2021 VT 61

No. 2020-150

Robert Jones, Janet Jones, and Jean Bombard	Supreme Court
v.	On Appeal from Superior Court, Orange Unit, Civil Division
James Hart and Matthew Wood	December Term, 2020

Michael J. Harris, J.

Nicholas A. E. Low of Tarrant, Gillies, Richardson & Shems, Montpelier, for Plaintiffs-Appellants/Cross-Appellees.

Brice C. Simon of Breton & Simon, PLC, Stowe, for Defendant-Appellee/Cross-Appellant Hart.

PRESENT: Reiber, C.J., Robinson and Carroll, JJ., and Morris and Pearson, Supr. JJ. (Ret.), Specially Assigned

¶ 1. **CARROLL, J.** This appeal is the latest in an ongoing dispute between neighbors Robert and Janet Jones and James Hart. Following a three-day trial, a jury found that the Joneses trespassed and caused a private nuisance that interfered with Hart's use and enjoyment of his property and awarded Hart a total $60,000 in damages, $15,000 separately against Janet and Robert for each claim.[1] After trial, the court denied the Joneses' motion for a new trial or remittitur on the private-nuisance claim but granted the Joneses' motion for remittitur on the private-trespass claim. On appeal, the Joneses argue that the trial court erred in denying their motion for a new

[1] To avoid confusion between the named parties, we refer to the Joneses by their given names.

trial or remittitur on the private-nuisance claim. On cross-appeal, Hart argues that the trial court erred in granting the motion for remittitur on the private-trespass claim. For the reasons articulated below, we affirm.

I. Factual and Procedural History

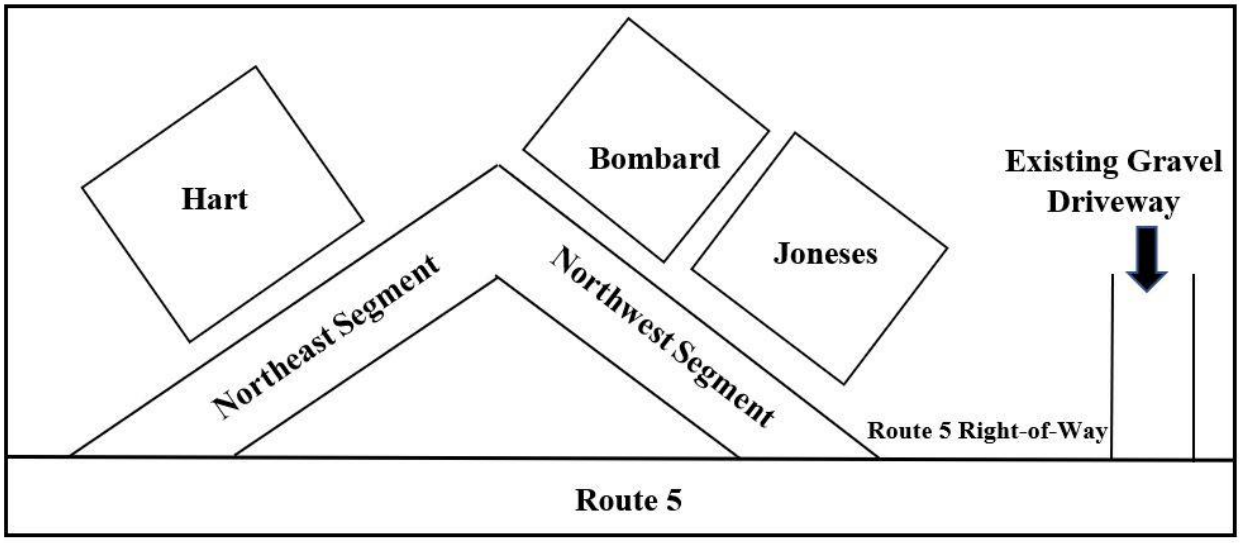
¶ 2. To understand the issues on appeal, we begin with a detailed history of the contentious relationship between Hart and the Joneses. The record indicates the following. Both Hart and the Joneses own homes on Welch Loop, which is a private road owned by Hart through the James H. Hart Realty Trust. Welch Loop is a triangular road that has two access points along Vermont Route 5, which runs east-west at the relevant location. One segment of Welch Loop runs generally in a northwesterly direction from Route 5, and the other segment, which intersects Route 5 further to the west, runs in a northeasterly direction from Route 5 until it intersects with the more easterly segment.

¶ 3. For the past forty-five years, Robert and Janet Jones have lived in their home on Welch Loop, which is located to the east of Welch Loop approximately where the northwesterly segment intersects Route 5. Jean Bombard's[2] property borders the Joneses' property to the north, and her home is also located to the east of Welch Loop generally where the two segments forming Welch Loop intersect. Although both Bombard's and the Joneses' homes border the northwesterly segment of Welch Loop, they historically accessed their homes from Route 5 via a gravel driveway that is located to the east of Welch Loop on the Joneses' property. Bombard has a right-of-way to use the Joneses' driveway and can access her property from a steep driveway that extends from the Joneses' driveway.

