

VERMONT SUPERIOR COURT, CIVIL DIVISION, CHITTENDEN UNIT

243 Colchester Avenue, LLC v. Nina O'Connor et al.

243 Colchester Avenue, LLC v. O'Connor · No. 25-CV-04286 · Decided December 15, 2025

SUMMARY

The Vermont Superior Court denied 243 Colchester Avenue, LLC's motion for a preliminary injunction seeking to remove Nina and Andrew O'Connor from disputed land and to stop their alleged continuing trespass. The court concluded that although the plaintiff established irreparable harm as a matter of law, it had not shown a likelihood of success on the merits because the O'Connors might establish adverse possession. The court dismissed as moot the defendants' motion for miscellaneous relief and granted their motion for leave to file a sur-reply.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Vermont Superior Court, Civil Division, Chittenden Unit                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Colin Owyang                                                                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | Vermont Superior Court, Civil Division, Chittenden Unit                                                                                                                                                                                                                                                                                                     |
| DECIDED               | December 15, 2025                                                                                                                                                                                                                                                                                                                                           |
| DOCKET                | 25-CV-04286                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Plaintiff moved for a preliminary injunction seeking to eject defendants from a disputed portion of land and remove their personal property. Defendants opposed the motion, asserted adverse possession as an affirmative defense, and moved for miscellaneous relief and leave to file a sur-reply.                                                        |
| STANDARD OF REVIEW    | The movant bears the burden of establishing the factors supporting a preliminary injunction, including likely irreparable harm, potential harm to the opposing party, likelihood of success on the merits, and the public interest. The court assesses likelihood of success by predicting the outcome at trial and does not make ultimate merits findings. |
| PRECEDENTIAL VALUE    | Unknown; Vermont Superior Court trial-level opinion                                                                                                                                                                                                                                                                                                         |
| PARTIES               | 243 Colchester Avenue, LLC v. Nina O'Connor, Andrew O'Connor                                                                                                                                                                                                                                                                                                |

TOPICS

injunctions

adverse possession

trespass

quiet title

civil procedure

## PRACTICE AREAS

real estate

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## QUESTIONS PRESENTED

1. Whether 243 established the requirements for a preliminary injunction against the O'Connors' alleged continuing trespass.
2. Whether 243 demonstrated a likelihood of success on the merits in light of the O'Connors' adverse-possession defense.
3. Whether the potential harm and public-interest factors favored issuing the requested injunction.
4. Whether the O'Connors' motions for miscellaneous relief and leave to file a sur-reply should be granted or dismissed as moot.

## HOLDINGS

1. For purposes of the preliminary-injunction motion, a continuing trespass constitutes irreparable harm as a matter of law.
2. 243 failed to establish a likelihood of success because the evidence could support the O'Connors' adverse-possession defense.
3. 243 failed to establish that the public-interest factor favored the requested injunction.
4. The motion for miscellaneous relief was dismissed as moot, and the motion for leave to file a sur-reply was granted.

## KEY QUOTATIONS

*“A preliminary injunction is an extraordinary remedy never awarded as of right.” (at 3)*

*“In other words, whether merely by surveying or by letters, a title holder does not interrupt adverse possession unless they physically interrupt the claimant’s occupancy.” (at 6)*

*“243 has, therefore, failed to meet its burden in showing why the court should issue the requested preliminary injunction.” (at 7)*

## FACTUAL BACKGROUND

243 Colchester Avenue, LLC owned land in Burlington adjoining the O'Connors' property. Beginning in 2008, the O'Connors allegedly used a portion of 243's land by blazing trails, installing fencing, maintaining animals, constructing structures, and otherwise occupying the area. 243 first discovered the activities in 2019 when it surveyed and staked the land, surveyed again in 2025, and then asked the O'Connors to remove their property; the O'Connors refused. The court found for purposes of the preliminary-injunction motion that the activities were not clandestine and that the evidence could support an adverse-possession defense.

## PROCEDURAL HISTORY

243 Colchester Avenue, LLC filed claims for trespass and quiet title concerning land occupied by the O'Connors. The O'Connors counterclaimed for trespass and unjust enrichment and asserted adverse possession. After briefing and oral argument without receiving evidence, the court ruled on the papers, denied the preliminary injunction, dismissed the miscellaneous-relief motion as moot, and granted leave to file the sur-reply.

## DISPOSITION

other

## CASES CITED

- Taylor v. Town of Cabot, 2017 VT 92, ¶ 19, 205 Vt. 586
- Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008)
- State v. Glens Falls Insurance Co., 134 Vt. 443, 450 (1976)
- Protect Our Wildlife v. Fish and Wildlife Board, No. 24-CV-00189, 2024 WL 1492588, at \*2 (Vt. Super. Ct. Feb. 22, 2024)
- D'Ambrosio v. Scott, 784 F. Supp. 3d 699, 702 (D. Vt. 2025)
- American Environmental, Inc. v. Burlington School District, Case No. 23-CV-00054, 2023 WL 2137953, at \*2 (Vt. Super. Ct. Feb. 4, 2023)
- State v. Preseault, 163 Vt. 38, 43 (1994)
- S. L. Garand Co. v. Everlasting Memorial Works, Inc., 128 Vt. 359, 362 (1970)
- Begin v. Barone, 124 Vt. 421, 422 (1965)
- Barrell v. Renehan, 114 Vt. 23, 25, 39 (1944)
- MacDonough-Webster Lodge No. 26 v. Wells, 2003 VT 70, ¶¶ 24, 28, 175 Vt. 382
- Jarvis v. Gillespie, 155 Vt. 633, 638, 641 (1991)
- N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 444 (1999)
- Lyon v. Parker Young Co., 96 Vt. 361, 364 (1923)
- First Congregational Church of Enosburg v. Manley, 2008 VT 9, ¶¶ 15-16
- Thurston v. Batchellor, 100 Vt. 334, ¶¶ 9-10
- Harlow v. Miller, 147 Vt. 480, 483 (1986)
- Rueda v. Kuban, 133 Vt. 584, 585 (1975)
- Camp v. Camp, 88 Vt. 119, 120 (1914)
- Miceli v. Foley, 575 A.2d 1249, 1258 (Md. Ct. Spec. App. 1990)
- Rosencrantz v. Shields, 28 Md. App. 379, 390-93, 346 A.2d 237 (1975)
- Crown Credit Co. v. Bushman, 869 N.E.2d 83, 91 (Ohio Ct. App. 2007)
- Pugatch v. Stoloff, 671 N.E.2d 995, 1000 (Mass. App. Ct. 1996)
- Brown v. Whitcomb, 150 Vt. 106, 110 (1988)

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