

Connecticut Law on Spite Fences

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Issue

Does Connecticut have a “spite fence” law?

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Summary

Connecticut law authorizes individuals to file suit against adjacent property owners or lessees who, with malice, erect a fence (or similar structure) that has no useful purpose but interferes with the plaintiff’s enjoyment of his or her property. When a claim is successfully made, the court typically orders the removal of the structure, or objectionable portion thereof. In some cases, courts may also award damages.

This report summarizes CGS §§ [52-480](#) and [52-570](#) and related case law. It does not address other claims that may be available to property owners aggrieved by a neighbor’s fence (e.g., private nuisance).

Connecticut Statutes and Case Law

Under Connecticut law, one may file a “malicious erection of structure” suit against an adjacent property owner or lessee of an adjacent parcel (CGS §§ [52-480](#) & [52-570](#), see sidebar). In order to make a successful claim, the plaintiff must prove that the defendant erected the structure with the “intent to annoy or injure” the plaintiff’s use of his or her land.

Relevant Statutes

[CGS § 52-570](#) authorizes individuals to file an action for malicious erection of structure against an adjacent property owner or lessee who erects a structure with the intent to annoy or injure the plaintiff

[CGS § 52-480](#) authorizes the court to issue an injunction against the erection of a structure intended to annoy or injure the plaintiff

Connecticut courts use a six-factor test to determine whether a structure is built to annoy or injure a neighbor. Under the test, the following elements are required to make a successful claim:

1. the defendant erected a structure;
2. the structure was erected maliciously;
3. the structure was erected with intent to injure the plaintiff's enjoyment of land;
4. the structure is useless to the defendant;
5. the structure impairs the plaintiff's land's value; and
6. the structure in fact impairs the plaintiff's enjoyment of land (*Whitlock v. Uhle*, 75 Conn. 423 (1903)).

Generally, the first prong of the test is not disputed, as a man-made structure, such as a fence, exists. But this prong was analyzed in a case where the plaintiff contended that an overgrown hedge constituted a "spite fence." In rejecting the claim, the court said that CGS §§ [52-480](#) and [52-570](#):

"prohibit malicious 'structures' from being 'erected.' They do not require naturally growing plantings to be affirmatively trimmed... The law is reluctant to compel possessors of land to alter the natural condition of their property (*Dalton v. Bua*, 47 Conn. Supp. 645, 648-9 (Super. Ct. 2003); but see *Patrell v. Gaudio*, 2010 WL 5610843 (Conn. Super. Ct. Dec. 15, 2010) (recently constructed earthen berm topped with trees deemed a structure)).

Regarding the second prong, the courts have provided the following guidance for determining whether a defendant acted with malice:

"Deciding whether a structure has been erected maliciously does not involve a journey deep into the defendant's heart. 'Whether a structure was maliciously erected is to be determined rather by its character, location and use than by an inquiry into the actual motive in the mind of the party erecting it.'" (*Geiger v. Carey*, 170 Conn. App. 459, 487 (2017), quoting in part *DeCecco v. Beach*, 174 Conn. 29, 32 (1977)).

In analyzing whether a structure was erected to the detriment of the plaintiff and without benefit to the defendant, as required for a successful claim, Connecticut's Supreme Court has said that:

“[t]he intent to injure is determined mainly from the fact that the structure does impair the value of the adjacent land and injure the owner in its use, [and] from the absence of any real usefulness of the structure...” (*DeCecco v. Beach*, 174 Conn. 29, 32 (1977)). “We think we do not go too far in saying that [] malicious intent must be so predominating as a motive as to give character to the structure. It must be so manifest and positive that the real usefulness of the structure will be as manifestly subordinate and incidental” (*Gallagher v. Dodge*, 48 Conn. 387, 392 (Conn. 1880)).

At the same time, the Connecticut Supreme Court has “acknowledged that a ‘spite fence’ may serve some purpose yet still be objectionable” (*Errichetti v. Botoff*, 2017 WL 951157, at *6 (Conn. Super. Ct. Feb. 2, 2017); see also *Harbison v. White*, 46 Conn. 106 (1978)).

As the above excerpts show, determining whether a defendant erected a structure with the intent to annoy or injure the plaintiff’s use of his or her land is a fact specific inquiry. Examples of structures that have been deemed in violation of the “spite fence law” include those that:

1. obstruct a view of a stream and wooded area or lake (see, e.g., *Errichetti v. Botoff*, 2017 WL 951157 (Conn. Super. Ct. Feb. 2, 2017); *Geiger v. Carey*, 170 Conn. App. 459 (2017));
2. are high and close to an adjacent building, reducing air flow and blocking light (see, e.g., *Harbison v. White*, 46 Conn. 106 (Conn. 1878); *Rapuano v. Ames*, 21 Conn. Supp. 110 (Super. Ct. 1958)); and
3. among other things, are “unsightly” (see, e.g., *Whitlock v. Uhle*, 75 Conn. 423 (Conn. 1903); *Scott v. Wilson*, 82 Conn. 289 (Conn. 1909)).

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