

In the early 1980s, Albert Santaniello, Jr. (Plaintiff's late father) and Ms. Blais had a discussion concerning a sapling which was growing within six inches of the fence line.¹ There was both a fence and a short wall along the Santaniello property's southern boundary. Albert Santaniello, Jr., concerned that a fully-grown tree would damage his fence and structure, asked Ms. Blais to remove the sapling and offered to plant a new one; she refused. The tree was left to grow, and it did. This grown tree is the subject of the current dispute; it is a Norway Maple tree that measures approximately fifty-five to sixty feet tall.

In 2009, Anthony A. Santaniello commenced a project of building and repairing the eight-inch wall at the borders of his property and encasing fencing atop the walls.² This took several summers, and by the summer of 2013, he had completed the project but for the area around the tree. The tree was now bulging over the property line, tens of feet high, and branches were hanging over onto the Santaniello property. Roots from the tree encroached on Mr. Santaniello's property and made it difficult to mow his lawn. Mr. Santaniello approached Ms. Blais about the encroachments, and she allowed him to trim the branches to the property line and shave the tree trunk. Mr. Santaniello did so (Exhibit 10), finished building the wall, and placed a temporary movable fence at the tree's base. Apparently still upset by the tree's intrusion and its roots above the ground, Mr. Santaniello dug out the roots to photograph them. (Exhibit 13.) Ms. Blais noticed this project but did not inquire.

In 2019, the tree's branches had grown to extend over the Santaniello property as the tree itself was now over fifty feet tall. Concerned about the integrity of his garage roof some twelve

¹ At trial, neither side presented evidence as to who planted the tree or if it grew naturally, *see* Joint Statement ¶¶ 20-24; as such, the Court does not have reason to conclude that the tree was planted out of spite.

² These walls are submerged about four inches under the ground, so they are about four inches above ground. As shown in the photographs, the Santaniello property is four to six inches below the neighboring properties.

feet from the tree, as well as buildup of leaves and water on the roof, Mr. Santaniello removed the shingles. The garage roof was at least fifteen years old. Mr. Santaniello noticed damage to the plywood, so he tarped it over until the next year. Afterwards, he cut the tree's branches back toward the fence on his property and replaced some plywood, fascia board, and shingles on the garage and the patio adjacent to the garage.

Doing the work himself, Mr. Santaniello paid \$2496.28 for materials for the garage roof and \$662.33 for the patio roof. He labored seventy-two hours on the garage roof and patio roof. The garage shingles were twenty-seven years old when they were replaced.

In 2018, North Eastern Tree Service, Inc. viewed the tree and its roots and provided an estimate of \$4900 to remove the tree, but it never was removed. A survey of the property was completed in 2017.

Today, the tree is once again moving Mr. Santaniello's fence inward. Of course, the branches are extending well over the boundary line and into his yard. When discussions with Ms. Blais failed, Mr. Santaniello filed a Complaint with this Court in 2020 seeking a declaratory judgment, injunctive relief, and damages. *See* Am. Compl. In essence, he wants to remove the tree's encroachments that are on his property, specifically the roots and trunk, and he seeks an award of damages against Ms. Blais.

II

Presentation of Witnesses

Mr. Santaniello, now retired, presented as an affable and courteous man who is dedicated to his yard. He vividly recalls the past events, having lived on the property as a young child. Mr. Santaniello was cooperative with all the attorneys who inquired, responded completely, and was consistent in all of his testimony. He accepted corrections concerning which year Ms. Blais

moved to the Blais property and apologized for his error. His manner of reacting to his misstatement demonstrated his keen desire to be accurate and his reasonableness in acknowledging that certain events happened many years ago.

In contrast, Ms. Blais was less cooperative. She insisted that the tree was on her property, acknowledged that the tree extended into the Santaniello property, and agreed that Mr. Santaniello expressed his concerns at least two times. In spite of the photographic exhibits, Ms. Blais refused to accept that the tree's roots could be a tripping concern and would not accept that its trunk was bulging. She was, however, well-spoken, careful of her answers, and well prepared for her testimony.