[2] Bombard did not participate in this appeal, but was a named plaintiff below.

¶ 4. Hart's home, which his great-grandfather bought in 1936, is located to the west of Bombard's home alongside the northeasterly segment of Welch Loop. The northeasterly segment has not been used as a driveway since the 1940s when Hart's great-grandfather grassed it in.

¶ 5. The following schematic generally depicts Welch Loop and the location of the parties' homes:[3]



¶ 6. In 2012, the Joneses and Bombard filed suit against Hart, claiming they had (1) adversely possessed parking spaces in front of their homes on the northwesterly segment of Welch Loop; and (2) acquired a prescriptive easement to use the entirety of Welch Loop to access their homes, meaning both the northeasterly and northwesterly segments. Hart brought several counterclaims, asserting that (1) both the Joneses and Bombard trespassed on his property; (2) Bombard committed timber trespass by cutting a tree on his property; and (3) Janet committed slander.

¶ 7. In July 2012, a jury found that the Joneses had adversely possessed two nine-by seventeen-foot parking spaces in front of their home on Welch Loop. These parking spaces were separated by a nine-foot space, of which Hart maintained ownership. Bombard, on the other hand,

[3] This schematic is included only as an illustration to provide context to the facts underlying this appeal. It was not in evidence and is not drawn to scale.

did not prevail on her adverse-possession claim. The Joneses and Bombard prevailed in part on their prescriptive-easement claim and were granted a twenty-foot-wide easement solely on the northwesterly segment of Welch Loop to access their homes. Hart only prevailed on his private-trespass claim against the Joneses, and the jury awarded him $15,000 in damages. In August 2012, the trial judge conducted a site visit, and a survey was completed—the so-called Bell Survey—which was the final determination of all the "disputed boundaries, easements, and rights of way."

¶ 8. In an August 2013 order, the court explained that it was Hart's responsibility to plow Welch Loop, but that the parties should equally share the cost of plowing. In the beginning of 2014, however, the parties filed several post-judgment motions requesting additional clarification on the issue of snowplowing. In March 2014, the court issued the following order:

> There have been numerous motions post-judgment on the rights and remedies of the parties for the snow plowing of the [Welch Loop]. A jury has rendered its decision and the court has issued a formalized order as the exact whereabouts of the owned parking areas and the extent of use by the parties of the loop. One subject still in contention is snow removal of the loop. The court had previously ruled that [Hart] was to hire a person and the cost would be split in 3 equal shares. The parties have requested additional clarification. Noting that this is Vermont where it tends to snow in the winter, the court does not have the ability to micromanage every possible scenario involving snow removal. For example, during a large snow storm plowers tend to be busy and the court is without authority to require a 3rd party to plow the loop first. Likewise, the court will defer to the discretion of the plower as to when the driveway needs to be plowed. Finally, if for some reason the plower is not able to make it to the property and someone needs to leave, that party is free to shovel. As has previously been stated the Jones may shovel their walk way and their parking spots if needed for ingress and egress.

¶ 9. About a year later, the Joneses and Bombard filed another complaint against Hart, as trustee of the James H. Hart Realty Trust, generally alleging that Hart was regularly intruding onto and disrespecting their property to punish them for prevailing in the 2012 case, as well as overbilling them for snowplowing. Hart filed several counterclaims, including claims for private

nuisance and trespass. Over the next several years, the parties repeatedly amended their pleadings and engaged in extensive motion practice.

¶ 10. By the time the parties went to trial in July 2019, the Joneses' and Bombard's claims were as follows: Hart (1) overbilled them for snowplowing[4]; (2) blocked Bombard's easement by parking, or letting others park, on the Welch Loop in front of her home; (3) created a private nuisance by erecting fences near the Joneses' parking spaces, Bombard's front porch, and Bombard's property line, as well as by parking a truck in the Route 5 right-of-way in front of the Joneses' home; (4) improperly parked an unregistered vehicle near Bombard's property to intentionally annoy and harass her; and (5) allowed trees on his property to fall on Bombard's property, causing damage to her front porch. Bombard separately alleged that she had acquired a prescriptive easement over a portion of Hart's property where she had erected a lamppost. The Joneses also alleged that the survey pins marking their parking spaces were inconsistent with the Bell Survey. Hart asserted counterclaims, alleging that the Joneses and Bombard (1) failed to pay snowplowing bills; (2) trespassed on his property; (3) cut trees on his property; (4) used their properties in a way to create a private nuisance; (5) intentionally caused Hart extreme emotional distress; (6) assaulted Hart; and (7) maliciously abused the judicial process and maliciously prosecuted certain claims.

