Philip Quaranta et al.

v.

William Cooley et al.

LLI-CV-05-4002605S

Superior Court of Connecticut, Litchfield

December 3, 2007

Caption Date: December 3, 2007

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Gill, Charles D., S.J.

Opinion Title: MEMORANDUM OF DECISION

The oldest Supreme Court of Connecticut's words on the subject matter of this case are particularly applicable here:

. . . it is the bickerings, spite, and hatred arising from neighborhood quarrels; it is difficult for any legislation to remedy such evil.

Whitlock v. Uhle, 75 Conn. 423 (1903).

It is equally difficult for a conscientious judge to remedy the evils of hate, bickerings, and spite as well.

This case is a nominee for first prize in each of those categories. The nomination is enhanced by the participant's use of 21st Century implements, a digital camera being ever held at the ready, and both sides wielding video cameras with one side actually having the video camera permanently attached to the dashboard of her car. And this is just a preview of coming attractions.

If not for the circumstances of this real life and totally unnecessary drama one might think the court was dealing with immature middle-schoolers, or a movie like a serious version of the Grumpy Old Men. Sadly, in this bewildering world of hunger, child maltreatment and the violent deaths of soldiers and civilians in wars, the people in this case have chosen to make their world focus a fifty-foot right of way that only effects their two properties. The places they call home but have turned into hell.

Making this scenario even more ludicrous are the ages and health of the participants. The plaintiffs, the Quarantas, are senior citizens. Mr. Quaranta was living in his home of 26 years on life support systems when the fruitless battle began. He eventually had a heart transplant. He has a 4.7 cm aneurysm in the area and it is inoperable. A 5 cm. aneurysm, which could be caused by stress and high blood pressure, would cause his demise. It is inoperable for medical reasons and the defendants are apparently not moved by his plight.

The defendants, the Cooleys, are younger than the Quarantas, but mature, they have a 25-year-old son, also have health considerations. They have also taken a back seat to the momentous struggle in this case. Mr. Cooley is in a convalescent hospital with severe Alzheimers disease. Mrs. Cooley has struggled with breast cancer. The Cooley family has lived at their home for 16 years.

One may validly wonder if both of these families have lost sight of the important things in life, including life itself.

Essentially this saga starts with a man named Broderick who subdivided his property into two parcels. The first parcel contained his home and was closer to a city street, Dorwin Hill Road, in New Milford. (This became the plaintiff's home.)

The second parcel was farther from the road and past the plaintiffs' home. It contained two lots. (One was to become the defendants' home.)

When he created the subdivision, there was an existing paved driveway to his home, now the plaintiffs, from Dorwin Hill Road. It was bordered with a small and attractive split rail fence on each side. There was also a quaint lamppost on the side of the driveway that provided not only illumination but attractiveness to the entire property. This lamppost is on the defendants' property but was maintained by the plaintiffs who to this day still pay its electric bill. There were manicured lawns on both sides of the driveway.

In order to provide access to the interior lots, Broderick created by deed two twenty-five (on paper) roads for a total width of fifty feet over the same area on which his driveway existed.

Each lot owns twenty-five feet in fee, and each has the right to pass and repass over the twenty-five feet owned by the other. The practical effect of these easements is to allow all three parcels of land to share access to Dorwin Hill Road with one common driveway.

These easements were approximately 575 feet in length and basically provided in all deeds for a right of any lot owner to "pass and repass at all times and for all purposes."

The following facts are relevant to understanding, if that is humanly possible, of how these two sets of "neighbors," whose homes cannot even be seen by each other, can end up in a most "unneighborly" like situation where the families of each side accuse the other of using the "F" word, raising the middle finger on numerous occasions, and other immature and harassing behavior. The latter included the noisy racing of vehicles, the

blowing of car horns and trash placement fights. And there is much more to follow, and even at that, the court will not attempt to recount every detail of the testimony.

