Court of Appeals Authorizes Tree Root Cutting – Ruling that Roots Trump Tree

By Michael Spence / April 11, 2016

On April 4, 2016, Division I of the Washington Court of Appeals declared that a landowner may remove tree roots that encroach onto his or her property – even if it severely damages, or possibly even kills, the tree. This decision is surprising on a number of levels.

The case is known as Mustoe v. Ma/Jordan, and the facts are very simple. A large portion of the roots from two trees growing on Jennifer Mustoe's property encroached onto the property owned by Xiaoye Ma and Anthony Jordan. Jordan dug a 2.5 foot deep trench along his property line, resulting in a loss of nearly half of the trees' roots, severely damaging the trees and creating a safety hazard for Mustoe. Mustoe sued Ma and Jordan for negligence and nuisance, but she lost on summary judgment at the trial court.

The decision was appealed to Division I of the Court of Appeals, who upheld the lower court's decision based on Gostina v. Ryland, a 1921 case holding that it was proper for an owner to "*clip or lop off the branches or cut the roots at the property line*". Mustoe attempted to argue that the Gostina case also provided that in doing so, a landowner must "*act in good faith and … not cause damage to the non-encroaching portions of the trees*", but the Court of Appeals would have none of it. Mustoe also cited the 1917 case of Sandberg v. Cavanaugh Timber Co. for the proposition that "*each member of society owes a legal duty, as well as a moral obligation, to his fellows. He must so use his own property as not to injure that of others*", but the Court distinguished that case because it involved a property owner's duty to stop a forest fire from spreading rather than the digging of a trench on one's own property that damaged tree roots originating from another property.

Mustoe next argued that the "common enemy doctrine", which allows property owners to protect their property from flowing water on the condition that they not cause "*unnecessary damage*" to neighboring properties applies by analogy, but the Court rejected that theory as well, holding that tree roots are not a "*force of nature*" like running water can be.

Mustoe next argued that the root cutting constituted a nuisance, but she had not "*established that she has any legal cause for complaint or interference with the lawful removal of the roots on Ma's property*", presumably because no law calls for the protection of encroaching tree roots. Mustoe's final argument was that Jordan was negligent in cutting the roots and damaging the tree, but the Court rejected that argument, stating that "*a negligence claim presented in the garb of nuisance need not be considered apart from the negligence claim*". Since the Court had already rejected the nuisance claim, they automatically rejected the negligence claim as well.

Long story short, the case appears to clearly and unequivocally authorize property owners to freely remove tree roots from their property, even if it severely damages (or maybe even kills) a tree on a neighboring property. The only caveat to this decision appears to be that it must be legal to cut the roots, i.e. the tree must not be protected by a local tree preservation ordinance. But if the tree is not protected, the roots may be freely cut. (Note: if the tree

straddles the property line, any roots and branch cutting may not damage the tree under a different body of law).

This decision should be controversial in Seattle primarily because of the recent high profile cutting of over 150 trees on public property in West Seattle to improve neighboring views. The Mustoe case does not authorize this sort of action, but it does not speak to root cutting in order to improve an individual's view.
It is unknown whether the case will be appealed at this time.

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