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Property Insurance

By: Catherine A. Cooke
Robbins, Salomon & Patt, Ltd., Chicago

Spite Fences: Neighborly Disagreement into the Modern Age

The history of "spite fences"—as the name implies—is a long and troubled one. Owners of neighboring parcels of property have certain rights, privileges, and duties that define their legal relationships with their neighbors. Unfortunately, for any number of reasons, neighborly relationships can go awry, starting with simmering tensions and often culminating in protracted and emotionally-fueled litigation over property rights.

Modern "Spite Fence" Example

As any city dweller knows, the allure of a permanent deeded parking spot in an indoor and climate-controlled parking garage is quite appealing, not to mention expensive. Many condominium unit owners and other Chicago residents often pay $30,000 or more for these prime pieces of real estate. Oversized SUVs, careless parking habits, and overprotective car owners are just a few issues that might irk a parking space "neighbor."

Take, for example, a hypothetical situation that is not too farfetched from reality. Individuals who are next door neighbors in a condominium building and also adjacent parking space owners engage in several disagreements related and unrelated to their parking spaces and vehicles. Shortly after one disagreement, Owner 1 erects a metal fence on the shared boundary line of the parking space with Owner 2. On the other side of Owner 2's parking space is a cement pillar, leaving little margin for parking "error" to begin with. Owner 2 has a full size vehicle, which under normal circumstances fits within the boundaries of his space. With a cement pillar on one side and a metal fence on the other, however, there is not enough room to open the doors so that occupants, including the driver, can enter and exit the vehicle.

The applicable condominium declaration expressly prohibits owners from erecting fences. Attempts to resolve the disagreement amicably fail, and Owner 2 demands that the condominium board require Owner 1 to remove the fence as violative of the declaration. Unable to gain resolution through the condominium board, Owner 2 is forced to file a lawsuit requesting declaratory and injunctive relief, and seeks a preliminary injunction to require Owner 1 or the condominium association to remove the fence by the parking space. Owner 2 argues that the structure is in the nature of a "spite fence," violates applicable condominium rules, and was erected primarily with malicious intentions to injure him by interfering with his use and enjoyment of his parking space. After a full evidentiary hearing, the court grants the motion for preliminary injunction and orders the removal of the fence.

Owner 1 reluctantly removes the fence, but is not content to give up the "fight" just yet. Instead, Owner 1 gets more creative and acquires a full-size cargo van, which he immediately parks directly on the boundary

line between the parking spaces. The cargo van has the same effect as the fence in prohibiting Owner 2 from using his parking space. Can Owner 2 argue that the van constitutes a "spite fence" for purposes of requiring its removal if the primary purpose of parking the van is to annoy and maliciously interfere with Owner 2's ability to use his parking space? Similar situations involving neighborly disputes, property boundaries, and aptly named "spite fences" have continued to show up in courts for nearly two centuries, in varying iterations.

A Brief History of Spite Fences

Many cases involving spite fences center on the right of a property owner to an unobstructed view or access to light. Under the doctrine of "ancient lights," the common law courts of England would grant a prescriptive easement to an individual who had continuously enjoyed access to light, air space, or a view. Though American courts tended to adhere to these common law principles, around the turn of the 18th Century, support in the United States began declining for the doctrine of ancient lights, in part due to concerns about its negative effect on economic growth and land development. One of the earliest courts to reject the ancient lights doctrine reasoned, in *dicta*, that it could not be "applied in the growing cities and villages of this country, without working the most mischievous consequences." *Parker v. Foote*, 19 Wend. 309, 318 (N.Y. Sup. Ct. 1838).

Today, most courts deny all easement rights to light or air space by implication, except in very limited cases of necessity. Those courts generally conclude that there is no absolute right to a view, air space, or light, unless granted in writing by a law, an express easement, or other applicable rule. Notwithstanding the general rule that property owners may use and enjoy their property in such a manner as they see fit, courts continued to recognize a limited number of exceptions, including the "spite fence" doctrine.

The "spite fence" doctrine prohibits a property owner from constructing a fence or other structure that interferes with a neighbor's access or enjoyment of his or her property, including access to light, air space, or a view, *if* the property owner's primary motivation is spiteful or malicious. In the late 1800s, courts in some states began to hold that a fence erected for no purpose except to harm a neighbor could be abated as a nuisance under common law. The seminal case holding as such is *Burke v. Smith*, 69 Mich. 380, 383–84 (1888). Thereafter, many jurisdictions adopted and followed *Burke*, such that it became the prevailing modern view. See, *e.g.*, *Sundowner, Inc. v. King*, 95 Idaho 367, 368 (1973) (listing cases starting in the early 1900s that adopted the modern view of spite fences).

Spite Fence Legislation and Other Governing Regulations

In 1889, the Massachusetts Supreme Judicial Court, in an opinion written by Justice Oliver Wendell Holmes, upheld the constitutionality of a Massachusetts statute that stated that "[a]ny fence, or other structure in the nature of a fence, unnecessarily exceeding six feet in height, maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance." *Rideout v. Knox*, 148 Mass. 368, 369 (1889). In so finding, Justice Holmes noted that "it is not enough to satisfy the words of the act that malevolence was one of the motives, but that malevolence must be the dominant motive,—a motive without which the fence would not have been built or maintained." *Rideout*, 148 Mass. at 373.

