EX# 313-6

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Land Use Department

Regulations of Connecticut State Agencies
Title 22a. Environmental Protection
Department of Energy and Environmental Protection (1)
Control of Noise (Refs & Annos)

Regs. Conn. State Agencies § 22a-69-1.5

Sec. 22a-69-1.5. Compliance with regulations no defense to nuisance claim

Currentness

Nothing in any portion of these Regulations shall in any manner be construed as authorizing or legalizing the creation or maintenance of a nuisance, and compliance of a source with these Regulations is not a bar to a claim of nuisance by any person. A violation of any portion of these Regulations shall not be deemed to create a nuisance per se.

**Credits**
(Added effective June 15, 1978.)

<Statutory Authority: C.G.S.A. § 22a-69>

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Regs. Conn. State Agencies § 22a-69-1.5, CT ADC § 22a-69-1.5

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KeyCite Yellow Flag - Negative Treatment
Distinguished by Kinsale, LLC. v. Tombari, Conn.Super., April 1, 2005

259 Conn. 345
Supreme Court of Connecticut.

James PESTEY et al.,
v.
Nathan R. CUSHMAN et al.

No. SC 16559.
|
Argued Sept. 24, 2001.
|
Decided Feb. 5, 2002.

**Synopsis**

Neighboring property owners brought private nuisance claim for damages against dairy farm operators. Following jury trial, the Superior Court, Bishop, J., entered judgment for neighboring owners. Operators appealed. Transferring case from Appellate Court, the Supreme Court, Vertefeuille, J., held that: (1) to recover damages for private nuisance, plaintiff must show defendant's conduct was the proximate cause of an unreasonable interference with plaintiff's use and enjoyment of his or her property, adopting Restatement (Second) of Torts § 822; (2) when considered together, jury instructions and jury interrogatories properly informed jury of necessary elements of private nuisance claim; (3) neighboring owners' opinion that diminution in value of his property was result of offensive odors emanating from neighboring dairy farm was admissible; (4) owners established necessary foundation to qualify waste management handbook as a learned treatise on issue of odor control; and (5) evidence supported jury's finding on proximate causation.

Affirmed.

**Procedural Posture(s):** On Appeal.

West Headnotes (32)

[1] **Trial** Construction and Effect of Charge as a Whole

Jury instructions are to be read as a whole, and instructions claimed to be improper are read in the context of the entire charge.

5 Cases that cite this headnote

[2] **Trial** Sufficiency as to Subject-Matter

A jury charge is to be considered from the standpoint of its effect on the jury in guiding it to a correct verdict.

[3] **Trial** Application of Instructions to Case

Test to determine if a jury charge is proper is whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law.

1 Case that cites this headnote

[4] **Nuisance** Nature and elements of private nuisance in general

Law of private nuisance springs from the general principle that it is the duty of every person to make a reasonable use of his own property so as to occasion no unnecessary damage or annoyance to his neighbor.

34 Cases that cite this headnote

[5] **Nuisance** Nature and extent of injury or danger

Essence of a private nuisance is an interference with the use and enjoyment of land.

54 Cases that cite this headnote

[6] **Nuisance** What Constitutes Nuisance in General

Unreasonableness, in context of private nuisance action, cannot be determined in the abstract, but, rather, must be judged under the circumstances of the particular case.

4 Cases that cite this headnote

[7] **Nuisance** Instructions

Instructions in private nuisance action brought by neighboring property owners in connection with odors allegedly emanating from dairy

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That was the situation in *Walsh v. Stonington Water Pollution Control Authority,* supra, 250 Conn. 443, 736 A.2d 811.

**[10]** In *Walsh,* this court rejected the defendants' argument on appeal that their operation of the wastewater treatment plant in question could not constitute a nuisance since the operation of such a plant was clearly a reasonable use of property. *Id.,* at 457, 736 A.2d 811. This court held that the production of odors by the defendants' plant could constitute a nuisance, notwithstanding the fact that operating a wastewater treatment plant was clearly a reasonable use of the property in question. *Id.* Although the proposition was not stated expressly in *Walsh,* our holding in that case demonstrates that, while the reasonableness of a defendant's conduct is a factor in determining whether an interference is unreasonable, it is *not* an independent element that must be proven in order to prevail in all private nuisance causes of action. The inquiry is cast more appropriately as whether the defendant's conduct unreasonably interfered with the plaintiff's use and enjoyment of his or her land rather than whether the defendant's conduct was itself unreasonable. *Quinnett v. Newman,* supra, 213 Conn. at 348, 568 A.2d 786 (nuisance refers to condition that exists and not to act that creates it). The proper focus of a private nuisance claim for damages, therefore, is whether a defendant's conduct, i.e., his or her use of his or her property, causes an unreasonable interference with the plaintiff's use and enjoyment of his or her property. *Herbert v. Smyth,* supra, 155 Conn. at 81–82, 230 A.2d 235; see also *Scribner v. Summers,* 84 F.3d 554, 559 (2d Cir.1996); *Copart Industries, Inc. v. Consolidated Edison Co. of New York, Inc.,* 41 N.Y.2d 564, 570, 362 N.E.2d 968, 394 N.Y.S.2d 169, reconsideration denied, 42 N.Y.2d 1102, 399 N.Y.S.2d 1028, 369 N.E.2d 1198 (1977).

