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Not a good idea to interfere with right-of-way

Grant and Lisa Hall were next-door neighbours to Loraine Wiltshire in north Toronto. The Hall property is west of the Wiltshire property, and both are registered under the Land Titles Act.

There is a shared walkway two feet 10 inches wide between the two houses. The part of the walkway on the Wiltshire side is one foot nine inches wide, and the part on the Hall side is one foot one inch wide. Each owner has a right-of-way over the walkway on the neighbouring side of the property line, to a depth of 69 feet from the street line.

There is no explanation on the Wiltshire title of the uses permitted over the rights-of-way, but the deed to the Hall property states that the reciprocal rights of way are "for the use of the owners and occupants from time to time and at all times, in, over, along and upon ... " the two side-by-side strips of land.

For many years the owners of the two properties existed peacefully beside each other, but that relationship ended when a developer bought what became the Hall property, demolished the original small bungalow and built a larger home on the site. The demolition and construction caused considerable distress to Wiltshire.

In 2004, the Halls bought the new home while it was under construction. On taking occupancy, they and their children used the walkway between the two houses, and the increase in foot traffic and "noise resulting from that usage" upset Wiltshire.

As well, the developer positioned the clothes dryer vent so that it exhausted into the mutual walkway at a point almost directly opposite the Wiltshire side door.

It was clear that Wiltshire was offended and upset by the redevelopment of the neighbouring property and the Halls inherited her hard feelings.

Eventually, the bitterness resulted in the construction, by Wiltshire, of a fence down the middle of the walkway, just inside the property line. This had the effect of depriving the Halls of all of the right of way over the Wiltshire property, except for about 13 inches on their own side of the fence and one inch on the Wiltshire side of the property line.

In May 2005, Wiltshire brought a court application against the Halls and the builder asking for removal of the right-of-way from the property titles.

The judge dismissed the application against the builder and ordered the case to proceed to trial against the Halls. He also ordered Wiltshire to pay $8,600 in costs to the builder and $8,000 to the Halls.

The case came before Justice John Macdonald last December. After reviewing the 1943 property deeds which originally set out the rights-of-way, he concluded that the rights were created to facilitate the use and occupation of the original bungalows and their front and rear yards for residential purposes by the owners or occupants from time to time as they saw fit.

The judge then concluded that the fence erected by Wiltshire "is a substantial interference with the right-of-way which the Halls have" over the Wiltshire property.

On the issue of the dryer vent, the judge found that Wiltshire's allegations against the Halls were "overstated, that is exaggerated," and that the dryer vent and its outflow were not an actionable nuisance.

He noted that Wiltshire was "reacting to an unjustified sense of violation at the hands of the Halls," and that "she has acted up to this point in a fashion which is reactive and obstreperous."

The court's decision affirmed the existence of the right-of-way and barred Wiltshire from interfering with it in future.

The fence had to go, and an injunction was issued prohibiting Wiltshire from erecting another fence or obstructing the right-of-way except with permission of the court.

The lesson of the case is that interfering with someone else's right-of-way is not a good idea. It can consume large amounts of time and money and is rarely successful.

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