But first, after a reading of both briefs, this court met with counsel to see if reason could prevail even at that late date. Both lawyers, who are quite competent and experienced, wisely agreed to see if a resolution could be achieved. They even suggested that they would agree to let their clients meet with the court without them to see if there could be a resolution.

Alas, it was reported to me by the staff that the "feud" continued and efforts at rationality were fruitless. That being the case the court now proceeds with its opinion, ironically on the eve of Thanksgiving and the coming of Christmas.

Before continuing with a recitation of the additional facts in this case, which should be embarrassing to the parties and their families, the court will emphasize the importance of credibility in this case. When all of the human verbal litter and debris is shorn from this case, credibility becomes the decisional partner of the law.

The defendant loses the credibility contest handily. Neither she nor her witnesses, by demeanor or testimony, were believable to the court. (Examples will follow.)

But first a more detailed review of the facts is in order.

The first punch of this battle was thrown by the defendants, Mrs. Cooley in particular. This was the first house she ever lived in her life. She had lived in Roosevelt Island in New York City in an apartment.

Living in semi-rural Connecticut does not comport to the multiple-dwelling existence that was her sole life experience. Unfortunately, there was no Connecticut Semi-Rural Living 101 course for her to take.

She started this traditional "great neighbor" relationship not by a neighborly visit or a phone call. She started it with a cold legal letter within thirty days of moving in. (Defendants' Exhibit 3.)

This warm and candid epistle, after discussing property lines, contains the following warm language:

You have lampposts and a driveway which sit on our property.

Since we have not given permission for these installations, I am writing this letter to put our property claim in writing. We do not wish to lose rights to this property.

It is important for us to discuss this as soon as possible.

Please contact us if there is any action or paperwork needed by us to assure that our property lines remain in place. Many thanks.

This letter was blind copied to their attorney, Robert Guendelsberger, who one may surmise they consulted with before drafting the letter.

While the court had little information about the intervening years, the major complaints seem to have arisen in the year 2000 while Mr. Quaranta was on life support systems awaiting the heart transplant he finally received in 2001. It continued through 2005.

In 2000, Sean Cooley was about 18 years old and was 23 years of age in 2005. The plaintiffs claim that during these years there were numerous parties of young people at the Cooley residence. All of the party-goers had to pass over the jointly held easement and go by the plaintiffs well cared for and attractive home and grounds. (The court viewed the property on two occasions.) The parties were so-called "keg" parties as one witness testified.

The plaintiffs' testified that the defendant's young party goers parked their cars on the right of way. They estimated that there were 30-40 cars so parked on occasion. (After viewing the area the court concludes that the plaintiffs have probably exaggerated that amount. Frankly, both sides have fallen prey to the exaggeration ogre.)

In any event, the parking of these cars and particularly the subsequent maneuvering of them as they left the parties was loud and annoying to the plaintiffs. The plaintiffs allege the youngsters were screaming and cursing as they left the parties which admittedly served alcohol. The next day the plaintiff, cleaned up empty bottles and smoking product remainders. Mrs. Quaranta spoke to Mrs. Cooley about this situation without result. The plaintiffs estimate that the parties were about 4 times per month. (Not surprisingly the defendant's estimate of parties was much lower.)

In desperation the plaintiffs consulted Attorney Thomas Allingham and asked him to write to the New Milford Police Department requesting them to take action regarding what they viewed as trespassing issues. The police had been called in the past but were unable to act because of their uncertainty regarding ownership issues. (See Plaintiff's Exhibit 4 - Copy attached.)

Attorney Allingham had a copy of this letter served on the defendants by a Judicial Marshal.

Thereafter, the complained of activities stopped for a few months and then started up again.

The grand finale was the defendant's Halloween Party in 2005. There was a loud commotion on the mutual passage within eighty feet of the plaintiff's

bedroom.

Mrs. Quaranta went out in her bed clothes to ask for peace and quiet and she received curses from the young guests and one exposed himself to her and urinated toward her. (He was subsequently arrested.)

