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In re Madert

February 2002

Meadowbrook Swimming Club v. Albert

Franklin Supreme Court (1938)

This appeal is from a decree for an injunction against the continuance of a noise nuisance. Several years ago Meadowbrook Swimming Club built an amusement park, including a large swimming pool, in the narrow valley of Jones Falls. High hills, which rise on both sides of the valley, have become popular sites for expensive residences. In 1935 Meadowbrook added an outdoor dance floor, with a "shell" platform for the musicians' stand. The club opened the dance floor to the public, engaged modern jazz orchestras to play dance music from nine to twelve, six nights per week, and used amplifiers to enhance the volume of sound.

Immediately, a number of residents, whose houses were located on the hills some 200 feet or more above the dance floor, complained in writing to Meadowbrook. The club made sundry efforts to minimize the alleged nuisance. The club abandoned the amplifiers, limited dancing to four nights a week, sought expert advice, and undertook acoustic experiments. Nevertheless, the blare of the brasses, the beating of the drums, and the thumping of the bass were, and are, so penetrating and loud that witnesses who live on the sides of the hills, who are doubtless normally constituted and of exceptional integrity and intelligence, are unable to sleep, to study, or otherwise lead normal lives in their own homes for four evenings a week during the summer.

Though not a nuisance *per se,* where a trade or business as carried on interferes with the reasonable and comfortable enjoyment by another of his property, a wrong is done to a neighboring owner for which an action lies at law or equity. It makes no difference that the business was lawful and conducted in the most approved method. The question is whether the nuisance complained of will or does produce unreasonable physical discomfort to persons of ordinary sensibilities, tastes, and habits. However, not every inconvenience will call forth the restraining power of a court. The injury must diminish materially the value of the property as a dwelling and seriously interfere with the ordinary comfort and enjoyment of it.

Noise alone may create a nuisance and be the subject of injunction. In *Lloyd v. Parsons,* Franklin Court of Appeal (1934), a person who kept on his premises so great a number of domestic animals, fowl, and hogs that their noise deprived the complainant neighbor of the reasonable use and comfortable enjoyment of his adjacent dwelling was properly enjoined from keeping the animals. Any habitual noise, whether produced by domestic animals or by skilled musicians, which is so loud, continuous, insistent, not inherent to the character of the neighborhood and unusual therein, that normal people are so seriously incommoded that they cannot sleep, study, read, converse, or concentrate until it stops, is unreasonable.

The decree in this case permanently enjoined Meadowbrook from "the playing of loud music, or the creation of other similar noises" upon its property "in such manner that the noise is transmitted onto the properties of the plaintiffs, so as to deprive them and the members of their families of the reasonable use and comfortable enjoyment" of their respective homes. Meadowbrook argues on appeal that the decree has the effect of an unqualified prohibition against the playing of jazz or other loud music. But such a purpose is not indicated by the decree.

A change of the conditions under which the loud jazz music is played might prevent the disturbance. For example, the club's president suggested that the construction of a roof to cover the open-air dance floor and connect it with the top of the shell might obviate the cause of complaint. The decree leaves Meadowbrook free to adopt any effective method of so reducing the volume of sound transmitted to the homes of the plaintiffs that they will no longer be disturbed.

The form of the decree is not objectionable as insufficiently definite for it specifies the purpose and extent of the restriction that it imposes, while leaving the defendant at liberty to devise and apply promptly an efficient plan for the abatement of the prohibited nuisance.

Decree affirmed, with costs awarded to plaintiffs.

Gorman v. Sabo

Franklin Court of Appeal (1956)

The jury returned a verdict of $3,500 against Mr. and Mrs. Gorman in a suit by their neighbors, Mr. and Mrs. Sabo, based on the willful and malicious beaming into the Sabo home of loud blaring of the Gorman radio. The Gormans appealed.

The jury found the following facts. Mr. and Mrs. Sabo and their four children moved in next door to the Gormans, who also had children. Trouble arose among the children, producing ill feeling on the part of Mrs. Gorman against the Sabo family.

