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Tree Owner's Rights and Responsibilities

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Whose Tree Is It?

How do you know whether a tree is yours? It is your tree if you or a previous landowner planted it and its main trunk is entirely within your property boundary. Naturally occurring trees are also generally the responsibility of the owner of the land on which they grow. The level of responsibility is determined by the context of the location. A tree growing in a residential neighborhood would require more care than a tree in a rural setting.

All previously existing trees as well as additional trees are the responsibility of the owner of the land on which the trees grow. However, in some cases the ownership of trees is shared. Shared trees are referred to as boundary and border line trees. A boundary line tree is one in which a property line passes through any part of its trunk. However, trees located completely on one person's property can be considered a boundary line tree if the adjacent owners have treated it as common property by express agreement or by their course of conduct. Border line trees have a trunk that is located entirely on one side of the property line, but the roots or branches of the trees extend over the line (Bloch [Tree Law Cases in the USA]). Each landowner has an interest in both boundary and border line trees. According to Tennessee law, an adjoining landowner may prune away roots or other vegetation intruding upon the property line at his or her own expense if roots or vegetation create a nuisance or cause harm or potential harm to the adjoining property. *Lane v. W.J. Curry & Sons*, W2000-01580-COA-R3-CV, LEXIS 674, 2001 WL 1042132 (Tenn. Ct. App. Sept. 5, 2001) available at http://scholar.google.com/scholar_case?case=4952041742266738718&q=Lane+v.+W.+J.+Curry+and+Sons,+92+S.W.3d+355,+357+(Tenn.+2002)&hl=en&as_sdt=4,43. However, neither owner can remove the tree without the other's consent and cannot cut away the part that extends onto his/her land if injury would result in harm to the common property of the tree.

Photo Credit: Wayne Clatterbuck

A large tree overhanging two adjacent properties between two drives

The court case *Cathcart v. Malone* used this particular Tennessee law to settle the case. Malone "willfully and maliciously" cut and destroyed two boundary line shade trees owned by both the defendant Malone and the plaintiff Cathcart. Malone violated the law in the sense that he or she knowingly caused harm to the common trees and did so without the plaintiff's consent; therefore, Malone was held liable for the damages. *Cathcart v. Malone*, 229 S.W.2d 157 (Tenn. 1950) available at http://scholar.google.com/scholar_case?case=17003617250126213576&q=Cathcart+v.+Malone,+229+S.W.2d+157+(Tenn.+1950)++&hl=en&as_sdt=4,43

Adjoining Landowners

Previously, Tennessee law regarding adjoining landowners followed the common law concept of "self-help," which required that an adjoining property owner over whose property the branches extended should use "self-help" as the only remedy in an effort to decrease the number of cases that were tried in court. This self-help action was overturned in a court case in 2005, which allowed landowners to file nuisance actions if necessary. A case that debates the concept of "self-help" is the Supreme Court case *Lane v. W.J. Curry and Sons*. This case concerned a dispute among adjacent homeowners over harm caused by intruding branches and roots. The defendant, W.J. Curry and Sons, owned three large oak trees with branches that overhung the plaintiff's house, which forced the plaintiff to replace her roof because the branches were preventing it from drying. A large limb from the overhanging tree fell through the plaintiff's roof, attic and kitchen ceiling. The roots also posed a problem by infiltrating and clogging the plaintiff's sewer line, which prevented the plaintiff from using the shower or toilet for two years. At the time that this case was brought to court, self-help was considered the only remedy, which meant that the plaintiff could not recover compensation for any part of the damage caused by the defendant's tree. Because the plaintiff did not have the physical or financial means to act according to the self-help ruling, the case was appealed, and it was determined that self-help was not the sole remedy.

