

SUPREME COURT OF VERMONT

Evans v. Cote

197 Vt. 523 (2014) · Decided August 29, 2014

SUMMARY

The Vermont Supreme Court affirmed an award of nominal damages, attorney’s fees, costs, and injunctive relief in an unlawful-mischief and trespass action involving a boundary dispute. The court held that Vermont’s unlawful-mischief statute permits attorney’s-fee recovery even when only nominal damages are awarded, and that the fee award need not be proportional to the damages if reasonable under the circumstances. The court also declined to review challenges to the sufficiency of the evidence because the defendant had not provided a trial transcript.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| COURT                 | Supreme Court of Vermont                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Dooley, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| JURISDICTION          | Vermont                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | August 29, 2014                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Defendant appealed from a superior court judgment finding that he violated Vermont's unlawful-mischief statute by intentionally damaging plaintiff's property and trespassing, awarding plaintiff nominal damages, attorney's fees, and costs, and issuing a permanent injunction.                                                                                                                                                                               |
| STANDARD OF REVIEW    | The sufficiency of the evidence supporting findings could not be reviewed because defendant failed to order a trial transcript, resulting in waiver under V.R.A.R. 10(b)(1); the Court therefore assumed the findings were supported. The grant of a permanent injunction was reviewed for abuse of discretion. Entitlement to attorney's fees under the statute was reviewed de novo. The amount of a statutory fee award was reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PARTIES               | Cote v. Evans                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

TOPICS

trespass

real estate

equitable relief

damages

appellate procedure

## PRACTICE AREAS

real estate

trespass

property damage

attorney's fees

appellate procedure

## QUESTIONS PRESENTED

1. Whether the permanent injunction against defendant's continuing trespass was an abuse of discretion.
2. Whether the evidence supported the finding that defendant violated 13 V.S.A. § 3701(c).
3. Whether 13 V.S.A. § 3701(f) authorizes attorney's fees when the plaintiff recovers only nominal damages.
4. Whether the attorney's-fee award was unreasonable or an abuse of discretion because it was disproportionate to the \$1 damages award.

## HOLDINGS

1. The permanent injunction was proper because the trial court found past trespass and a substantial probability of future trespass, and damages were inadequate to address a continuing trespass.
2. The trial court's findings adequately established all elements of a violation of 13 V.S.A. § 3701(c), including intentional damage to plaintiff's property without a right or reasonable ground to believe defendant had a right.
3. Attorney's fees may be awarded under 13 V.S.A. § 3701(f) when the plaintiff proves that the statutory violation caused some damage, even if the amount of damages is minimal or nominal.
4. The attorney's-fee award was not an abuse of discretion merely because it greatly exceeded the \$1 damages award.

## KEY QUOTATIONS

*“Vermont law is clear that even the threat of continuous trespass entitles a party to injunctive relief.”* (197 Vt. at 528)

*“The statute contains no requirement that the actual damages reach a threshold minimum to trigger the award of attorney's fees.”* (197 Vt. at 530)

*“When attorney's fees are awarded pursuant to a statute, the amount of the fee award, which depends on the facts of the case, is within the court's discretion.”* (197 Vt. at 533)

*“Absent strong evidence of excessiveness, this Court defers to the trial court's judgment as to the amount of fees.”* (197 Vt. at 535)

## FACTUAL BACKGROUND

The parties were neighboring landowners involved in a longstanding dispute over the boundary between their properties. A prior declaratory judgment established the boundary in plaintiff's favor. In the later action, the trial court found that defendant trespassed on plaintiff's land and, after the limitations period, intentionally knocked

down one dead but standing tree on plaintiff's side of the boundary. The court awarded \$1 in damages, issued a permanent injunction against future trespass, and awarded \$22,406 in attorney's fees and costs after reducing the lodestar by 75 percent.

## PROCEDURAL HISTORY

The parties disputed the location of their property boundary. In an earlier declaratory-judgment action, a default judgment established the boundary in plaintiff's favor, and the Supreme Court affirmed denial of defendant's motion to vacate that judgment. Plaintiff then brought this separate action alleging trespass and property damage. After a bench trial, the superior court found post-limitations-period damage consisting of defendant's knocking down one tree, awarded \$1 in damages, issued a permanent injunction, and awarded \$22,406 in attorney's fees and costs. The Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Evans v. Cote, No. 2009-326, 2010 WL 712475 (Vt. Feb. 25, 2010) (unpub. mem.)
- In re S.B.L., 150 Vt. 294, 307, 553 A.2d 1078, 1087 (1988)
- Hoiska v. Town of East Montpelier, 2014 VT 80, ¶ 9 n.\*, 197 Vt. 196, 101 A.3d 890
- Begin v. Barone, 124 Vt. 421, 422, 207 A.2d 252, 254 (1965)
- State v. Preseault, 163 Vt. 38, 43, 652 A.2d 1001, 1004 (1994)
- Alberino v. Balch, 2008 VT 130, ¶ 7, 185 Vt. 589, 969 A.2d 61 (mem.)
- State v. Therrien, 2011 VT 120, ¶ 9, 191 Vt. 24, 38 A.3d 1129
- State v. Squiers, 2006 VT 26, ¶ 9, 179 Vt. 388, 896 A.2d 80
- In re Verizon New England Inc., 173 Vt. 327, 334, 795 A.2d 1196, 1202 (2002)
- Nichols v. Agency of Environmental Conservation, 160 Vt. 620, 621, 627 A.2d 858, 858-59 (1993) (mem.)
- Clark v. Aqua Terra Corp., 133 Vt. 54, 58, 329 A.2d 666, 668 (1974)
- Bragg v. Laraway, 65 Vt. 673, 683, 27 A. 492, 495 (1893)
- John Larkin, Inc. v. Marceau, 2008 VT 61, ¶ 9, 184 Vt. 207, 959 A.2d 551
- Anderson v. Johnson, 2011 VT 17, 189 Vt. 603, 19 A.3d 86 (mem.)
- Kwon v. Eaton, 2010 VT 73, ¶¶ 13, 20-21, 188 Vt. 623, 8 A.3d 1043 (mem.)
- L'Esperance v. Benware, 2003 VT 43, ¶ 22, 175 Vt. 292, 830 A.2d 675
- Human Rights Commission v. LaBrie, Inc., 164 Vt. 237, 252, 668 A.2d 659, 670 (1995)
- State v. Breznick, 134 Vt. 261, 266, 356 A.2d 540, 543 (1976)