III

Standard of Review

Nonjury trials are governed by Rule 52(a) of the Superior Court Rules of Civil Procedure, which states that “the court shall find the facts specially and state separately its conclusions of law thereon[.]” Super. R. Civ. P. 52(a). The trial justice “weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.” *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984). Our Supreme Court further has recognized that “[a] decision in a nonjury civil trial does not require exhaustive analysis of the evidence[.]” *Connor v. Sullivan*, 826 A.2d 953, 960 (R.I. 2003) (internal quotation omitted). Accordingly, “if the decision reasonably indicates that the trial justice exercised his 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.” *Id.* (internal quotation omitted).

IV

Analysis

Notably, this case is *not* about whether Mr. Santaniello has the right to resort to self-help in cutting down the tree's branches that extend onto his property. In fact, neither party has disputed this issue; Ms. Blais concedes that Mr. Santaniello has such right. The issue before this Court is whether Mr. Santaniello has the right to cut the tree's encroachments, such as its roots and trunk, which extend over the boundary line onto his property and charge Ms. Blais for such removal costs.

It is well settled that a landowner has the right "to cut off the limbs which were overhanging or encroaching on her property from trees located on the adjoining property." *Rosa v. Oliveira*, 115 R.I. 277, 285, 342 A.2d 601, 605 (1975). As it is permissible for the neighbor to trim the branches that extend onto his property, this Court finds it just as appropriate and rational to find that a neighbor may cut the trunk or any other part of a tree that is on his property line. Accordingly, this Court concludes that Mr. Santaniello may cut the tree's roots and parts of the trunk that extend onto his property and he does not need permission to do so.

A

Declaratory and Injunctive Relief

Plaintiff seeks a declaratory judgment with respect to his rights to remove the tree and its encroachments and injunctive relief requiring Defendant to remove the tree and its encroachments. As this appears as an issue of first impression in Rhode Island,³ this Court reviews decisions from other jurisdictions for guidance and concludes that the popular approach

³ Although slightly similar factual scenarios have been presented to this Court, none encompass the issue here. *See Rosa v. Oliveira*, 115 R.I. 277, 342 A.2d 601 (1975) (concluding that a landowner may cut tree limbs extending onto his or her property).

stemming from Hawaii, in the case of *Whitesell v. Houlton*, 632 P.2d 1077, 1079 (Haw. Ct. App. 1981), should apply here.

In *Whitesell*, defendants owned a large tree with branches protruding over plaintiffs' property. Plaintiffs asked the defendants to cut the intruding branches, but they refused. Plaintiffs' garage roof and van were damaged by the intruding branches. Plaintiffs then cut some of the intruding branches with rental equipment. After a storm, branches broke off and remained dangling over the plaintiffs' driveway and carport. The plaintiffs informed the defendants by letter of such branches. After months with no response from the defendants, the plaintiffs hired a professional tree trimmer and brought an action for damages caused by the tree and costs incurred in cutting the tree back.

The trial court awarded plaintiffs the rental equipment charges, repairs to the garage roof and van, and half the cost of the tree trimmer. The appellate court considered various approaches, but ultimately applied the following rule:

“[W]hen overhanging branches or protruding roots actually cause, or there is imminent danger of them causing, sensible harm to property other than plant life, in ways other than by casting shade or dropping leaves, flowers, or fruit, the damaged or imminently endangered neighbor may require the owner of the tree to pay for the damages and to cut back the endangering branches or roots and, if such is not done within a reasonable time, the damaged or imminently endangered neighbor may cause the cutback to be done at the tree owner's expense.

“However, we also hold that a landowner may always, at his own expense, cut away only to his property line above or below the surface of the ground any part of the adjoining owner's trees or other plant life.” *Whitesell*, 632 P.2d at 1079.

In seeking to apply the same approach to the instant matter, this Court does not reach this decision lightly; it has considered the approaches taken by various jurisdictions. *See Lane v. W.J. Curry & Sons*, 92 S.W.3d 355, 361-63 (Tenn. 2002) (explaining the various approaches,

including (1) the Massachusetts rule, where “self-help is the landowner’s exclusive remedy”; (2) the Restatement rule, that “imposes an obligation upon a landowner to control the landowner’s encroaching vegetation [only] when the vegetation is ‘artificial’”; and (3) the Virginia rule, which limits a landowner “to self-help unless the encroaching tree or plant is ‘noxious’ and causes actual harm to the neighboring property”). However, this Court is persuaded by the *Whitesell* approach because it is a “realistic and fair” rule wherein “the owner of the tree’s trunk is the owner of the tree, [and therefore] he bears some responsibility for the rest of the tree.” *Lane*, 92 S.W.3d at 363 (internal quotation omitted) and finds it is most consistent with existing Rhode Island caselaw as set forth in *Rosa*. This Court concludes that Plaintiff may remove the tree’s encroachments that extend onto his property, including removing the tree’s roots and shaving its trunk on his side of the border.

