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April 24, 2025

Via email - srose@lauderdalewest.org

Stephen Rose, President
Lauderdale West Community Association No. 1, Inc.
1141 NW 85 Avenue
Plantation, FL 33322-4624

RE: Lauderdale West Community Association No. 1, Inc. (the "Association")
Our File No. 12933.000

Dear Mr. Rose,

You have asked us for our opinion as to who is responsible for the costs associated with the repair of a water line that was damaged by roots from a tree owned by the Association.

Water lines and other utilities that service only one unit are typically defined as being an extension and part of the unit even if located on the common area or on another person's property. See, e.g., §718.108, Florida Statutes. The owner would have an easement over the Association's common area to access the water line.

Florida is considered a naturally vegetative state. That means under current law a land owner legally is not liable to persons outside the land for damages, nuisance or trespass resulting from trees and other natural vegetation growing on the land. An adjacent property owner to such a vegetation, however, is privileged to trim back, at the adjacent owner's own expense, any encroaching tree roots or branches and other vegetation which has grown onto his property. *Balzer v. Ryan*, 263 So.3d 189 (Fla. 1st DCA 2018); *Scott v. McCarty*, 41 So.3d 989 (Fla. 4th DCA 2010); *Gallo v. Heller*, 512 So. 2d 215, 216 (Fla. 3d DCA 1987).

Because the owner could have trimmed back the roots of the Association tree away from the water line, the Association is currently not liable for a root damage done to a homeowner's water line by an Association owned tree.

Sincerely,

FRANK WEINBERG & BLACK, PL



JOEL MARTIN MCTAGUE, B.C.S.
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Declined to Follow by Atkins v. Adams, Me., August 29, 2023

263 So.3d 189

District Court of Appeal of Florida, First District.

Barbara BALZER, Petitioner,

v.

Cindy RYAN and Hoyt Maxwell, dba North
Florida Decorative Concrete, Respondents.

No. 1D18-3182

|

December 31, 2018

Synopsis

Background: Neighbor sued landowner for damage to neighbor's tree from landowner's removal of encroaching roots. After a nonjury trial, the county court awarded neighbor partial damages. Neighbor appealed. Landowner cross-appealed. The circuit court reversed the judgment and remanded for dismissal with prejudice. Neighbor filed petition for writ of certiorari.

[Holding:] The District Court of Appeal, Wetherell, J., held that the circuit court's ruling was not contrary to clearly established principles of law.

Petition denied.

Procedural Posture(s): Petition for Writ of Certiorari; On Appeal; Judgment.

West Headnotes (7)

- [1] **Certiorari** 🔑 Scope and Extent in General
The scope of review in a second-tier certiorari proceeding is extremely narrow.
2 Cases that cite this headnote
- [2] **Certiorari** 🔑 Scope and Extent in General
Where it is undisputed that the circuit court afforded the parties procedural due

process, second-tier certiorari review is limited to determining whether the court's decision departed from the essential requirements of law.

2 Cases that cite this headnote

- [3] **Certiorari** 🔑 Grounds in general
Certiorari 🔑 Errors and irregularities
A departure from the essential requirements of law, such as will support certiorari relief, requires something more than mere legal error; it requires a violation of a clearly established principle of law resulting in a miscarriage of justice.

4 Cases that cite this headnote

- [4] **Certiorari** 🔑 Errors and irregularities
Clearly established law, a violation of which can support certiorari relief, can derive from controlling precedent, and without such controlling precedent, a district court cannot conclude that a circuit court violated a clearly established principle of law.

5 Cases that cite this headnote

- [5] **Certiorari** 🔑 Errors and irregularities
In addition to drawing from controlling precedent, clearly established law, a violation of which can support certiorari relief, can also derive from rules of court, statutes, and constitutional law.

1 Case that cites this headnote

- [6] **Adjoining Landowners** 🔑 Trees and plants on or near boundary
An owner of a healthy tree is not liable to an adjoining property owner for damage caused by encroaching tree branches or roots, but the adjoining property owner is privileged to trim back, at his own expense, any encroaching tree roots or branches which have grown onto his property.