The appeal also determined that a nuisance action can be brought against an adjoining landowner if tree branches or roots encroach upon a neighbor's property. In this particular case, the plaintiff had the right to trim or remove encroaching branches and roots because they were causing damage to her property; however, a landowner also has the right to trim his/her neighbor's tree to the property line if the branches extend beyond that line — even if a border line tree is not causing damage to his/her neighbor's property. Landownership rights extend indefinitely upward and downward, and those rights are protected from invasion by an adjoining landowner to the same extent as surface rights. When trimming the tree, an adjoining landowner is not allowed to unduly harm his/her neighbor's tree. As defined in the appealed case, *Lane v. W.J. Curry and Sons*, a nuisance action can be brought when branches or roots of boundary or border line trees intrude upon and damage the property of an adjoining property owner. His/her right to cut off the overhanging branches is considered "self-help," which can be a sufficient remedy, but not the only remedy. *Granberry v. Jones*, 216 S.W.2d 721, 722 (Tenn. 1949). Notice is not required (but might be encouraged).

In a similar Supreme Court case, *Granberry v. Jones et al.*, the defendants (Jones) planted shrubbery entirely on their property. However, the shrubbery grew and the foliage encroached upon the house of the plaintiff by entering the windows and causing the wall of the house to rot and decay rapidly. Because self-help was a valid remedy for this case, the defendant argued that the plaintiff should have trimmed the foliage away from the house in order to prevent damage. Because the plaintiff should have taken the self-help initiative, the defendant claimed that they did not owe the plaintiff for damages since the defendant has the right to plant shrubbery on his property, and the damages from that shrubbery were caused by the plaintiff failing to trim the part of the shrubbery that was on his property.

According to the opinions of this case, every landowner has rights to the soil and the area above and below, and he may use or occupy the area however he chooses. Therefore, a landowner may plant several shade trees or as many as would make up a thick forest on his land, and if the only damages are a loss of view rather than a damage to property, then the loss of the adjoining landowner's view is considered *damnum absque injuria*, which means that the adjoining landowner has no legal remedy over the loss of his view. Potentially, he may only have legal remedy for the damage to his property, depending on the situation. Therefore, a landowner has no natural right to air, light or an unobstructed view. It has been held that such a right may be created by private parties through the granting of an easement or through the adopting of conditions, covenants and restrictions, or by the legislature creating a right to

sunlight for solar collectors or for satellite television. Local governments may impose restrictions that pertain to the property regarding obstructions to air, light and view.

Tree Owner Rights and Responsibilities

Landowners' tree rights limit nuisance claims and trespass regarding cutting, trimming or removing trees that extend beyond property boundaries, especially abutting easements for streets and utility lines. According to the trespass law, Tenn. Code Ann. § 39-14-405 (2014), others are not allowed to harm a landowner's trees. Persons cutting, removing or otherwise harming a tree can be liable for double or triple the value of the tree if the trespass is upheld. As in the case of *Jack Jones v. Melvin Johnson*, Johnson trespassed onto Jones's property and made several deep chainsaw cuts into a large black walnut tree, killing it. Jones had to pay to have the tree removed, and the court awarded Jones more than five times the amount he had to pay to have it removed. *Jones v. Johnson*, M2002-01286-COA-R3-CV, LEXIS 423 (Tenn. Ct. App. June 4, 2003).

Typically, the most contentious "trespass" is tree trimming or right-of-way maintenance by utilities or municipalities. In a tree-trimming dispute with a utility or service, first determine whether the company has the authority to trim or remove trees. Persons using a right-of-way generally have no rights unless granted by the jurisdiction's authority for proper use of the streets. If authority exists, determine whether or not an easement is present on your property that would allow the public utility to enter the land. A landowner whose title extends to the center of the street has an interest in the trees adjacent to the public right-of-way. The authority of the utility to use the street does not empower or authorize it to damage the trees or otherwise appropriate any of the landowner's property without compensation. Contrast this situation to one where the municipality reserves the right to use your land for streets.