The usable part of the mutual passage is paved and graveled. The remainder was well kept lawn, on both sides.

Two of the defendants, Mrs. Cooley and her daughter, took to riding at high speed over the grassy area even leaving deep tire tracks which are unsightly.

Although the defendant's trash pick-up was on Fridays, they would put their trash out all week long. (The trash pick up spot was at the beginning of the mutual right of way. This means that it was viewable only from the plaintiff's property and its ugliness only detracted from their enjoyment of it.)

Naturally, the animals got to the trash during the week and the plaintiffs did the clean up.

And the beat goes on. Mrs. Cooley takes to driving fast down the mutual passage raising dust and her middle finger while blowing her horn the entire 573 feet.

She put weed killer on the lawn she owns but fronts the plaintiff's meticulous lawn and home. This was done ostensibly to do away with the need to weed whack.

The defendants do figure eights on the law portion of the passage on rainy days. Not to mention numerous u-turns as well.

There were many verbal confrontations as well. One of the defendants' guests says to Mrs. Quaranta "what's your problem bitch."

Twenty-something-year-old Sean Cooley says to Mr. Quaranta, with the heart transplant and in his late 60s, "Hit me!", "I'll wipe the ground up with you".

The defendant alleges that in one of their verbal confrontations that the senior Mrs. Quaranta hit her and knocked her down. This is totally not believed by the court and that belief is supported by an unrelated witness.

This narrative need not contain any more details to obtain a clear view of the situation.

The first time this foolish behavior came to the attention of a court was in May of 2007. It was pre-tried by Sheedy, J. As a result of only a chambers discussion Judge Sheedy also had a clear view of the situation.

She entered the following order:

The parties and their respective family and invitees are to refrain from intimidating, threatening, harassing, stalking, assaulting, or attacking, the other party or parties and to refrain from entering the property of the other until this dispute is tried and resolved on the merits.

Thereafter, the defendants enacted a totally ugly, unnecessary, and aesthetically disgusting CHICKEN WIRE fence on the side of the passage that fronts the plaintiffs' house, and only the plaintiffs' house, thereby detracting from the beauty and enjoyment of the plaintiffs in their home. In nearly 25 years on the bench, I have never seen such willful, inconsiderate, hateful and despicable conduct by one neighbor to another.

Of course, the defendant had her say too. (The court excluded the defendant Mr. Cooley from this case in view of his Alzeimers disease and confinement in a convalescent home.)

The defendant's first witness added nothing to the case. Cathy Johnson was a nurse's aide for Mr. Cooley. In such daytime capacity she said she saw Mrs. Quaranta throw branches in Mrs. Cooley's front yard and threaten her: "you wait until I get you alone" was the alleged comment. No action was taken. She also says the plaintiff's car followed her all the way home once. (Whatever that means.)

The next witness was the defendant's daughter Jennifer. She testified that the plaintiff's son's construction equipment was noisy. (The plaintiffs had purchased a lot opposite the defendant's home, put up a stockade fence on their border and allowed their son to park his equipment there. That practice has long ended and is not part of the case.)

She also saw rocks thrown over the stockade fence to her parents lawn but did not see who threw them. She admitted to driving fast down the easement as well. Her testimony added little to the case.

The next witness was the defendant's son, Sean, now 25 years old. He said the keg parties or as he called them "gatherings" occurred only once a month. He also said most of his guests car-pooled. His demeanor and testimony were lacking in credibility in every respect. He was a minimizer in every way. Sean, his mother and another were video-taped smashing down the entrance way decorative fence. The plaintiffs noticed that their decorative ceramic family nameplate had been smashed. They inquired on the tape as to who did just a malicious thing, and Sean replied "we did!" The video tape of these actions and admissions sealed the lid of the believability coffin with this court. Particularly since all of the Cooley's testified differently under oath.

And now we come to the testimony of the person who as an individual and as a parent was the willing catalyst of this ongoing craziness, Joanne Cooley.