Mrs. Gorman deliberately harassed the Sabo family with the aim of making them move. She turned up the radio to an excessive volume, beaming it directly from a west window of the Gorman house into the east side of the Sabo house. The window was kept open even in cold weather. This continued for hours each day over a period of several years. Mrs. Gorman also ordered her children to beat with sticks and stones on metal furniture and cans at strategic times.

Mrs. Gorman's efforts to get rid of the Sabo family were known to the neighbors, many having seen the radio and heard its noise. Mrs. Gorman told various neighbors that she intended to make the Sabos move, that she would make life miserable for Mrs. Sabo, and that she hoped Mr. Sabo would be struck down.

As a result of the noise, life became miserable for Mr. and Mrs. Sabo. Their children could not take their naps. It was necessary to move them from their rooms on the side of the house facing the Gormans. On innumerable occasions it was impossible to carry on a conversation in the Sabo home. Mrs. Sabo suffered from an actual illness because of the constant noise. Mr. Sabo became irritable and nervous.

If noise causes physical discomfort and annoyance to those of ordinary sensibilities, tastes and habits, and seriously interferes with the ordinary comfort and enjoyment of their homes and thus diminishes the value of the use of their property, it constitutes a private nuisance, entitling those offended against to damages. Where there is a non- trespassory invasion of rights in real property occupied as a home, consisting of a private nuisance, the measure of damages is the diminution in the value of the use of the property as a home. The elements in the loss of the value of the use include the ordinary use and enjoyment of the home and also sickness or ill health of those in the home caused by the nuisance. A plaintiff is not limited to the recovery of the diminished rental value but may be compensated for any actual inconvenience and physical discomfort that materially affected the comfortable and healthful enjoyment and occupancy of the home.

Damages for illness, pain and discomfort, and annoyance caused by a nuisance are recoverable in addition to, and separate from, damages for diminution in the value of the use or the value of the property. The Sabos produced sufficient evidence of the ill effects suffered by them to entitle them to substantial damages.

Once the right to compensatory or at least nominal damages has been established, punitive damages may also be awarded. The testimony also clearly supports a finding of willfulness and malice on the part of Mrs. Gorman sufficient to justify punitive damages.

Judgment affirmed, with costs awarded to plaintiffs.

Arundel Fish & Game Club v. Carlucci

Franklin Court of Appeal (2000)

This case concerns noise resulting from gunfire on the premises of the rifle and pistol firing range of the Arundel Fish & Game Club (the Club), which was established in the early 1950s. The issue is whether that noise constituted a common law private nuisance to resident owners of properties adjoining the Club. The District Court concluded that it did and issued an injunction requiring the Club to design and implement a noise abatement system. This appeal ensued.

When the Club purchased its property, there was relatively little residential development in the area. The real estate surrounding the Club's premises is now predominantly residential.

At trial, the owners of the adjoining residential properties described the noise emanating from the Club's activities. Michael Darrow testified that in 1987 he completed the home that he shares with his family. His house is located approximately 800 feet from the Club's land. Darrow related that the gunfire from the Club occurred from 9 a.m. until 9 p.m. seven days a week. He could hear the gun club's activities from any place in his house, including the shower with the water running. He testified that he and his family could not use their yard on the weekends. The noise prevents sleeping, reading, watching television or any other activity that requires concentration.

Five other residents similarly testified to the interference that the noise caused with enjoyment of their residences. The residents related their efforts to persuade the Club to modify its activities. Their complaints to the police also had not resulted in any relief.

The Club first argues that, since it is not subject to the noise restrictions imposed by regulations adopted by the Franklin Department of the Environment, its activities cannot be enjoined as a private nuisance. Under Title 3 of the Franklin Environment Code, which concerns Noise Control, Franklin Environment Code § 3-101 *et seq.,* the Department of the Environment has been charged with promulgating regulations that limit noise. Significantly, the legislature has exempted shooting sports clubs from the reach of noise regulations.