Understandably, shaving of the trunk and/or removal of the tree’s roots may result in destruction or damage to the tree. Trimming its branches may even result in damage. Mr. Santaniello has the right to use his property, reasonably, however he chooses. As such, this Court grants Mr. Santaniello’s request for declaratory judgment and injunctive relief to the extent that Plaintiff requested the ability to trim and/or remove the tree’s roots and parts of the trunk that have encroached onto his property.

B

Claims for Damages

Mr. Santaniello seeks an award of damages for Ms. Blais’ actions and omissions as to the tree and its encroachments. Recognizing the similarity and interplay of Mr. Santaniello’s claims for trespass, private nuisance, and damages, this Court analyzes these claims together. Mr. Santaniello claims that Ms. Blais “encroached and therefore trespassed upon [his property]” by

“allowing the [t]ree . . . to encroach upon, and to continue to grow and encroach upon, [his property].” (Am. Compl. ¶¶ 35-36.) He requests that this Court award him monetary damages, interest, attorneys’ fees, and costs for damage caused to his real and personal property. As to the count for private nuisance, Mr. Santaniello claims that Ms. Blais “used [her property] unreasonably and in a manner that materially interferes with [Mr. Santaniello]’s physical comfort and [his] use of the Santaniello [p]roperty” because the offensive condition of “the [t]ree and [its] [e]ncroachments” “originated on the Blais [p]roperty.” *Id.* ¶¶ 44-46.

A trespass is the “wrongful[] interfere[nce] with the legal rights of the owner[.]” *Santilli v. Morelli*, 102 R.I. 333, 338, 230 A.2d 860, 863 (1967) (internal quotation omitted). Trespass focuses on the intent behind the interference. *See e.g. Bennett v. Amadio*, 900 F. Supp. 2d 95, 98-99 (D. Mass. 2012) (while nuisance law is founded on the principle that an owner of property should be assured the use and enjoyment of his own property). *See Hydro-Manufacturing, Inc. v. Kayser-Roth Corporation*, 640 A.2d 950, 957 (R.I. 1994) (explaining that a private nuisance “arises from the unreasonable use of one’s property that materially interferes with a neighbor’s physical comfort or the neighbor’s use of his real estate”). In other words, a nuisance claim focuses on the result on the landowner’s property.

In *Fabbri v. Regis Forcier, Inc.*, 114 R.I. 207, 208, 330 A.2d 807, 808 (1975), plaintiffs filed a civil action to compel adjoining landowners to remove a tree which was allegedly a danger to the plaintiffs because the tree’s roots were exposed from defendants’ digging out the hill on their property and causing erosion. The trial justice agreed that the tree’s exposed roots were a continuing danger. On appeal, our Supreme Court upheld the trial court’s finding, affirming that

“[a]n unsound tree standing near a property boundary line is a nuisance which the landowner on whose land the tree stands may be required to eliminate regardless

of whether it was planted or was the result of natural growth . . . [t]o hold otherwise would place plaintiffs in continuing jeopardy from an object over which they have no control[.]” *Fabbri*, 114 R.I. at 208-09, 330 A.2d at 808.

The Santaniellos asked Ms. Blais, on multiple occasions, to allow them to move the tree or to have it removed herself. Ms. Blais refused. Now the tree’s encroachments continue to materially interfere with the Santaniello property, causing Mr. Santaniello to expend time and money to repair his garage roof and patio roof. Further, Mr. Santaniello’s fence and improvements are impacted by the tree’s roots. As in *Fabbri*, if Mr. Santaniello cannot remove the tree’s encroachments, the tree will continue to materially interfere with his property. *See Fabbri*, 114 R.I. at 209, 330 A.2d at 809. This Court finds that the evidence presented at trial shows that parts of the tree have trespassed onto the Santaniello property and such has led to a private nuisance. Accordingly, this Court finds in favor of Mr. Santaniello as to Count II for trespass and Count IV for private nuisance.

