

FILED
Court of Appeals
Division II
State of Washington
4/23/2018 9:29 AM

No. 50982-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

THERESA and KENT BOYLE,

Appellants,

v.

JOHN and BRENDA LEECH,

Respondents.

APPELLANTS' REPLY BRIEF

GORDON THOMAS HONEYWELL LLP
Warren J. Daheim
Attorney for Appellants

Suite 2100
1201 Pacific Avenue
Tacoma, WA 98401-1157
(253) 620-6500
WSBA No. 03992

TABLE OF CONTENTS

I. LEECHES SKIRT THE ISSUE..... 1

II. CONCLUSION..... 2

TABLE OF AUTHORITIES

CASES

MJD Properties LLC v. Haley, 189 Wash. App. 963, 970, 358
P.3d 475 (2015)..... 1

Whitsel v. Houiton, 2 Haw.App 365, 366, 632 P.2d 1077
(1981)..... 1

I. LEECHES SKIRT THE ISSUE

The issue is whether toxic debris from a neighbor's giant sequoia tree can ever be a nuisance. The trial court ruled as a matter of law it cannot. The Leeches have pointed to no legal authority directly in point which supports the trial court's decision.¹

The Leeches argue that trees typically do not constitute a nuisance.² Granted. But this case involves not any tree. It involves a dying tree shedding toxic debris.³

Leeches argue that ordinary debris from trees does not constitute a nuisance. Granted. But this case involves toxic debris damaging the neighbor's home, furniture and vehicles.⁴

Leeches argue that they must have committed an unlawful act to constitute a nuisance. But that is not the law. *See MJD Properties LLC v. Haley*, 189 Wash. App. 963, 970, 358 P.3d 475 (2015) ("when nuisance exists it is not excused by the otherwise lawful quality of the business or structure accusing nuisance.")

¹ Most of Leeches' authorities involve trees which overhang or encroach. They deal with a different problem.

² Leeches ask "whether a tree alone can constitute a nuisance." P. 14

³ Leeches point out that some pages of Boyle's declaration are missing from the record. But the declaration of Brian Allen, an arborist, and Dennis and Donna Quackenbush, Boyles' neighbors, fully support the essential facts of this appeal.

⁴ *See, Whitset v. Houlton*, 2 Haw.App 365, 366, 632 P.2d 1077 (1981) which distinguishes noxious from non-noxious debris.

Leeches argue that Boyles have not shown negligence on Leeches' part. But nuisance does not require a showing of negligence. It requires an unreasonable annoyance.

Finally, Leeches argue it would be unreasonable to require them to take down their tree. But that is premature. The issue on appeal is whether toxic debris can ever be a nuisance. If so, and if it constitutes a nuisance here, then and only then will the Court decide on the remedy. It may be periodic pruning. It may be periodic cleaning of their own property. It may be damages.

II. CONCLUSION

Allowing Boyles to seek relief for damage to their property does not open Pandora's box. It does not constitute a threat to tree owners everywhere. Keeping a tree will continue to be a reasonable use of property. It simply helps confirm that when trees are dying and in the process of shedding toxic debris, the owner may have some responsibility to be a good neighbor. Stripped of legalese, it is not any more complicated than that.

///

///

///

Dated this 22nd day of April, 2018.

Respectfully submitted,

GORDON THOMAS HONEYWELL LLP

By 

Warren J. Daheim
Attorney for Appellants
WSBA No. 03992

CERTIFICATE OF SERVICE

I, Gerri Downs, certify that on the 23rd of April, 2018, I forwarded a true and correct copy of the foregoing to Respondents as follows:

Attorneys for Respondents

Thomas H. Oldfield, WSBA No. 02651
Oldfield & Helsdon, PLLC
1401 Regents Blvd., Suite 102
Fircrest, WA 98466
Phone: (253) 564-9500
Fax: (253) 414-3500
Email:
toldfield@tacomalawfirm.com

- U.S. MAIL
- VIA EMAIL (e-service agmt)
- VIA E-SERVICE
- VIA LEGAL MESSENGER

Co-Counsel for Respondents

James N. Mendel, WSBA No. 29223
Tyson & Mendes, LLP
200 West Mercer Street, Suite 411
Seattle, WA 9119
Phone: (206) 420-4267
Fax: (206) 420-4375
Email: jmendel@tysonmendes.com

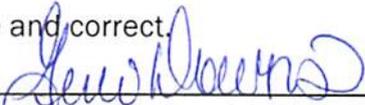
- U.S. MAIL
- VIA EMAIL
- VIA E-SERVICE
- VIA LEGAL MESSENGER

Co-Counsel for Respondents

Theodore M. Miller, WSBA #39069
Law Offices of Sweeney & Dietzler
1191 Second Avenue, Suite 500
Seattle, WA 98101
Phone: (206) 633-1310
Fax: (866) 546-5102
Email:
theodore.miller@libertymutual.com

- U.S. MAIL
- VIA EMAIL
- VIA E-SERVICE
- VIA LEGAL MESSENGER

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



Gerri Downs, Legal Assistant
gdowns@gth-law.com
Gordon Thomas Honeywell LLP

GORDON THOMAS HONEYWELL LLP

April 23, 2018 - 9:29 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50982-2
Appellate Court Case Title: Theresa & Kent Boyle, Appellants v John & Brenda Leech, Respondents
Superior Court Case Number: 16-2-11504-2

The following documents have been uploaded:

- 509822_Answer_Reply_to_Motion_20180423092744D2624178_7750.pdf
This File Contains:
Answer/Reply to Motion - Reply to Response
The Original File Name was Appellants Reply Brief.pdf

A copy of the uploaded files will be sent to:

- JMendel@TysonMendes.com
- theodore.miller@libertymutual.com
- toldfield@tacomalawfirm.com

Comments:

Sender Name: Gerri Downs - Email: gdowns@gth-law.com

Filing on Behalf of: Warren J. Daheim - Email: wdaheim@gth-law.com (Alternate Email:)

Address:
1201 PACIFIC AVE
STE 2200
TACOMA, WA, 98402
Phone: (253) 620-6500

Note: The Filing Id is 20180423092744D2624178