One could almost use that well worn lawyer's expression "I rest my case" after merely viewing Mrs.

Cooley's Exhibit 12 which in gruesome detail sets out the "this is my property" syndrome. It is not surprising that she took the axe too, and threatened to axe, anything, even of beauty, that was on HER PROPERTY. A lamppost, (that provided her light and the plaintiffs paid for the electricity), fences (that enhanced the entrance to both their properties), a beautiful birch tree (no professional evidence that it had to be cut down), the ceramic nameplate, (which her son admitted smashing) and even shrubbery. Such warmth! And it shows in the fifty plus exhibits.

The court is inclined to believe that both women used foul language to each other. And, further, that certain minor but annoying actions by the plaintiffs taint their halos by overreaction as well.

Mrs. Cooley's credibility started a downward spiral early on in the trial. When one sees photos from her car driving on the lawn toward Mrs. Quaranta on her lawnmower when she has the pavement to drive on one may begin to wonder.

She postured herself as having the body of a 95 year-old woman. This is hard to believe viewing her machinations on tape, her speedy honking driving and the destruction of shrubbery. She seemed full of vim and vinegar on the stand.

Additionally, the court suspects that the defendant was the author of an anonymous letter of complaint on a tangential issue to the trial. That suspicion is confirmed in part by a certain similarity in a letter known to be written by the defendant. Further it purports to be from a neighbor who "lives next door to the site" in question. It was the court's observation that the only home "next door to the site" is the defendants. This situation plays absolutely no part in the court's conclusions in this case.

Mrs. Cooley claims that Mrs. Quaranta physically assaulted her on March 17, 2006. However, it took her two weeks to go to her family doctor! And his report of May 27, 2006 indicates she had pain in her right knee as a result of a "fall down on her driveway". (Arthritic in nature.) Nothing is mentioned about an assault! There was testimony by a contemporary of Sean Cooley who testified he attended a dozen or so "keg parties" at the defendants' home. He saw cars parked on the easement that blocked the plaintiff's driveway. He confirmed that the parties were noisy and held indoors as well as in a tent attached to the house. They would start between 6 and 9 p.m. and he would leave between 1 and 1:30 a.m.

Mrs. Cooley also admits blowing her horn on the easement. She could not remember if she blew it the entire length of the easement or not. The latter strains the Court's credibility.

Generally speaking she was quite evasive in her answers on cross examination.

She claimed her pocketbook was struck once by Mr. Quaranta. The better evidence is that it was accidental. In either event, hardly an earth shaking event. Certainly not one captured on her dashboard mounted video camera.

THE LAW

Eventually all of this chaotic drama must be placed in legal pigeon holes for the purposes of decision making. Obviously, what "ails" the litigants here is well beyond the healing powers of the law or this court. It is the court's hope that its legal holdings, and commentary thereto, will enable the parties to get back on a civil track in order for them and their families to enjoy all that life has to offer once their hatreds have abated.

A

THE CHICKEN WIRE FENCE

The court finds that this unsightly and unuseful fence was maliciously erected by its character, location, and the obvious state of mind and motive of the defendant. It is hereby ordered to be removed by the defendant within ten days of the filing of this memorandum. (See *DeCeco v. Beach*, 174 Conn. 29, 32 (1977), Section 52-480 of the General Statutes.)

B

THE USE OF THE RIGHT OF WAY

The court finds by clear and convincing evidence that the defendant and her family have clearly exceeded the use of the right of way and have done so in a vindictive and malicious manner as to harm the plaintiffs.

The deed allows the defendant to use the 25' strip of land for "all purposes of ingress and egress from and to said Dorwin Hill Road".

Obviously, the defendant can use the right of way for any reasonable purpose necessary to that use.