Many jurisdictions followed with similarly worded spite fence statutes, including California (Cal. Civ. Code § 841.4); Rhode Island (R.I. Gen. Laws Ann. § 34-10-20); Indiana (Ind. Code. § 32-26-10-1); Wisconsin (Wis. Stat. Ann. § 844.10); and New York (N.Y. Real. Prop. Acts. § 843), to name a few. The statutes typically create a presumption that a fence over a certain height (although there is no height limitation in a few

states), built maliciously with the intention of annoying a neighbor, and with little or no value to the owner, constitutes a private nuisance.

Illinois presently has no such spite fence statute. Even in the absence of a statute on point, however, the issue might be addressed in local ordinances, zoning codes, or in the rules and regulations of homeowners associations, planned subdivisions, or condominium associations. Cases involving spite fences and structures generally incorporate nuisance law principles and employ a balancing test—weighing the adverse effect on the aggrieved landowner's use and enjoyment of his or her property against the value of the structure to the fence owner. If the offending activity can be classified as a nuisance, and all other factors warranting injunctive relief are present, courts may award permanent injunctive relief and order the removal or abatement of the spite fence or structure.

Other "Spite Structures"

The word "fence" in spite fence jurisprudence is not limited to the typical picket fence or other similar barrier that first comes to mind. Fence ordinances often include any structure that serves as an enclosure or partition, including trees or hedges. A 2002 California appellate court case held, as a matter of first impression, that a row of trees planted on or near the boundary lines separating two pieces of properties could constitute a "spite fence" within the statute's definition. *Wilson v. Handley*, 97 Cal. App. 4th 1301, 1307 (3d Dist. 2002). The court, citing Black's Law Dictionary, noted that, although "one definition of the word 'fence' is 'an enclosing structure . . . intended to prevent intrusion from without or straying from within,' a fence also may be a 'structure . . . erected . . . to separate two contiguous estates' or 'a barrier intended . . . to mark a boundary.'" *Wilson*, 97 Cal. App. 4th at 1307 (internal citations omitted).

In 2011, the Maine Supreme Judicial Court also concluded that a row of maliciously planted trees could fall within the definition of its spite fence statute, which specifically included reference to a "structure in the nature of a fence." *Peters v. O'Leary*, 2011 ME 106, ¶ 19; *see also* Me. Rev. Stat. tit. 17, § 2801. Courts elsewhere also have considered whether other structures, such as billboards, signs, sheds, and even houses, can constitute "spite structures" in appropriate factual circumstances. See, *e.g.*, *Sundowner, Inc. v. King*, 95 Idaho 367, 369 (1973) (holding that an 85-foot by 25-foot "sign" structure constituted a spite fence and ordering its removal by grant of an injunction when the sign served no useful purpose to its owners and was erected because of ill will toward the neighboring property owner); *Lovell v. Noyes*, 69 N.H. 263 (1898) (finding that a 15-foot shed constructed to annoy an adjoining neighbor was designed to take the place of a fence, and thus could fall within the applicable statute's definition, but reversing judgment in the plaintiff's favor because the shed could have served a useful purpose to its owner based on its size).

Future Application of Spite Fence and Nuisance Principles

The doctrine underlying spite fences has evolved from cases dealing primarily with fences or structures obstructing scenic views or sunlight, into the realm of disputes between urban parking space owners erecting fences between deeded parking spots. As property ownership and neighborly clashes are often highly emotional issues, the fact that these disputes spill into the courtroom is not surprising. Though the facts and circumstances of any particular dispute always are unique, the law generally has refused to protect the malicious construction of structures on land for the purpose of annoying the owners or occupants of adjoining properties and interfering with the use and enjoyment of another's property.

Whether a so-called "spite van," as highlighted in the opening example, could fall into the category of a "spite fence" is unclear and would likely turn on the definition of "fence" or similar nuisance prohibitions in the governing condominium documents or applicable municipal laws. Whether the "spite object" must be

affixed to the property in order to be considered in this category remains to be seen. Given the tenor of the current case law, however, it appears that courts have authority to enjoin the malicious placement of a "structure" for purposes of interfering with another property owner's use and enjoyment of his property—even if that property is "just" a parking space, and even if the "fence" does not fall within the traditional definition of the word.

About the Author

Catherine A. Cooke is an associate at *Robbins, Salomon & Patt, Ltd.* and concentrates her practice in the area of commercial litigation and creditors' rights. She earned her undergraduate degree from Indiana University-Bloomington in 2003, and law degree from The John Marshall Law School in 2006, where she served as Administrative Editor of *The John Marshall Law Review*. She is licensed to practice law in both Illinois and Indiana.

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Illinois Association of Defense Trial Counsel, PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, idc@iadtc.org