Shiel v. Rowell

State of Massachusetts, Appellate Division, Southern District

August 9, 2017, Decided

No Number in Original

Reporter
2017 Mass. App. Div. LEXIS 30 *; 2017 Mass. App. Div. 115

Mary Shiel vs. John Rowell, and another[1]

Prior History: **[*1]** Opinion affirming judgment for defendant. Judgment entered in Quincy District Court by Coven, J.

Counsel: William F. Spallina for the plaintiff.

Daniel S. McInnis for the defendants.

Judges: Present: Hand, P.J., Welch & Finigan, JJ.

Opinion by: Welch

Opinion

Welch, J. It is well established in Massachusetts precedent that an individual whose property is damaged by an overhanging tree has no cause of action against a landowner of the property upon which the tree lies. See *Ponte v. DaSilva, 388 Mass. 1008, 446 N.E.2d 77 (1983)* (the eponymous "Massachusetts Rule"). The Commonwealth of Massachusetts, a state that cherishes individual rights, empowers the aggrieved neighbor to engage in self-help and lop off the offensive limb that trespasses on his or her property. The plaintiff-appellant, Mary Shiel ("Shiel"), invites us to overturn this precedent; we decline the invitation.

At one time, the neighborhood of Chaffin and Linden Roads in Randolph lived in harmony. Shiel and her neighbors, defendants-appellees Keli Jo and John Rowell ("Rowel's"), enjoyed an uncomplicated and pleasant relationship; throughout the years, there would be soirees, weddings, and the usual and customary events that form the bonds of comity in the community; under the surface, however, a discord was growing. **[*2]** The parties share a property line that is populated by vegetation and trees. As the relationship between the parties grew, so did the tree. As time passed and the tree gravitated toward Shiel's property, the limbs reaching across the property line became more and more aggravating to Shiel.

[1] Keli Jo Rowell.

As a result of Shiel's arboreal upset, and corresponding behavior resulting in police being called to her home, the Rowells sought, and were granted, multiple orders of protection.[2]

In 2014, the first round of civil litigation began wherein Shiel filed a small claims action against the Rowells regarding the rancorous tree. On November 4, 2014, a full hearing was held before a magistrate. A transcript of the small claims hearing, included in the record appendix, revealed many rebukes from both the magistrate and Shiel's own attorney to Shiel for her inability to control herself. Exhibiting admirable patience, the magistrate presided over the lengthy hearing[3] and found for the Rowells. Unsatisfied with the result, Shiel hired another attorney and had him file a complaint in the Quincy District Court alleging nuisance and trespass, the same causes of action litigated in the small claims hearing. To respond **[*3]** to this new complaint, the Rowells hired counsel who alerted, as a matter of professional courtesy, the attorney for Shiel that the matter had already been litigated in the small claims court (counsel for the Rowells also forwarded a copy of the small claims transcript to the attorney). Counsel's efforts were for naught, and the matter proceeded ahead resulting in the Rowells filing a motion to dismiss based upon res judicata, the Massachusetts Rule mandating dismissal, and that the District Court did not have equity jurisdiction to decide the case as there was no claim for money damages.

As there was no need to discuss the issues of res judicata and equitable jurisdiction, as the Massachusetts Rule was directly on point, the motion judge, in a well-penned decision, found for the Rowells and dismissed Shiel's complaint. The motion judge held that *Ponte v. DaSilva, 388 Mass. 1008, 446 N.E.2d 77 (1983)* controlled and Shiel had no actionable claim. Shiel then argued that the law should not be followed, to which the court declined to disregard established precedent.

In her appeal, Shiel does not ascribe fault to the trial court's decision other than that the judge should have disregarded the settled law and applied a different standard. Shiel **[*4]** would have us adopt the law of Hawaii, a deciduously dissimilar state, which rejected the Massachusetts Rule for one providing a homeowner with a cause of action against a neighbor's tree encroachment. We decline to fell judicial precedent. It is the province of the Legislature or the Supreme Judicial Court to change any decision by the Supreme Judicial Court. See *Commonwealth v. Colon, 52 Mass. App. Ct. 725, 730 n.1, 756 N.E.2d 615 (2001); Foley v. Evans, 30 Mass. App. Ct. 509, 512 n.5, 570 N.E.2d 179 (1991); Commonwealth v. Dominico, 1 Mass. App. Ct. 693, 710, 306 N.E.2d 835 (1974); Gerber v. City of Worcester, 1 Mass. App. Ct. 811, 812, 294 N.E.2d 451 (1973); Burke v. Toothaker, 1 Mass. App. Ct 234, 239, 295 N.E.2d 184 (1973)*. The decision of the lower court is upheld.

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[2] The testimony referred to "restraining orders," but the record is unclear as to whether such orders were pursuant to G.L.c. 209A or G.L.c. 258E.

[3] The transcript of the small claims hearing extended to sixty-three pages.