

DECISION

Case number: NDR080-12

Applicant: Mr Jeffrey Davies

Respondents: Mr Robert Anthony Yeates
Mrs Helen Mary Yeates

Before: Ms Peta Stilgoe, Acting Deputy President

Date: 2 January 2013

Proceeding Type: On-Papers Hearing

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. The application in relation to the six leopard trees on 36 Hereford Crescent Carindale is dismissed.

Signed

Ms Peta Stilgoe
Acting Deputy President
Queensland Civil and Administrative Tribunal

Date: 2 January 2013

CITATION: Edmonds v Yeates

PARTIES: Mr Jeffrey Davies
V
Mr Robert Anthony Yeates
Mrs Helen Mary Yeates

APPLICATION NUMBER: NDR080 -12

MATTER TYPE: Other civil dispute matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Peta Stilgoe, Acting Deputy President**

DELIVERED ON: 2 January 2013

DELIVERED AT: Brisbane

ORDERS MADE: **1. The application in relation to the six leopard trees on 36 Hereford Crescent Carindale is dismissed.**

CATCHWORDS: TREE DISPUTE – where six leopard trees in boundary – where trees existed prior to construction of house - where land benched so that trees appear bigger – where leaf litter – whether substantial, ongoing and unreasonable interference – whether risk of serious injury

Neighbourhood Disputes Resolution Act
2011 ss, 66, 75, 78(1)

Graham & Ors v Welch [2012] QCA 282
Thomsen v White [2012] QCAT 381
Wallace v Keg [2012] QCAT 466

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers in accordance with section 32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

REASONS FOR DECISION

- [1] Mr and Mrs Yeates have a row of six leopard trees next to the western boundary of their land. Mr Davies lives next door. The trees overhang his boundary and he says that the leaves, pods and small braches from the trees cause a substantial, ongoing and unreasonable interference with his land. He wants Mr and Mrs Yeates to cut the trees back to the boundary and undertake regular pruning to minimise the mess that the trees cause.
- [2] I can only make an order if I am satisfied¹ that it is appropriate to remedy, restrain or prevent serious damage to Mr Davies' land or any property on his land or a substantial, ongoing and unreasonable interference with Mr Davies' use and enjoyment of his land.
- [3] Mr Davies has provided photographs that show leaf litter and twigs in his garden, roof and walkways. He says that the leaf litter blocks his gutters. He says that blocked gutters could cause water overflow in the wet season. That overflow could cause damage to his property. He says that his patio is unusable because of the shade provided by the trees. He says that the patio is permanently discoloured. He has installed gutter guard which, he says, partly solves the problem of leaves in the gutter. Mr Davies says that, when he bought his house, the trees were not causing him any problem. In the past, he regularly pruned the trees and cleaned the gutters. He says that, because of the *Neighbourhood Disputes Resolution Act 2011*, that obligation now falls to Mr and Mrs Yeates.
- [4] Mr and Mrs Yeates say that the trees existed before Mr Davies' house was built. They say that the trees were well-established when Mr Davies bought his house. They also say that the developers of Mr Davies' lot sought a relaxation of the boundary, bringing his house closer to the trees than is usual. They deny that the trees are causing serious damage or a substantial, ongoing and unreasonable interference to Mr Davies' lot.
- [5] Brisbane City Council has advised, by email of 12 November 2012, that the trees are not protected by any local law or development condition.
- [6] The tribunal engaged Mr Hobbs, an arborist, to complete an independent report about the trees. He says that Mr Davies' land was benched when the house was built, which means that his gardens are about 1200 mm lower than Mr and Mrs Yeates' land. Mr Hobbes observes that the height difference makes the trees look taller than they actually are. Mr Hobbes also observes that Mr Davies' home occupies most of his lot; again, according to Mr Hobbes, this makes the trees look larger than they are.
- [7] Mr Hobbes notes that the trees are exotic species but not invasive. He observes that leopard trees perform well in suburban locations and are not known to cause any significant problems. He is of the view that the trees, although close to Mr Davies' home, require only regular pruning.
- [8] This tribunal has determined² that the dropping of leaves, flowers, fruit, seeds or small elements of deadwood by urban trees ordinarily will not provide the basis for ordering removal of, or intervention with, an urban

¹ *Neighbourhood Disputes Resolution Act 2011* s66

² *Thomsen v White* [2012] QCAT 381, *Wallace v Keg* [2012] QCAT 466

tree. That approach is consistent with a recent decision of the Court of Appeal in *Graham & Ors v Welch*³. Atkinson J said⁴:

Trees and bushes are common place and desirable attributes of homes in residential areas. It is not possible to have the Australian gumtree without the possibility of gumnuts falling or a Casuarina without the possibility of seed pods, or many common native or exotic trees or shrubs which flower and then produce nuts, berries, seeds, or seed pods.

- [9] The leaf litter of which Mr Davies complains is a natural incidence of a suburban landscape that includes trees. It does not constitute a substantial, ongoing and unreasonable interference.
- [10] I am not persuaded that Mr Davies' home is at risk of serious damage. The connection between the leaf litter and possible damage to his home through water ingress is too remote.
- [11] I am not persuaded that the trees cause a severe obstruction of sunlight to Mr Davies' home. He has not produced any independent evidence of the patio discolouration. He has not produced any evidence that the discolouration, if it exists, was caused by the trees. Even if that evidence was available, it is relevant to the exercise of my discretion that the trees existed before Mr Davies acquired the house⁵. To some extent, Mr Davies must take the trees as he finds them.
- [12] Mr Davies has not demonstrated that there will be serious damage to his property or that the trees cause a substantial, ongoing and unreasonable interference with her land. There is no severe obstruction of sunlight. The application should be dismissed.

³ [2012] QCA 282

⁴ At [24]

⁵ *Neighbourhood Disputes Resolution Act 2011* s75(d)