What constitutes reasonable use "is a question of fact to be determined on a case by case basis, considering all the relevant circumstances, including such factors as the amount of harm caused, its foreseeability, the purpose or motive with which the act was done, and the consideration with which the act was done, and the consideration of whether the utility of the use of the land outweighed the gravity of the harm resulting." *Peterson v. Oxford*, 189 Conn. 740, 745, 459 A.2d 100 (1989).

In this case, the court finds that a number of the plaintiff's activities on this simple "right of way" are, in layman's terms, ludicrous, and in legal terms harmful, unnecessary, illegal and unreasonable.

Therefore, the court orders the defendant and her

family as follows:

(1) Drive your vehicles only on the paved or graveled portion of the right of way.

(2) Do not drive your vehicles more than ten miles per hour on the right of way.

(3) Do not blow your horn on your vehicles or play loud music while on the right of way.

(4) Do not make obscene gestures on the right of way.

(5) Do not park on the right of way or allow any of your guests to do so.

(6) Remove any storage containers from the right of way.

(7) Place your refuse only on the street known as Dorwin Hill Road at the end of your right of way.

(8) The refuse is to be placed there *only* on the day before the trash pick up.

(9) The defendant shall remove the trash container which is unsightly, *unused* and has a "No Trespassing" sign on it with the defendant's name underneath.

(10) Remove the four trees from the front of the plaintiffs' gate at the end of the easement. (These were ostensibly planted two weeks before this trial commenced!)

(11) Continue to snowplow in a timely manner to the plaintiffs' driveway.

(12) No destructive chemicals to be used on the lawns.

(13) The plaintiffs shall not mow the defendant's lawn unless requested to do so.

(14) The plaintiffs shall not impede the defendant or her agents from performing any work that is legal upon the defendants' property.

(15) The plaintiffs' are ordered not to touch the defendants' trash.

C

THE MAINTENANCE COSTS

This is a moot point. The plaintiffs have been paying to have snow removed from their driveway to Dorwin Hill Road. The defendant has been paying to remove the snow from her home to the plaintiffs' driveway. Ergo, not justiciable problem here. The parties are ordered to continue this practice.

D

EMOTIONAL DISTRESS

Based upon the totality of the evidence aforementioned the court finds that the defendant, directly and indirectly negligently and intentionally caused severe emotional distress upon the plaintiffs and knew or should have known that their acts would result in severe emotional distress to the plaintiffs. In fact, in the case of Mr. Quaranta, the distress is life threatening. The defendants evidenced a reckless indifference to the plaintiffs' rights as showed an intentional and wanton violation of these rights. The defendants inflicted injury maliciously with evil motive and violence. (See *Venturi v. Savitt, Inc.*, 191 Conn. 565, 592 (1983); *Bennett v. Gibbon*, 55 Conn. 450, 452 (1887)).

Our law provides for punitive damages in such cases. However, the law also provides that the amount of punitive damages are determined by the amount of the plaintiffs' attorneys fees. The plaintiff made a demand for that specific relief and are therefore entitled to them.

The plaintiff did not present evidence of the cost of the work performed by her attorney. Therefore, the court will conduct a hearing at the convenience of the parties to determine the amount of those fees. (*Kenny v. Civil Services Commission*, 197 Conn. 270 (1985)).

TRESPASS

The defendants claim that the plaintiffs committed a trespass on their property. Clearly they did. And they did so in a naughty, foolish and immature manner. Nonetheless, the court can find no actual damages here and therefore awards the defendant nominal damages in the amount of one dollar.

CONCLUSION

The final statement by the court is ordered to be personally read by the parties.

This entire case was distressing to all involved in it. The judge, the lawyers, and the court personnel are all shaking their heads in utter dismay.

The court, as previously noted, has no magic healing powers. And it is healing that these litigants desperately need, for their own good and well being.

The defendants' lawyer sagely suggests in his well written brief "that the only way to return to a cordial atmosphere is to return the properties to the condition that they were in before this dispute began." The court agrees and makes the following suggestions in the interest of human harmony and peace. (An interesting time of the year to be discussing "peace"!) Mr. Quaranta expressed it perfectly in his testimony when he said "I just want to live in peace".