1 Case that cites this headnote

- [7] **Adjoining Landowners** 🚧 Trees and plants on or near boundary

Certiorari 🔑 Particular proceedings in civil actions

Circuit court did not violate clearly established law by refusing to hold landowner liable to neighbor for the cost of removing tree that was damaged when landowner cut roots that were encroaching onto her property, and thus neighbor was not entitled to certiorari relief from circuit court's order, since there was no controlling precedent on the issue.

3 Cases that cite this headnote

***190** Petition for Writ of Certiorari—Original Jurisdiction.

Attorneys and Law Firms

Barbara Balzer, pro se, Petitioner.

Elwin R. Thrasher, III, Tallahassee, for Respondents.

Opinion

Wetherell, J.

In this second-tier certiorari proceeding, Petitioner seeks review of a circuit court appellate decision holding that Respondents are not liable for damaging a tree on Petitioner's property when they cut some of the tree's roots that had encroached onto Respondent Cindy Ryan's property. Because the circuit court's decision does not violate any clearly established principle of law, we deny the petition for writ of certiorari.

Factual and Procedural Background

A large pine tree stood on Petitioner's property near the boundary between her and Ms. Ryan's properties. The tree's roots encroached onto Ms. Ryan's property, damaging the sewer line that ran under her driveway. To fix the sewer line, the driveway had to be removed and replaced, and Ms. Ryan hired Respondent Hoyt Maxwell to do that work. While removing the driveway, Mr. Maxwell cut some of the encroaching tree roots. Although this did not kill the tree, it undermined the tree's structural integrity and increased the

risk that the tree might someday fall on Petitioner's house. Accordingly, Petitioner paid to have the tree removed.

Petitioner sued Respondents in county court to recover the costs of removing the tree. After a nonjury trial, the county court entered a final judgment awarding Petitioner only a portion of the costs she incurred. Petitioner appealed the judgment to the circuit court, arguing that the county court erred by not awarding all of her costs. Respondents cross-appealed the judgment, arguing that the county court erred in finding them liable to Petitioner for damaging the tree because Ms. Ryan had the right to cut the tree roots that encroached onto her property.

The circuit court reversed the judgment. The court reasoned that because Petitioner could not be compelled to pay for the damage to Ms. Ryan's sewer line caused by the encroaching tree roots, she likewise had no cause of action against Ms. Ryan if the tree was damaged when Ms. Ryan exercised her “privilege” to cut the roots encroaching onto her property. The court remanded the case for entry of a final judgment dismissing Petitioner's claim against Respondents with prejudice.

Petitioner sought review of the circuit court's decision by filing a petition for writ of certiorari in this court.

Legal Analysis

[1] [2] [3] [4] [5] The scope of our review in this second-tier certiorari proceeding is extremely narrow. *See* 🚩 *Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So.3d 1086, 1092 (Fla. 2010). Where, as here, it is undisputed that the circuit court afforded the parties procedural due process, our review is limited to determining whether the court's decision “departed from the essential requirements of law.” 🚩 *Id.* A departure from the essential requirements of law requires something more than mere legal error; it ***191** requires a violation of a “clearly established principle of law” resulting in a miscarriage of justice. 🚩 *Id.* Clearly established law can derive from controlling precedent,¹ but if there is no controlling precedent, “certiorari relief cannot be granted because ‘[w]ithout such controlling precedent, [a district court] cannot conclude that [a circuit court] violated a clearly establish[ed] principle of law.’ ” *Dep't of Highway Safety & Motor Vehicles v. Edenfield*, 58 So.3d 904, 906 (Fla. 1st DCA

2011) (brackets in original) (quoting  *Ivey v. Allstate Ins. Co.*, 774 So.2d 679, 682 (Fla. 2000)); see also *Nader v. Dep't of Highway Safety & Motor Vehicles*, 87 So.3d 712, 723 (Fla. 2012) (explaining that “certiorari jurisdiction cannot be used to create new law where the decision below recognizes the correct general law and applies the correct law to a new set of facts to which it has not been previously applied”) (emphasis in original).

