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Agnello v. Urbano, No. CV000273689S, 2002 Conn. Super. LEXIS 3421 (Conn. Super. Ct. Oct. 24, 2002)

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court reasoned that the TCE continued to migrate onto Hoery's property, and the failure to prevent the pollution plume also constituted a continuing property invasion. So long as these continuing property invasions remained, the court stated that it was immaterial whether the United States continued to release TCE. The court thus affirmatively certified that migration and ongoing presence of toxic chemicals, regardless of whether the pollution has ceased, constitutes a continuing trespass or nuisance under Colorado law.

Karen L. Golan

CONNECTICUT

Agnello v. Urbano, No. CV000273689S, 2002 Conn. Super. LEXIS 3421 (Conn. Super. Ct. Oct. 24, 2002) (holding that abutters cannot divert surface water onto the adjacent landowner's property; that abutters cannot interfere with an express, implied, or prescriptive easement; and that interference with an easement reasonably necessary for the use and normal enjoyment of property is trespass).

Joseph and Sharon Agnello filed a six-count complaint against Armando and Maria Urbano, the adjacent property owner, in the Superior Court of Connecticut at New Haven. The complaint addressed three main issues: (1) whether Urbano diverted surface water onto Agnello's property; (2) which owner possessed title to a triangular area of land; and (3) Agnello's easement rights. Urbano filed a counterclaim, which sought to quiet title and alleged Agnello trespassed on his property. The court found in favor of Agnello on all counts.

Agnello and Urbano owned adjacent properties. A twenty-five foot right-of-way provided access to Agnello's property. In 1999, Urbano removed a split rail fence located on the adjacent property and constructed a new fence. In addition, Urbano placed materials in the right-of-way, which deprived Agnello of access and constructed a cinder block wall in order to divert surface water onto Agnello's land. Agnello requested and received a temporary restraining order before trial. The order prevented Urbano from diverting the water onto Agnello's land and from interfering with the right-of-way access. Urbano violated the order by building various barriers and limiting the right-of-way.

First, the court addressed whether Urbano wrongfully diverted surface water. The court applied the test formulated in *Tide Water Oil Sales Corp. v. Shimelman*, which states, "the landowner, in dealing with surface water, is entitled to take only such steps as are reasonable." Accordingly, the court held Urbano improved his land and caused the water to impermissibly flow on to Agnello's land. The court further

found Urbano used the surface water unreasonably, because the water could have been diverted without adversely impacting Agnello.

Second, the court discussed the quiet title claim. The court found Agnello's expert witness offered more credible evidence than Urbano's expert witness. Therefore, the court held in favor of Agnello on the quiet title claim. Additionally, Agnello claimed Urbano trespassed on her land. The court concluded Urbano had trespassed, finding Agnello owned the property, Urbano intruded on the land by intentionally placing materials on the property, and the intrusion caused direct injury to Agnello. The court refused to award damages on the trespass claim.

Finally, Agnello claimed easement title based on an easement conveyed by deed, easement by implication, and easement by prescription. Agnello produced her property deed, which specifically mentioned an easement right. The court found Agnello presented adequate evidence to prove an express easement for "ingress and egress" purposes. Next, the court stated the factors for easement by implication—"the intention of the parties and whether the easement is reasonably necessary for the use and normal enjoyment of the dominant estate." Moreover, Agnello established easement by prescription by proving adverse possession. Agnello proved the open visibility of the easement, the uninterrupted use of the easement for fifteen years, and thus possessed a claim of right.

In conclusion, the court ruled in favor of Agnello and ordered Urbano to install a drainage system to divert surface water into the public storm drain system and to cease interference with the easement.

Susan Curtis

ILLINOIS

Nottolini v. LaSalle Nat'l Bank, 782 N.E.2d 980 (Ill. App. Ct. 2003)
(holding that a water-filled quarry is not of natural origin, and therefore is not a lake).

In 1999, Alecia, Cheryl, and Rick Nottolini ("Nottolins") filed a complaint in the Circuit Court of Kane County for a declaration of their rights to make reasonable use and enjoyment of the surface waters of an abandoned, water-filled quarry ("Quarry"). The Nottolins also requested a permanent injunction to bar the Quarry owner, William Dwyer ("Dwyer"), from maintaining any fences and barriers around the Quarry that would restrict their access to it. Dwyer counterclaimed for a declaration of his exclusive rights to the Quarry. The court held for the Nottolins, and denied Dwyer's counterclaim. Dwyer appealed to the Appellate Court of Illinois, Second District, claiming that the circuit court was mistaken in defining the Quarry as a lake. The appellate court reversed and remanded the case back to the