¶ 11. After a three-day trial, a jury found that the Joneses (1) owed Hart approximately $3800 in plowing bills; (2) failed to demonstrate that the survey pins marking their parking spaces were inaccurate; and (3) did not prove that Hart engaged in private nuisance by installing fences near their parking spaces or parking his truck along the Route 5 right-of-way. As to Bombard's claims, the jury found that Hart (1) did not interfere with access to her easement; and (2) did not engage in private nuisance by erecting a fence in front of her porch. Finally, regarding Hart's

[4] This claim was also brought against Matthew Wood, Hart's snowplow driver from 2012 to 2018, but the claim against Wood was dismissed during trial.

counterclaims, the jury found that the Joneses trespassed and caused a private nuisance that interfered with Hart's use and enjoyment of his property and awarded $30,000 for each claim.[5] Hart did not prevail in his claims against Bombard.

¶ 12. Following the verdict, the Joneses moved for a new trial, arguing that (1) the jury instructions providing that Hart could recover for pain and suffering and mental anguish were erroneous; and (2) the jury verdict on the private-trespass and nuisance claims was not supported by the evidence. Alternatively, the Joneses moved to remit the $60,000 jury award, arguing that it was clearly excessive because Hart did not present any evidence of damages with respect to either claim. The court denied the motion for a new trial. As to the jury instructions, the court concluded that the Joneses were precluded from challenging them because they failed to raise any objections at trial, during the charge conferences, or before the jury began its deliberations. As to the sufficiency of the evidence, the court summarized the evidence presented at trial as follows:

> [T]he Joneses, on repeated incidents, remained present in the Welch Loop where their presence interfered with the snow plower's ability to clear the Welch Loop of snow; that the Joneses cleared areas of snow outside of their easement areas, and entered and cleared snow from portions of Welch Loop beyond the car parking spot and access easements where they had no right to go; and that for a time, the Joneses parked a long recreational vehicle on Main Street, near the Welch Loop ingress/egress road cut, such that the parked vehicle restricted views as Mr. Hart or his property users exited Welch Loop. The alleged conduct of the Joneses also included their taking pictures of [Mr. Hart] when he was in or around Welch Loop, and Mr. Jones allegedly driving into the Welch Loop while Mr. Hart was present, at an unsafe speed. During the operative time of the events (after the last trial), each side contended the other had made certain unkind comments towards the other.

With minimal analysis, the court concluded that the evidence was sufficient to support the jury verdict on the private-nuisance and trespass claims.

[5] During trial, Hart's claims for intentional infliction of emotional distress, abuse of process, malicious prosecution, and defamation were dismissed. Bombard's claims for damage to her porch and for a prescriptive easement were also dismissed.

¶ 13. Moving to the motion for remittitur, the court explained that although Hart presented no evidence of economic damages, the $30,000 award for private nuisance was justified based on the evidence regarding the nontangible impact the Joneses' conduct had on Hart's use and enjoyment of his property. The court granted the motion on the private-trespass claim, however—reasoning that Hart was only entitled to nominal damages because he presented no evidence of either property damage or personal injury—and offered Hart a remittitur of $1000 or a new trial on that claim.

¶ 14. The Joneses now appeal, and Hart cross-appeals. The Joneses argue that the trial court abused its discretion in denying their motion for a new trial because the evidence introduced at trial did not demonstrate that their conduct amounted to private nuisance. In addition, they argue that there is no evidence that they caused $30,000 worth of damages. Finally, they assert that the trial court abused its discretion in denying their motion for remittitur because Coty v. Ramsey Associates, Inc., 149 Vt. 451, 546 A.2d 196 (1988), dictates that $30,000 in damages for annoyance and discomfort is clearly excessive.

¶ 15. Hart maintains that the trial court did not abuse its discretion in denying the Joneses' motion for a new trial on the private-nuisance claim because the evidence at trial indicated that the Joneses interfered with his use and enjoyment of property by, among other things, blocking the snowplow driver from clearing the Welch Loop, photographing him on his property, driving on Welch Loop at an unsafe speed, almost hitting him with a shovel, and parking an exceedingly large motorhome adjacent to Welch Loop in the Route 5 right-of-way. With regard to damages, Hart maintains that the $30,000 award is supported by the evidence and is not clearly excessive. On cross-appeal, Hart argues that the trial court abused its discretion in granting the motion for remittitur on the private-trespass claim because it improperly assumed that the jury awarded deterrence damages. He maintains that the jury could have reasonably concluded that $30,000 was an appropriate assessment of the harm the Joneses' trespass caused.

