic Ocean.

As in Dowdell, the disputed trees were planted in close proximity to one another and in a manner that serves to block the plaintiffs' view of the ocean. See Dowdell, 847 A.2d at 830. These facts and our Supreme Court's finding with respect to the arborvitae trees in Dowdell lead this Court to the inescapable conclusion that the disputed trees in this case (which exceed six feet in height) constitute a "structure in the nature of a fence" within the context of the spite fence statute. Id.; see also Sec. 34-10-20.

In addition, the offending fence must exceed six feet in height to constitute a spite fence. Sec. 34-10-20. While the precise height of the trees is not entirely clear to the Court in this case, it is undisputed that the trees range in height from thirty feet to seven feet, clearly exceeding the six foot requirement in the statute. See id.

The paramount question that remains concerns the Beneses' purpose(s) for planting the disputed trees. The spite fence statute provides relief for fences that are "maliciously erected or

maintained for the purpose of annoy[ance.]" Sec. 34-10-20. In Dowdell, our Supreme Court recognized that, if there is a useful purpose, the victim may not recover under the spite fence statute. 847 A.2d at 831 (citing Musumeci, 77 R.I. at 258-59, 75 A.2d at 177). In other words, the motive for erecting (or maintaining) the fence must be a wholly malicious one. Id. (citing Musumeci, 77 R.I. at 258-59, 75 A.2d at 177). However, the Court also noted that privacy alone could not be found to be a legitimate justification for a fence "where evidence of malicious intent plainly outweighs the discounted benefit claimed by a defendant." Id.

In the present case, the Beneses have put forth several "good faith" reasons as to why they planted the trees. The Beneses contend that they planted the trees in order to protect their privacy which was encroached upon by the recently renovated property at 3 Beavertail Road. The Beneses argued that privacy was required to ensure the health of their daughter whose medical condition could be worsened by an increased amount of noise and/or light. They argued further that privacy was required to maintain, or increase, the market value of their home. Indeed, the Beneses declared these concerns in a letter to the Town written on January 14, 2010—prior to the time when the disputed trees were planted. Furthermore, the Beneses claim that they got the idea to plant the offending trees from a realtor that Mr. Benes met with either in August or September of 2010. Finally, the Beneses allege that the trees were planted to prevent the Wallers' dogs from crossing onto the Beneses' property and potentially harming their daughter.

While these justifications seem benign, a closer inspection of the evidence reveals that the Beneses' motives were not entirely innocent. To begin with, the email from Mr. Archer to Wendy Waller is dated February 10, 2010. This email clearly warns Ms. Waller that, if she proceeds with her plans to build balconies and decks facing south, the Beneses will "plant a deep

line of trees and plantings that will comfortably exceed the height of the balcony to shield any view whatsoever of your house." (Ex. 20.) A copy of this email was also sent to Mr. Benes on that date. By his own account, this email predates Mr. Benes' meeting with Ms. Pritchett by more than six months. Clearly then, Mr. Benes had the idea of planting the trees prior to the time he met with his realtor, despite his claims to the contrary. In addition, the Court is not persuaded by Mr. Benes' claim that the trees were planted to keep the dogs on the Wallers' property. It seems obvious that trees would not prevent dogs from crossing a shared boundary line. Indeed, if the Beneses truly were attempting to keep the dogs away, a simple fence would have been the more logical solution.

While the Court is sympathetic to the Beneses' concern for their daughter's health, it is not compelling. The Beneses only have one window facing the Waller property, and that window is high and would allow little, if any, noise and light to enter the Beneses' home. Further, the trees that stand between the two homes serve to adequately screen the Beneses' home from noise and light emanating from the Wallers' home. Accordingly, the Court finds that this justification is "no more than a subterfuge" for their malicious intent to annoy the Wallers. See id. at 829.

The trees that extend to the water and beyond the area between the parties' homes serve no purpose but to block the Wallers' view of the Atlantic Ocean. These trees do not afford the Beneses' daughter an increased amount of privacy as the homes would be satisfactorily shielded from one another without the disputed trees. It is clear that the disputed trees were only planted in an effort to exact revenge on the Wallers for building a larger two-story home on the property at 3 Beavertail Road which the Beneses "vehemently" opposed. As to the disputed trees, the

Court is satisfied that the Beneses' malicious intent plainly outweighs the justifications they claim and constitute a spite fence in violation of § 34-10-20. See id. at 831.