[6] Under Florida law, it is well-established that an owner of a healthy tree is not liable to an adjoining property owner for damage caused by encroaching tree branches or roots, but the adjoining property owner “is privileged to trim back, at [his] own expense, any encroaching tree roots or branches ... which has grown onto his property.” *Gallo v. Heller*, 512 So.2d 215, 216 (Fla. 3d DCA 1987); see also *Scott v. McCarty*, 41 So.3d 989 (Fla. 4th DCA 2010) (noting that *Gallo* reflects the predominate view around the country) (citing *Encroachment of Trees, Shrubbery, or Other Vegetation Across Boundary Line*, 65 A.L.R. 4th 603 (1988)).

[7] The issue in this case, however, is whether the adjoining property owner is liable to the tree owner when the self-help remedy authorized by *Gallo* causes damage to the tree. There is conflicting authority on this issue in other states,² but we have found no Florida case addressing the issue. Accordingly, in the absence of any controlling precedent, it follows that the

circuit court did not violate clearly established law in ruling the way that it did.

This conclusion is not undermined by the sole case relied on by Petitioner in her petition for writ of certiorari,  *McCain v. Florida Power Corp.*, 593 So.2d 500 (Fla. 1992). Although the general principles of negligence law discussed in that case have been extended to suits against landowners in certain circumstances,³ we are not persuaded *192 that those principles are dispositive here because Petitioner did not allege that Respondents' actions caused damage to anything other than the tree whose encroaching roots Ms. Ryan undisputedly had a right to cut,⁴ and a rule imposing liability for causing any damage to the tree in these circumstances would effectively eviscerate that right.

Conclusion

For the reasons stated above, the petition for writ of certiorari is DENIED.

Wolf and Lewis, JJ., concur.

All Citations

263 So.3d 189, 44 Fla. L. Weekly D149

Footnotes

¹ Clearly established law can also derive from “rules of court, statutes, and constitutional law,” see  *Allstate Ins. Co. v. Kaklamanos*, 843 So.2d 885, 890 (Fla. 2003), but Petitioner has not argued that the circuit court's decision violates any rule, statute, or constitutional provision.

² Compare  *Mustoe v. Ma*, 193 Wash.App. 161, 371 P.3d 544 (2016) (holding that landowner does not owe a duty of care to prevent damage to neighbor's tree when cutting roots that are encroaching onto the landowner's property) with  *Brewer v. Dick Lavy Farms, LLC*, 67 N.E.3d 196 (Ohio Ct. App. 2016) (holding that landowner exercising his right to cut encroaching branches from his neighbor's tree must use reasonable care so as not to cause damage to the neighbor's property) and  *Fliegman v. Rubin*, 1 Misc.3d 127A, 781 N.Y.S.2d 624 (N.Y. Sup. Ct. App. Term 2003) (table) (holding that “an adjoining landowner's right to engage in self-help [by cutting encroaching tree roots] ‘does not extend to the destruction or injury to the main support system of the tree’ ” (quoting 1 N.Y. Jur 2d, Adjoining Landowners § 57)) and  *Booska v. Patel*,

24 Cal.App.4th 1786, 30 Cal.Rptr.2d 241, 245 (1994) (holding that landowner had a duty to act reasonably when cutting encroaching roots from a tree on his neighbor's property).

- 3 See, e.g.,  *Williams v. Davis*, 974 So.2d 1052 (Fla. 2007);  *Whitt v. Silverman*, 788 So.2d 210 (Fla. 2001). Accord  *Hardin v. Jacksonville Terminal Co.*, 128 Fla. 631, 175 So. 226, 228 (1937) (explaining that "there is no liability on the part of a landowner to persons injured outside his lands ... unless the owner has done or permitted something to occur on his lands which he realizes or should realize involves an unreasonable risk of harm to others outside his land").
- 4 Whether and how the general principles of negligence discussed in  *McCain* and its progeny would apply if Respondents' actions were alleged to have caused damages to persons or property *other than the tree* is a different issue that is not presented in this case.