The easement holder has the right to remove obstructions located within the scope of the easement that threaten the full use of that easement. The easement holder likewise has a duty to remove those obstructions in a way that causes the least amount of destruction to the landowner's property. This is accomplished by doing only what is "reasonable and necessary" to ensure the easement holder's full enjoyment of the easement. Reasonable and necessary are often subjective parameters and depend on the facts and circumstances of each case. Tree-trimming standards do exist for most situations. Many cases make it clear that a landowner's property interest in trees is subservient to a public utility company's right to remove and trim trees that interfere with the necessary and reasonable operation of the utility. The right of the general public to receive the benefits public utilities provide supersedes the rights of property owners to have trees located on their property untouched.

Generally, the landowner on whose property a tree grows will be held to a duty of care determined by principles of negligence. Common prudence in tree maintenance is expected to prevent injury or damage to a neighbor's property. For example, in *Gloria Lane v. W.J. Curry and Sons*, W.J. Curry and Sons were responsible for maintaining the branches and roots on their trees because they encroached on another person's land and were causing harm. A landowner with constructive or actual knowledge of a tree with a patently defective condition is liable for damages, injury or death caused by that tree. Knowledge of the condition is always difficult to determine; some cases, however, have held landowners to a higher standard (greater duty) of inspection to discover possible defective conditions of a tree to prevent the tree from causing problems. Tree owners in urban areas have a duty to inspect each and every tree on the premises to determine which are hazardous and have them removed. In rural areas, there is no duty to inspect natural trees, but if a person knows or should have known that hazardous trees exist, liability has held for natural trees in these areas.

Typically, landowners are not liable for "acts of God." An act of God is an inevitable accident that could not have been prevented by human care, skill or foresight, but which results exclusively from nature's cause, such as lightning, storms or floods. A landowner will not escape liability for damages caused by an unsound or defective tree located on his/her property. It is not an act of God if it could have been prevented by the exercise of reasonable diligence or ordinary care. In short, a landowner will not be responsible for injuries arising strictly out of an act of God. If, however, the injury could have been prevented by reasonable diligence or ordinary care or was caused by human agency, the landowner will not be entitled to the act of God defense and will be held liable. As in the case of *Cindy Russell*

v. Jean Claridy, an act of God caused a healthy tree to fall on Russell's van. The tree was healthy and in a rural area. Claridy had no duty of inspection because the tree was thriving with a fully green canopy. The court found that Claridy was not responsible for the damage to Russell's van due to a severe thunderstorm, or act of God. *Russell v. Claridy*, M2012-01054-COA-R3-CV, 2013 WL 655325, LEXIS 117 (Tenn. Ct. App. Feb. 20, 2013), available at http://www.tba.org/sites/default/files/russellc_022113.pdf.

Litter

Lane v. W.J. Curry and Sons in the Supreme Court of Appeals stated that litter from trees, such as leaves, twigs and small branches, are considered natural, general nuisances with no particular owner. Landowners are not expected to clear this type of debris. However, litter in the form of fruit belongs to the tree owner while attached to the tree and can be claimed after it falls. The above case also stated that litter may only be considered a public nuisance or an act of negligence if fallen litter has the potential to cause actual harm or pose imminent danger to adjoining property. In the case of *McClellan v. The City of Knoxville*, the plaintiff registered complaints with the city, claiming that the fruit of a mulberry tree on the city's property was causing a nuisance because it was "messy, stinks, and a hazard." The city of Knoxville did not take action to remove or trim the tree because a tree owner is not expected to pick up litter unless it is a hazard, and the city did not consider the fallen mulberries a hazard. The plaintiff claimed that the fruit litter caused her injury, which implies that it was a public hazard. If this were the case, it would be the city's responsibility to manage the fruit litter. However, the litter was considered a natural, general nuisance because there was no evidence otherwise, meaning that the plaintiff could not receive compensation for injuries.

McClellan v. City of Knoxville, 03A01-9604-CV-00119, 1996 WL 591180, LEXIS 654 (Tenn. Ct. App. Oct. 11, 1996).

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