

BEFORE THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

Daniel and Donny Brown,  
Plaintiffs,  
vs.  
Cedar Creek Rod and Gun Club,  
Defendant.

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Case No. 04CV164096

JUDGMENT

The court takes up the above styled cause for ruling. A jury trial was held in December of 2007, after which a verdict was rendered for damages resulting from nuisance. A temporary injunction was entered and extended pending a full evidentiary hearing on the scope and terms of a permanent injunction. Hearing was held on February 20, 2008 at which time additional evidence was adduced. Parties were invited to submit authorities and argument relative to the final judgment and have done so. Additional motions were presented to the court as well. The court now rules on those motions.

Defendant seeks to have the cause dismissed for improper venue. Without ruling on what venue would be proper, a review of the court file indicates that this claim was first raised by the Defendant, but that issue was subsequently withdrawn from consideration of the court by the Defendant. Venue being waiveable and not jurisdictional, the court denies this motion.

Defendant next argues that the conduct of the Defendant did not constitute a nuisance and therefore judgment cannot lie against it. The court having considered the law and the MAI instruction given finds that the instruction accurately states the law and declines to set the jury verdict aside on that basis.

Plaintiffs next seek to exclude the testimony of Wes Sherman presented by Defendant at the permanent injunction hearing. The court declines to rule on that request without further

testimony, but finds the request to be moot as a practical matter as further set forth below.

Being fully advised in the premises, the court finds as follows:

1. Plaintiffs own and occupy as their home, improved real property at 12101 East St. Charles Road, Boone County, Missouri.
2. Defendant possesses by lease, certain real property commonly known as 1420 County Road 276, Callaway County, Missouri.
3. On said property, Defendant operates a gun club, which includes a number of shooting ranges.
4. Plaintiffs' land and Defendant's club are separated by a public road and the county line and less than 1000 yards separate the trap fields and Plaintiffs' home.
5. After a 3 day trial, a Boone County jury found that Defendant's conduct of operating a gun club substantially impaired Plaintiffs' use of their own property and was an unreasonable use of Defendant's use of the land located at 1420 County Road 276, Callaway County, Missouri. The jury then tendered a verdict for damages in favor of Plaintiffs and against Defendant in the amount of \$ 700,000.00.
6. The features of the operation of the gun club which interfered with Plaintiffs' use of their land were as follows:
  - a. The number of days each month in which shooting took place;
  - b. The direction of the shooting, i.e. worse when it was directed towards Plaintiffs' home;
  - c. The number of shots in any given time period, i.e. the "barrage effect;"
  - d. The number of shots total that were fired, i.e. over 500,000 shots fired in

one calendar year;

- e. The unpredictability of what days were and were not shooting days; and
  - f. The hours of the day in which shooting took place.
7. The testimony of Wes Sherman was of little value to the court and accordingly was afforded no weight in that the circumstances under which he measured the amplitude of the sounds were not shown to be substantially similar to those suffered by the Plaintiffs. He measured and/or estimated the sound of a shotgun shot at various distances from the gun. However, the nuisance described involved all of the factors set forth in the previous paragraph and were not replicated in the experiment.
  8. The testimony of the Plaintiffs and their witnesses as to the magnitude of the effect of the operation of the gun club at Plaintiffs' home was credible.
  9. The credibility of the neighbor witnesses testifying for the defense was substantially diminished by their admission of their economic or personal relationship with the principals of the gun club and to the extent it was credible is given little weight when the location of their homes and the direction and distance of the shotgun discharge was considered as most lived behind the direction of fire.
  10. The evidence relating to shooting on the sporting clays field, which faces away from the Plaintiffs' home and is further away than the trap fields, suggests that the noise from activities conducted there is less intrusive.
  11. The credibility of the club representatives who testified were substantially diminished by the variations between their testimony at the jury trial and hearing on the permanent injunction.

12. The utility and benefit, while not unlimited, of the Cedar Creek Rod and Gun Club is acknowledged. Similar facilities do not exist in the area and a number of community groups use the club for recreation, an activity which brings social and economic benefit to the Columbia/Boone county area.
13. No evidence was presented which indicated that the social, community and/or economic benefit would be completely lost if shooting was limited or an event would have to be continued over several days.
14. No evidence was presented that the proposed physical changes, i.e. the planting of trees or the relocation of the trap fields themselves, would in any material way abate the nuisance.

As established by the jury verdict, the operation of the Cedar Creek Rod and Gun Club is a nuisance and the magnitude of Plaintiffs' injury is reflected by the award of damages. The task now before this Court is to craft permanent injunctive relief by balancing the equities.

Consideration is given to the social and economic utility of the operation of the gun club as same would be given to a Fourth of July fireworks demonstration or a Memorial Day Air Show.

However, only at the Plaintiffs' home, most everyday is the Fourth of July or Memorial Day.

The court has considered the unique remedies proposed by the Plaintiffs, but declines to consider such remedies as the court lacks sufficient evidence to determine exactly what is a fair economic price for giving up a weekend of peace. Considering that the existing (as of trial) operation of the gun club was a nuisance, but that some level of shooting could take place without rising to the level of an unreasonable use, the Court has considered the various characters of the gun club operations and has attempted to limit the same to a reasonable level in order to

abate the nuisance.

Having limited the operations of the Defendant in order to compel the abatement of the nuisance, the Court declines to predicate any authority for operations upon the satisfaction of the judgment, in full or in part. Plaintiffs have the full range of remedies available to them to seek satisfaction of their judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Judgment is hereby entered in favor of Plaintiffs and against Defendant in the amount of Seven Hundred Thousand Dollars (\$ 700,000.00).
2. The Cedar Creek Rod and Gun Club is directed to comply with the terms of the permanent injunction set forth this same date and incorporated by reference as if fully stated herein.
3. Costs are taxed against the Defendant.

4/4/08