512 So.2d 215

District Court of Appeal of Florida,
Third District.

Gretchen GALLO, Appellant,

v.

David HELLER and Beverly Heller, his wife, Appellees.

No. 86-1654.

I

July 21, 1987.

Synopsis

Property owner brought action against neighbors alleging that neighbors' trees had encroached onto plaintiff's property, causing damages. The Circuit Court, Dade County, George Orr, J., dismissed the complaint. Plaintiff appealed. The District Court of Appeal held that complaint claiming certain damages for nuisance allegedly created by trees growing on adjoining land, including that tree branches had damaged roof on house, that tree roots caused cement walkway to crack, that fallen leaves caused pet Afghan hound to contract severe allergy, and that trees' branches shaded property, causing vegetation to die, failed to state cause of action.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Dismiss.

West Headnotes (2)

- [1] **Adjoining Landowners** 🔑 Remedies and Procedure in General

Nuisance 🔑 What Constitutes Nuisance in General

Possessor of land is not liable to persons outside the land for a nuisance resulting from trees and natural vegetation growing on the land; however, adjoining property owner is privileged to trim back, at adjoining owner's own expense, any encroaching tree roots or branches and other vegetation which has grown onto his property.

8 Cases that cite this headnote

- [2] **Nuisance** 🔑 Pleading

Complaint claiming certain damages for nuisance allegedly created by ficus and melaleuca trees growing on adjoining land, including that tree branches had damaged roof on house, that tree roots caused cement walkway to crack, that fallen leaves caused pet Afghan hound to contract severe allergy, and that trees' branches shaded property, causing vegetation to die, failed to state cause of action.

3 Cases that cite this headnote

Attorneys and Law Firms

*216 Jerry A. Burns, for appellant.

Brian R. Hersh and Mitchell Panter, for appellees.

Before HUBBART, BASKIN and FERGUSON, JJ.

Opinion

PER CURIAM.

This is an appeal by the plaintiff Gretchen Gallo from a final order dismissing her complaint which seeks injunctive relief and monetary damages against her next door neighbors David and Beverly Heller in a dispute arising over certain trees growing on the Hellers' property. We affirm based on the following briefly stated legal analysis.

First, the plaintiff alleges in her complaint that the branches and roots of the Hellers' Ficus and Melaleuca trees have encroached onto the plaintiff's property, causing certain damages, to wit: (a) the tree branches have damaged the plaintiff's roof and house, (b) the tree roots have caused the plaintiff's cement walkway to crack, (c) the leaves of the Melaleuca tree have dropped on the plaintiff's property causing plaintiff's pet Afghan hound to contract a severe allergy, (d) the trees' branches have shaded the plaintiff's property causing certain of the plaintiff's vegetation to die.

[1] Second, the rule at common law and the majority rule in this country, which is followed in Florida, is that a possessor of land is not liable to persons outside the land for a nuisance resulting from trees and natural vegetation growing on the land. The adjoining property owner to such a nuisance, however, is privileged to trim back, at the adjoining owner's own expense, any encroaching tree roots

or branches and other vegetation which has grown onto his property.  *Richmond v. General Eng'g Enters. Co.*, 454 So.2d 16 (Fla. 3d DCA 1984); *Knepper v. Slovak*, 31 Fla.Supp. 131 (Fla. 15th Cir.Ct.1968); see  *Sterling v. Weinstein*, 75 A.2d 144 (D.C.1950);  *Schwalbach v. Forest Lawn Memorial Park*, 687 S.W.2d 551 (Ky.Ct.App.1985); *Melnick v. C.S.X. Corp.*, 68 Md.App. 107, 510 A.2d 592 (Ct.Spec.App.1986), cert. granted, 307 Md. 753, 517 A.2d 102 (1986);  *Michalson v. Nutting*, 275 Mass. 232, 175 N.E. 490 (1931) (leading case);  *Hasapopoulos v. Murphy*, 689 S.W.2d 118 (Mo.Ct.App.1985);  *Loggia v. Grobe*, 128 Misc.2d 973, 491 N.Y.S.2d 973 (Dist.Ct.1985); *Restatement (Second) of Torts* § 840 (1965). The underlying rationale for this well-settled law is that