B.

Breach of Contract

The Beneses have also filed three counterclaims in this case. First, the Beneses allege that they entered into an agreement with the Wallers, in which the Beneses agreed to remove certain trees and the Wallers agreed to refrain from building a structure on either of their properties that would be larger than the structures then thereon. It is well settled that a party suing for breach of contract must first prove that there was a meeting of the minds—a mutual agreement supported by adequate consideration. In this case, the Beneses have failed to prove, by a preponderance of the credible evidence, that the Wallers agreed to refrain from building a larger structure on their properties. Indeed, this Court accepts Sydney Waller's credible testimony that Mr. Benes simply agreed to remove the offending trees without any strings attached and rejects Mr. Benes' testimony to the contrary. Without a valid agreement, the Beneses obviously cannot succeed on their claim for breach of contract.

C.

Unjust Enrichment

The Beneses have also filed a counterclaim for unjust enrichment. The Beneses claim that the Wallers were unjustly enriched when the Beneses chopped down the old cherry trees at the request of the Wallers.

"Under Rhode Island law, unjust enrichment is not simply a remedy in contract and tort but can stand alone as a cause of action in its own right." Dellagrotta v. Dellagrotta, 873 A.2d 101, 113 (R.I. 2005) (citing Toupin v. Laverdiere, 729 A.2d 1286 (R.I. 1999)). "To recover for

unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances "that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof." Id. (quoting Bouchard v. Price, 694 A.2d 670, 673 (R.I. 1997)). "The most significant requirement for a recovery on quasi contract is that the enrichment to the defendant be unjust." R & B Elec. Co., Inc. v. Amco Const. Co., Inc., 471 A.2d 1351, 1356 (R.I. 1984) (quoting Paschall's, Inc. v. Dozier, 219 Tenn. 45, 57, 407 S.W.2d 150, 155 (1966)). This Court must look to the equities in this case and decide whether it would be unjust for a party to retain a benefit conferred upon it without paying the value of such benefit. Id.

In this case, the Court finds that the Beneses' claim for unjust enrichment must fail because they have failed to prove, by a preponderance of the credible evidence, that the Wallers were unjustly enriched. The offending cherry trees were located on the Beneses' property. While the Beneses removed the trees at the request of the Wallers, the Wallers believed the trees were causing moisture and mold problems in the property at 3 Beavertail Road. However, after the trees were removed, the home continued to suffer from a moisture issue. Accordingly, it seems that any benefit conferred on the Wallers was not appreciated by them. Furthermore, even if a benefit was conferred and appreciated, it would not be inequitable for the Wallers to retain the benefit given that the offending trees were on the Beneses' property.

D.

Private Nuisance

The Beneses' third counterclaim is one for private nuisance. The Beneses claim that the Wallers maintain illegal dog kennels, which cause excessive noise and pose a threat to their

daughter's health. There was no evidence as to noise or danger other than one occasion when a dog strayed onto the Beneses' property without a problem. It further appears that the Wallers have removed their dog kennels. Accordingly, the Beneses' claim must fail as they have failed to prove by a preponderance of the credible evidence that there was a material interference with their use and enjoyment.

V.

Conclusion

As a result of the foregoing analysis, this Court hereby rules that the Wallers have proven that the cedar trees that stand nearest the water beyond the edge of the Wallers' fence constitute a spite fence in violation of § 34-10-20. As such, this Court shall enter judgment in the Wallers' favor with respect to the disputed trees and orders the Beneses to remove those trees forthwith.

As to the remaining cedar trees that stand only between the two houses and do not extend past the Wallers' fence, the Court hereby rules that they do not constitute a spite fence as they were not motivated by a wholly malicious reason. As a result, with respect to these remaining cedar trees, the Court rules that the Plaintiffs failed in their burden.

As to the Beneses' counterclaims for breach of contract, unjust enrichment, and private nuisance, the Court finds that the Defendants failed in their burden and enters judgment in favor of the Plaintiffs.

Prevailing counsel shall prepare an Order and Judgment.