

SUPREME COURT OF VERMONT

Susan Alberino v. David Balch, 2008 VT 130

969 A.2d 61 (Vt. 2008) · No. No. 07-266 · Decided October 24, 2008

SUMMARY

The Vermont Supreme Court affirmed an injunction ordering Susan Alberino to remove an eight-foot plywood fence erected along the boundary with David Balch's property. The court held that the trial court's findings and evidence supported treating the fence as an unnecessary spite fence under 24 V.S.A. § 3817 and upheld the court's reliance on a site visit. Justice Skoglund dissented, concluding that the trial court had not made findings satisfying the statute and that an ugly fence alone was insufficient to warrant removal.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Johnson, J.; Burgess, J.; Skoglund, J.
JURISDICTION	Vermont
DECIDED	October 24, 2008
DOCKET	No. 07-266
DISPOSITION	affirmed
PROCEDURAL POSTURE	Alberino appealed a superior court order granting Balch injunctive relief and ordering removal of a plywood fence between their properties.
STANDARD OF REVIEW	The grant of injunctive relief is reviewed for abuse of discretion. Factual findings are reviewed in the light most favorable to the prevailing party and will not be set aside unless clearly erroneous; findings are clearly erroneous only when no credible evidence supports them. The appellate court will affirm if the record reveals any legal grounds justifying the result.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Susan Alberino v. David Balch

TOPICS

- real estate
- remedies
- equitable relief
- standard of review
- appellate procedure

PRACTICE AREAS

Real estate law

Property disputes

Equitable remedies

Appellate procedure

QUESTIONS PRESENTED

1. Whether the superior court improperly relied on observations made during a site visit.
2. Whether the superior court had authority to order removal of the plywood fence without an express finding that its sole purpose was to annoy Balch.
3. Whether the superior court's findings and the evidence supported injunctive relief and removal of the fence under 24 V.S.A. § 3817.

HOLDINGS

1. A trial court may conduct a site visit and use observations from that visit together with the testimony and other evidence to support its findings.
2. The evidence supported the implied finding that Alberino's fence was erected solely to annoy Balch by interfering with his view, and the superior court properly ordered its removal.
3. The superior court did not abuse its discretion in granting injunctive relief because credible evidence supported its findings and those findings provided legal grounds for ordering removal of the fence.

KEY QUOTATIONS

“the finder of fact may conduct a site visit or other analogous inspection, and may “base its findings upon such examination together with all the evidence in the case.”” (¶ 8, 969 A.2d at 64)

“the only plausible reading of the trial court's order is that such a finding was implicit.” (¶ 10, 969 A.2d at 65)

FACTUAL BACKGROUND

Alberino and Balch had a long-running dispute involving, among other matters, Alberino's dogs, alleged trespasses, noise, and property-related conflicts. After Alberino removed an orange plastic snow fence pursuant to a 2001 order, she built a roughly 488-foot, eight-foot-high plywood fence largely in the same location, although on her side of the boundary. The fence did not effectively contain the dogs, reduce noise, or provide meaningful privacy, and it warped, buckled, and in places encroached toward or onto Balch's property. The superior court found that the fence served no objective purpose and ordered its removal.

PROCEDURAL HISTORY

After Alberino erected a plastic fence, Balch counterclaimed in a harassment action for trespass and nuisance. The matter was transferred from small-claims court to superior court, which ordered removal of the plastic fence in 2001. Alberino then constructed a wooden plywood fence in nearly the same location. In 2004, Balch moved for contempt and requested removal of the plywood fence; after a hearing and site visit, the superior court ordered its removal under Vermont's unnecessary-fence statute. The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Letourneau, 168 Vt. 539, 551, 726 A.2d 31, 40 (1998)
- In re M.B., 2004 VT 58, ¶ 6, 177 Vt. 481, 857 A.2d 772 (mem.)
- Okemo Mountain, Inc. v. Lysobey, 2005 VT 55, ¶ 8, 178 Vt. 608, 883 A.2d 757 (mem.)
- Larkin v. City of Burlington, 172 Vt. 566, 568, 772 A.2d 553, 556 (2001) (mem.)
- Daigle v. Conley, 121 Vt. 305, 309, 155 A.2d 744, 748 (1959)
- In re Quechee Lakes Corp., 154 Vt. 543, 551-52, 580 A.2d 957, 962 (1990)
- Cass-Warner Corp. v. Brickman, 126 Vt. 329, 336, 229 A.2d 309, 314 (1967)
- McAndrews v. Leonard, 99 Vt. 512, 521, 134 A. 710, 714 (1926)
- Gertz v. Estes, 879 N.E.2d 617, 621 (Ind. Ct. App. 2008)
- Gamache v. Smurro, 2006 VT 67, ¶ 18, 180 Vt. 113, 904 A.2d 91
- Cabot v. Cabot, 166 Vt. 485, 497, 697 A.2d 644, 652 (1997)
- DeCecco v. Beach, 174 Conn. 29, 381 A.2d 543, 545 (1977)
- Cooley Corp. v. Champlain Valley Union High Sch., 144 Vt. 341, 343, 477 A.2d 624, 626 (1984)
- Hubbard v. Town, 33 Vt. 295, 298-302 (1860)
- Coty v. Ramsey Associates, 149 Vt. 451, 457-58, 546 A.2d 196, 201 (1988)
- Wernke v. Halas, 600 N.E.2d 117, 121-22 (Ind. Ct. App. 1992)
- Welsh v. Todd, 260 N.C. 527, 133 S.E.2d 171, 173 (1963)
- Burke v. Smith, 69 Mich. 380, 37 N.W. 838, 839-42 (1888)