

BARKING UP THE WRONG TREE

By Judith I Johannsen

Trees can enhance a property's value, provide shade, a nesting place for birds and exhilarating foliage in the fall. Trees can also cause problems between neighbors, especially when one owner's tree branches overhang another's property, reducing sunlight and enabling mildew on siding, dropping dead leaves onto another's lawn and into gutters, or by branches breaking off from disease, decay or storm.

An August 2007 Superior Court case in Rockville dealt with a tree on a hospital's property and the damage it caused to a car when it toppled into the yard and driveway of an adjacent property Miss C was renting. Miss C managed to trip and fall on the tree branches when checking out the damage the fallen tree had caused, so she sued the hospital for the damage to her car and for her personal injury.

Miss C claimed that the hospital had a responsibility to maintain its trees so that they would not fall into adjoining properties. She alleged that the hospital was careless and negligent in that it failed to warn her about the tree's dangerous condition, that it allowed an improperly maintained tree to fall on the property she was renting, and that the hospital's carelessness caused damage to her personally and to her car.

The hospital claimed that it was not careless and negligent and the court agreed. Here's why.

Years ago, when people owned vast parcels of land, there was little or no liability for trees falling onto neighboring properties; however, today, in urban areas where properties are smaller and homes and businesses are situated close together, it is non-sensical that a property owner could escape liability from a tree falling onto a neighbor's property.

The court reviewed case law from around the country and found that, in most states, an urban tree owner has a *limited* obligation to protect neighboring owners from falling trees and is responsible for damages from a falling tree *only if* that owner knew of the tree's dangerous condition.

In Connecticut, a 1997 Superior Court decision from the Litchfield judicial district, which decision drew from the law of torts, mirrored those other states' decisions and held that a property owner with trees on his property has a duty to prevent an unreasonable risk of harm to his own guests and to neighbors, and if a tree's poor condition is one which an owner could be aware of from an inspection, that owner is charged with having notice of that condition.

In this case, Miss C's job was to prove that the hospital knew or should have known that the tree on its property was in a dangerous condition and posed a risk of harm to others. The court found that as the hospital was unaware of the tree's condition, it had no obligation to inform Miss C about a condition it knew nothing about and, therefore, was not liable for the damages to Miss C herself or to her car. Miss C, it seems, was barking up the wrong tree.

So, if your neighbor has a large tree with branches extending over your boundary line fence and lawn and those branches are cracked and splitting off from the tree so much that s/he lashed the branches to the tree's trunk with a rope to prevent them from falling, when those branches fell to the ground, crushing your fence and injuring your dog, that neighbor would have a hard time proclaiming s/he had no knowledge or notice of the tree's dangerous condition or that it posed no risk of harm.

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