NC STATE EXTENSION

Tree Fall Liability

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Hurricane season reminds us all how quickly wind and rain can upend or tear limbs from a decades-old – sometimes centuries-old -tree. Trees and limbs often fall across property lines and cause damage, particularly in residential settings but also rural settings where the tree fall causes damage to fencing and other structures. This comment is meant to shed light on the question of who is responsible for such damage.

As a practical matter, a homeowners or farm hazard policy should cover structural damage and removal costs from a tree or branch falling on the property though the tree is rooted across the property line. It is not the policy-holder's responsibility to establish fault, and money for the tree damage and removal should come from the policy. In theory, the insurance company – if the amount paid out is significant enough – could pursue indemnity from the neighbor (or more likely their insurance company) under a theory that the neighbor was negligent in allowing a dangerous tree to loom beside the property line, though how often this happens is not readily known.

In the event liability does need to be assigned for a tree falling across a property line, the question relies on a number of factors. The North Carolina legislature has not addressed this issue by statute, so the determination of liability is left to the common – or court-made – law. North Carolina does not follow a strict liability standard with an "it's your tree, you pay" result. Instead North Carolina jurisprudence follows the common law negligence standard for property and bodily injury for damage caused by falling trees and limbs.

A person who is injured or suffers property damage due to the fall of a tree rooted on the adjoining tract must prove that the owner of the adjoining tract was negligent in permitting a dangerous tree to remain standing and poised for damage. Traditionally at common law, courts treated trees as "a natural condition of [the] land" that relieved one landowner of liability when his or her tree caused "an invasion of another's use and enjoyment" of another's land."1[1] Though as noted above this is largely the result when insurance is available, it is no longer a hard and fast rule regarding liability, and over the years courts have eliminated the distinction between trees that grow "naturally" and those planted by humans.

[1] Restatement of the Law of Torts, § 840, p.310 (cited in Rowe v. McGee, 5 N.C.App. 60, 168 S.E.2d 77 [N.C. App., 1969])

Under negligence theory, the landowner is under a duty to eliminate a reasonably foreseeable danger a tree may pose to adjoining property. Various facts point to the issue of foreseeability, including but not limited to whether a tree is dead or visibly dying, whether it leans prominently toward the adjacent tract, 3) whether limbs of the tree have extended far across the property line, whether the limbs extend over where cars are parked or other structures, or the tree-owner cut through a large anchoring root of the tree. If these or similar facts are produced, the trier of fact (judge or jury) may find that the owner of the tree could have foreseen that it was a matter of time before the fell. Whether the direction a dead tree would fall was itself predictable may be irrelevant. Also, while normally "acts of god" events – e.g. hurricanes – do not themselves assign liability, the effects of violent wind and heavy rain on an ailing tree and its root-hold could be viewed as something foreseeable. If the trier-of-fact (judge or jury) finds that a reasonable person would have known of these facts about a tree, it could find that the owner acted unreasonably in waiting for the tree to cause damage, and could therefore assign the owner liability for the damage and removal.

One North Carolina court opinion reports of a situation where neighboring landowners, seeing the deteriorating condition of a tree on the other side of their property line, obtained permission from the owner of the tree to remove it but failed to do so before the tree – after considerable time – eventually fell causing damage. The trial court found the tree owner liable for the damage. However, on appeal the Court held that the question of whether the neighboring landowners' failure to remove the tree when given the chance – even where the tree property had changed ownership – amounted to contributory negligence (a bar to recovery) on their part was a proper question for the jury to consider. The case went back to trial, but the result is not reported.

Again, such issues of liability should concern a damaged property-owner only in the event the property owner is not carrying insurance, has a lapsed policy, or otherwise isn't covered for the damage caused by the falling tree. As a practical matter the property owner should not be found at fault – i.e. denied insurance coverage – for failing to compel a neighbor to remove a threatening tree, which would be a costly and legally dubious effort in advance of an actual damaging event.