**[11]** **[12]** **[13]** **[14]** On the basis of our reexamination of our case law and upon our review of private nuisance law as described by ***361** the leading authorities, we adopt the basic principles of § 822 of the Restatement (Second) of Torts and conclude that in order to recover damages in a common-law private nuisance cause of action, a plaintiff must show that the defendant's conduct was the proximate cause of an unreasonable interference with the plaintiff's use and enjoyment of his or her property. The interference may be either intentional; *Quinnett v. Newman,* supra, 213 Conn. at 348, 568 A.2d 786 (nuisance is created intentionally if defendant intends act that brings about condition found to be nuisance); or the result of the defendant's negligence. *Id.,* at 348–49, 568 A.2d 786. Whether the interference is unreasonable depends upon a balancing of the interests involved under the circumstances of each individual case. In balancing the interests, the fact finder must take into consideration all relevant factors, including the nature of both the interfering use and the use and enjoyment invaded, the nature, extent and duration of the interference, the suitability for the locality of both the interfering conduct and the particular use and enjoyment invaded, whether the defendant is taking all feasible precautions to avoid any unnecessary interference with the plaintiff's use and enjoyment of his or her property, and any other factors that ****508** the fact finder deems relevant to the question of whether the interference is unreasonable. No one factor should dominate this balancing of interests; all relevant factors must be considered in determining whether the interference is unreasonable.

**[15]** The determination of whether the interference is unreasonable should be made in light of the fact that some level of interference is inherent in modern society. There are few, if any, places remaining where an individual may rest assured that he will be able to use and enjoy his property free from all interference. Accordingly, the interference must be substantial to be unreasonable. ***362** See 4 Restatement (Second), supra, § 822, comment (g); W. Prosser & W. Keeton, supra, § 88, p. 626.

Ultimately, the question of reasonableness is whether the interference is beyond that which the plaintiff should bear, under all of the circumstances of the particular case, without being compensated. See *Walsh v. Stonington Water Pollution Control Authority,* supra, 250 Conn. at 458–59, 736 A.2d 811; see also 4 Restatement (Second), supra, § 822, comment (g), and § 826, comment (e); W. Prosser & W. Keeton, supra, § 88, p. 629. With these standards in mind, we turn to the present case.

**[16]** In reaching its verdict, the jury completed a set of interrogatories provided by the trial court. Each interrogatory asked the jury whether the plaintiffs had proven a specific element of the private nuisance claim, and the jury answered each interrogatory affirmatively. The first interrogatory asked: "Did the plaintiffs prove [that] the defendants' dairy farm produced odors which unreasonably interfered with [the] plaintiffs' enjoyment of their property?" This interrogatory correctly captured the crux of a common-law private nuisance cause of action for damages, i.e., whether the defendants' conduct unreasonably interfered with the plaintiffs' use and enjoyment of their property. It correctly stated that the focus in such a cause of action is on the reasonableness of the interference and not on the use that is

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Title 22a. Environmental Protection
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Control of Noise (Refs & Annos)

Regs. Conn. State Agencies § 22a-69-3.2

Sec. 22a-69-3.2. Impulse noise

Currentness

(a) No person shall cause or allow the emission of impulse noise in excess of 80 dB peak sound pressure level during the nighttime to any Class A Noise Zone.

(b) No person shall cause or allow the emission of impulse noise in excess of 100 dB peak sound pressure at any time to any Noise Zone.

**Credits**
(Added effective June 15, 1978.)

<Statutory Authority: C.G.S.A. § 22a-69>

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Regs. Conn. State Agencies § 22a-69-3.2, CT ADC § 22a-69-3.2

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