This Court now turns to Mr. Santaniello’s claims for damages, including those raised in Count III of his Amended Complaint. Mr. Santaniello alleges that Ms. Blais’ actions and omissions, in failing to remove the tree or otherwise mitigate its encroachments from damaging the Santaniello property, have caused significant damage to his fence, garage roof, and patio. Based on the evidence provided at trial, this Court calculates the damages as follows: Mr. Santaniello established that he personally spent seventy-two hours working on the roof. The Court finds his tallies to be very organized and conservative. Despite there being scant proof concerning the value of his time and work, conservatively calculating the value of his work, this Court finds \$13 per hour, totaling \$936, to be appropriate.⁴

⁴ Per G.L. 1956 § 28-12-3(m), the minimum wage in Rhode Island is presently \$13 per hour.

Adding his out-of-pocket expenses⁵ to his labor, his total award is \$4094.61 in damages, plus interest and costs. The right to request attorney's fees is preserved, provided a request is submitted within ten business days.

V

Conclusion⁶

For the reasons stated, judgment is awarded to Plaintiff Anthony A. Santaniello and against Defendant Gail M. Blais on all counts. Plaintiff is awarded damages of \$4094.61, plus

⁵ For the garage, the Court granted \$2496.28 in costs incurred (\$29.69 (ex. 17), \$52.00 (ex. 18), \$68.42 + \$87.95 (ex.19), \$390.73 (ex. 20), \$58.38, \$49.42, and \$199.00 (ex. 21), \$1560.69 (ex. 22), nothing from exhibit 23). For the patio, the Court granted \$662.33 in costs incurred (\$267.22 (ex. 14), \$ 240.49 (ex.15), \$154.62 (ex. 16)). Not all requested costs were awarded.

⁶ While this portion of the Decision is not fact-finding or legal analysis, there is more that should be said. The parties have every right to turn to the courts for assistance in resolving disputes; however, was this suit necessary? Generally, neighbors resolve such disputes by working with each other in a reasonable manner. This may explain why Rhode Island has minimal precedent directly on this issue.

When purchasing a home, families understandably place themselves amid people whom they do not know. As a result, families with differing views and traditions are cast in a neighborhood where they may reside for decades. Despite their differences, these families should cooperate with one another to build harmony in the neighborhood. Here, the Santaniello family may have been more meticulous about their home and yard than others. Is it not better to have a meticulous neighbor than one who is not? Decades ago, the Santaniellos asked to move a mere sapling several feet away from their fence line. Their concern grew as the tree grew. Meanwhile, Ms. Blais observed Mr. Santaniello working on his fence, trimming the tree, and digging out its roots. Instead of offering to compromise—even when the Santaniellos offered to remove the tree and replace it with another just several feet away—Ms. Blais ignored the requests and the problem. Common sense and courtesy should have encouraged Ms. Blais to take the Santaniellos up on the offer. However, to this day, Ms. Blais continues to assert it is her tree in her yard while Mr. Santaniello cautiously has attempted to build, by hand, a fence and wall around the tree. A lawsuit and trial should not have been necessary. Therefore, Mr. Santaniello is granted the minimal damages he requests and the ability to clear his property to the property line.

What will become of the boundary after this? Likely, a fence line with a hacked, distressed tree left to wither, while Mr. Santaniello will return each year to trim, dig, and shave. Ms. Blais will be left with an unsupported tree in her backyard, one that stands at the will of a strong breeze. She also faces a concomitant possibility of future claims against her. Cleanup costs for the tree may be considerable. Would it not be easier to agree to remove the tree now and, if desired, plant another nearby?

interest and costs. The right to request attorney's fees is preserved, provided a request is submitted within ten business days. Mr. Santaniello is awarded a declaratory judgment that he may remove the tree encroachments over, onto, or under his property up to the boundary line, without seeking additional permission from Ms. Blais. His right to seek additional reimbursement for such expenses is preserved.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Anthony A. Santaniello v. Gail M. Blais**

CASE NO: **PC-2019-1107**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **April 10, 2024**

JUSTICE/MAGISTRATE: **Lanphear, J.**

ATTORNEYS:

For Plaintiff: **Nicole M. Labonte, Esq.**

For Defendant: **Lauren D. Wilkins, Esq.**