The regulations adopted by the Department of the Environment to control noise pollution are codified in the Franklin Code of Regulations (FCR) at 26-01 through 26-59.[1] The maximum permissible noise levels for commercial enterprises operating on residential land, measured at its boundary, are set forth at FCR 26-23(a):

> The maximum allowable noise level for a commercial enterprise in a residential zone shall not exceed 65

[1] Note that these regulations apply only to commercial and industrial enterprises.

> decibels in the daytime hours nor 55 decibels in the nighttime hours.[2]

Even though the Club qualifies for an exemption from the regulations of the Franklin Department of the Environment, the exemption does not bar residents from seeking equitable relief from a nuisance created by appellant.

In order to provide quantifiable guidelines for the operation of the gun club, the court will use some standards provided by the regulations promulgated by the Franklin Department of the Environment simply for the advisory benefit they provide. In this case, the measurements of the noise levels at the residents' property lines taken by experts retained by the residents varied between 72 and 89 decibels. All are significantly above the levels permitted by the Department of the Environment for commercial enterprises in residential zones. These guidelines can help a court inform its judgment about whether noise levels are unreasonable and can have deleterious effects on those subjected to them and what those levels should be.

Nuisance is usually placed into three classifications: first, those that are nuisances *per se* or by statute; second, those that prejudice public health or comfort such as slaughterhouses, livery stables, etc.; third, those that in their nature are not nuisances, but may become so by reason of their locality, surroundings, or the manner in which they may be maintained.

The gun club is a nuisance that falls into the third category. There is ample evidence to justify the court's conclusion that the gunfire on the Club's premises constituted a private nuisance to its residential neighbors.[3]

The Club also relies on the Restatement (Second) of Torts § 822.[4] The Club argues that liability for private nuisance should apply only when the interference is intentional and unreasonable or caused by negligent, reckless, or abnormally dangerous conduct. We agree.

In this case, however, the gun club's activities do violate the standard enunciated in the Restatement and are intentional, as we have defined that term:

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[2] Terms used in the regulations are defined at Franklin Code of Regulations (FCR) 26-02:

* * *

1. 'Daytime hours' means 7 a m. to 10 p m., local time.

2. 'Nighttime hours' means 10 p.m. to 7 a m., local time.

* * *

[3] The fact that most of the residents purchased their properties and built their homes on residentially zoned property after the Club had been established did not bar those residents from seeking relief from the nuisance.

[4] The Restatement (Second) of Torts § 822 provides:

> One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either
>
> (a) intentional and unreasonable, or
>
> (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

> An intentional invasion of another's interest in the use and enjoyment of land need not be inspired by ill will or malice. An actor who knowingly causes an invasion of this interest in the pursuit of a laudable enterprise without any desire to cause harm also commits an intentional invasion. It is the knowledge that the actor has at the time he or she acts or fails to act that determines whether the invasion resulting from his conduct is intentional or unintentional. When an actor is put on notice concerning the harm of certain activities and continues to engage in them with knowledge of the harm, the actor is liable for creation of a nuisance. *Lawrence v. Simms,* Franklin Supreme Court (1995).

Finally, the gun club argues that the injunction issued by the court was overbroad. We again disagree. The court ordered that within six months the Club design and implement a noise abatement system for all of its facilities so as to reduce the noise to not more than 65 decibels during the daytime and 55 decibels during the nighttime. It further provided that the sound would be measured by devices at locations on the residents' properties from the sides of the residents' houses that faced the Club's premises. It further ordered that during a six-month period the operation of the Club's firing ranges be limited to certain hours calculated to reduce the likelihood of interference with the use and enjoyment of the residents' properties.

Both experts who evaluated the noise emanating from the Club testified that there are effective noise abatement procedures that could be employed by the Club to reduce the noise levels that the residents were enduring on their properties. We perceive no abuse of the court's discretion in so framing the injunction.

Affirmed, with costs awarded to plaintiffs.