Here are my suggestions as to how to do exactly that, and it will take *both* sides.

Let us all go back to the day the Cooleys moved in

and put everything back the way it was. Let us dig a hole and bury all of the ill feelings and hatreds that are all consuming.

I would have some suggestions first for the Cooleys. (In addition to my orders. Let the Quarantas mow whatever they want. It makes the entrance to both of your homes more attractive and valuable. Perhaps replacement of the split rail fence at the beginning of the right of way is also a grand idea. Read on. Leave the shrubbery and trees alone unless they are a *serious* danger to vehicles on vision. Forget about the lampost-like items, they enhance, not hurt. There is no danger of the Quarantas making a claim to any of your "property".

That metal gate is ugly and reflects upon you both. Get rid of it. Also get rid of the stockade fence on the line between your second lot and the Cooleys. This shows good faith and as will be seen, might inspire the same good faith from the Cooleys. If you really find it necessary, and it is not really necessary, you could replace the ugly gate with part of the stockade fence as a gate. The remainder of the stockade fence could replace the present aged and decrepit one between your two homes.

If a back fence is needed, why not make it a split rail fence so that the Cooleys have a nicer view? Perhaps the Cooleys would contribute to that cost. Maybe you might think about reducing the attorneys fees that the Cooleys, now just Mrs. Cooley unfortunately, will be obliged to pay you!

The person whom many people honor in this Holiday Season forgave everyone. Isn't it time that the Quarantas and the Cooleys caught the spirit of the Season?

BY THE COURT,

Gill, J.

Plaintiff's Exhibit 4

THOMAS J. ALLINGHAM

PHILIP F. SPILLANE

November 29, 2004

Colin D. McCormack

Chief of Police

New Milford Police Department

49 Poplar Street

New Milford, CT 06776

Served Via Judicial Marshal

RE: *Quaranta Property: 75 Dorwin Hill Road*

Dear Chief McCormack:

I represent the Quaranta family who reside at 75 Dorwin Hill Road in New Milford, and I am writing to request your assistance in resolving a repeating trespass issue with their neighbors, the Cooley family. New Milford officers have responded in the past, but have declined to act because of their uncertainty regarding ownership of the parties' common driveway where the trespass complaints originate. I have reviewed the relevant land records, and with this letter I am providing your department with clarification of the driveway ownership issue.

The Quaranta family owns two separate parcels of land on Dorwin Hill Road, one contains their residence and the other is a vacant building lot. The Cooley family owns one parcel of land containing their residence, which is located behind the Quaranta residence. All three parcels of land share the same common driveway. The relevant deeds evidence the fact that the Quaranta family owns ½ of the common driveway, and the Cooley family owns ½ of the common driveway. In addition, each family has the deeded right to "pass and repass" over the entire driveway through respective easements. It is well settled that the owners of a right of way have the right to unhindered access, free of any obstructions. Since each family has the deeded right to "pass and repass" over the entire fifty-foot driveway easement, neither family may obstruct the driveway easement by any means at any time.

The central problem for the Quaranta family is the number of vehicles which attempt to park on the common drive and then trespass on their property causing actual damage to their shrubbery and lawn. To solve the problem, with a copy of this letter we are requesting the Cooley family to respect their deeded rights and to refrain from allowing guests to park on the common driveway easement. In the event that the problem is repeated, I have advised my clients to again contact the New Milford Police Department. In that regard, please advise responding officers that the Quaranta family has contracted the services of a land surveyor to properly establish the boundary lines. The Quaranta family has erected a stockade fence on the boundary line, and the fifty-foot common area that encompasses the driveway and easements is located immediately next to that fence. With this letter, the Quaranta family will expect responding officers to have access to this information about the location of the driveway and easement, and will expect them to act accordingly

Sincerely,

Thomas J. Allingham

cc: Mr. & Mrs. Cooley Served Via Judicial Marshal