“[I]t is wiser to leave the individual to protect himself, if harm results to him from this exercise of another's right to use his property in a reasonable

way, than to subject that other to the annoyance, and the public to the burden, of actions at law, which would be likely to be innumerable and, in many instances, purely vexatious.”

 *Michalson v. Nutting*, 275 Mass. 232, 175 N.E. 490, 491 (1931).

[2] Third, based on the above-stated law, it is clear that the plaintiff's complaint was properly dismissed below for failure to state a cause of action. The complaint claims certain damages for a nuisance allegedly created by the trees growing on the defendant's land, and, plainly, such damages *217 are not recoverable under the established law in this state.

Affirmed.

All Citations

512 So.2d 215, 12 Fla. L. Weekly 1765

41 So.3d 989

District Court of Appeal of Florida, Fourth District.

Virginia T. SCOTT, Appellant,

v.

Julie L. McCARTY, M.D., Appellee.

No. 4D09-1388

I

Aug. 4, 2010.

Synopsis

Background: Property owner brought action against neighbor alleging that overhanging branches and roots from neighbor's tree caused damage to property. The Circuit Court, Fifteenth Judicial Circuit, Palm Beach County, Edward Fine, J., dismissed complaint. Property owner appealed.

[Holding:] The District Court of Appeal, Warner, J., held that neighbor was not liable to adjoining property owner for alleged damage caused by overhanging branches and roots from tree.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Dismiss.

West Headnotes (1)

[1] **Adjoining Landowners** 🗝️ Trees and plants on or near boundary

Nuisance 🗝️ What Constitutes Nuisance in General

Neighbor was not liable to adjoining property owner for alleged nuisance caused by overhanging branches and roots from tree; however, adjoining property owner was privileged to trim back, at the adjoining owner's own expense, any encroaching tree roots or branches and other vegetation which had grown onto her property.

1 Case that cites this headnote

Attorneys and Law Firms

*989 Virginia T. Scott, Jupiter, pro se.

John L. Avery, Jr. of Joseph C. Kempe, P.A., Jupiter, for appellee.

Opinion

WARNER, J.

We affirm the trial court's dismissal with prejudice of appellant's complaint for damages to her property which she alleged were caused by overhanging branches and roots of her neighbor's trees encroaching on her property. She also alleged damages resulting from her removal of the portions of her neighbor's tree intruding on her property. The trial court dismissed the complaint based upon *Gallo v. Heller*, 512 So.2d 215, 216 (Fla. 3d DCA 1987), in which the appellate court stated the common law rule as follows:

[A] possessor of land is not liable to persons outside the land for a nuisance resulting from trees and natural vegetation growing on the land. The adjoining property owner to such a nuisance, however, is privileged to trim back, at the adjoining owner's own expense, any encroaching tree roots or branches and other vegetation which has grown onto his property.

The rationale for this conclusion was that it was wiser to leave the individual to protect himself than to subject the other to the annoyance of actions at law which would likely be innumerable. *Id.*

Appellant acknowledges that *Gallo* states the prevailing law but requests that we take a different course. We decline, finding that the *Gallo* view is the predominant view in the country. See *Encroachment of Trees, Shrubbery, or Other Vegetation Across Boundary Line*, 65 A.L.R.4th 603 (1988). We agree that departing from the precedent would invite further litigation between neighbors on this issue, which as a public policy matter should be avoided.

Affirmed.

All Citations

TAYLOR and MAY, JJ., concur.

41 So.3d 989, 35 Fla. L. Weekly D1726

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