¶ 16. We conclude that the trial court did not abuse its discretion in denying the Joneses' motion for a new trial on the private-nuisance claim because there was sufficient evidence for a jury to find that the Joneses' conduct amounted to a private nuisance. Similarly, we conclude that there was sufficient evidence to support the jury's award of $30,000 in damages for the private nuisance. In addition, contrary to the Joneses' assertion, Coty v. Ramsey does not require a conclusion that the jury verdict was clearly excessive. Finally, we conclude that Hart has not demonstrated that the trial court abused its discretion in granting the Joneses' motion for remittitur on the private-trespass claim.

II. Motion for New Trial on Private Nuisance

¶ 17. On appeal, the Joneses argue that the trial court erred in denying their motion for a new trial on the private-nuisance claim. The jury found that the Joneses caused a private nuisance that interfered with Hart's use and enjoyment of his property and awarded him $30,000 in damages. Following the verdict, the Joneses filed a motion for a new trial, arguing that the private-nuisance verdict was not supported by the evidence because Hart introduced little to no evidence on the private-nuisance claim and the jury was likely confused because Hart was allowed to testify about events that took place before the 2012 trial. In addition, the Joneses asserted that the jury improperly awarded Hart damages for pain and suffering because of erroneous jury instructions and Hart's counsel's closing arguments.

¶ 18. The court denied the motion. As to the damages for pain and suffering, the court explained that one of the claims that went to the jury involved Hart's claims for personal injury arising from the Joneses' alleged civil assault. Under the heading "Damages," the jury was instructed as follows:

> A party is also entitled to recover damages for any pain and suffering and/or mental anguish shown to have resulted from the wrongdoer's conduct. In making an award for pain and suffering and/or mental anguish, you will award a sum of money that you

> believe will fairly and reasonably compensate the party for the pain and suffering and/or mental anguish.

Although the court acknowledged that this "instruction did not inform the jury as to which of the claims included the right to recover for pain and suffering," it concluded that the Joneses were precluded from challenging the jury instructions because they failed to raise objections at trial, during the charge conferences, or before the jury began its deliberations. Similarly, the court concluded that the Joneses failed to object to Hart's counsel's allegedly improper closing statements. In any event, the court presumed the jury followed the instructions, which provided that the attorneys' arguments were not evidence.

¶ 19. As to the sufficiency of the evidence, the court summarized the evidence presented at trial, and, with minimal analysis, concluded that the evidence was sufficient to go to the jury. Finally, while the court acknowledged that Hart was allowed to testify about events that occurred prior to and at the 2012 trial, it explained that it either struck the evidence on the Joneses' motion or gave a limiting instruction, specifying that the evidence was relevant only to determine if the Joneses' "recent actions were performed with malicious intent."

¶ 20. On appeal, the Joneses argue the trial court erred for several reasons. First, in concluding that the private-nuisance verdict was supported by the evidence, the court relied upon certain evidence that the jury was not directed to consider—namely, that the Joneses took pictures of Hart and parked their motorhome in the Route 5 right-of-way. Second, the Joneses argue for a variety of reasons that their conduct did not amount to a private nuisance and any impact on Hart's property was not unreasonable or substantial enough to be a private nuisance. Finally, they argue that the $30,000 damage award was not supported by the evidence because there was no evidence of economic injury. In addition, the Joneses assert that because Hart was not a named plaintiff in his individual capacity, he is not entitled to noneconomic annoyance and discomfort damages.

¶ 21. Although a court may grant a new trial pursuant to Vermont Rule of Civil Procedure 59, "[t]he law favors upholding jury verdicts." Shahi v. Madden, 2008 VT 25, ¶ 14, 183 Vt. 320, 949 A.2d 1022. We accordingly afford a trial court's decision on a motion for a new trial "all possible presumptive support, similar to the support the trial court owes to a jury verdict," Smedberg v. Detlef's Custodial Serv. Inc., 2007 VT 99, ¶ 5, 182 Vt. 349, 940 A.2d 674 (quotation omitted), and will reverse "only upon a showing of a clear abuse of discretion," DeYoung v. Ruggerio, 2009 VT 9, ¶ 31, 185 Vt. 267, 971 A.2d 627. In so doing, we "view evidence in the light most favorable to the nonmoving party and disregard the effect of modifying evidence." Madden, 2008 VT 25, ¶ 14. "Although our review is deferential to the jury's verdict and the court's decision to deny a [new] trial, we will not uphold a verdict that is internally inconsistent." Epsom v. Crandall, 2019 VT 74, ¶ 24, 211 Vt. 94, 220 A.3d 1247.

¶ 22. We conclude that the trial court did not abuse its discretion in denying the Joneses' motion for a new trial. The jury instructions directed the jury to consider all the evidence presented, which included testimony that the Joneses took pictures of Hart and parked their motorhome in the Route 5 right-of-way. We further conclude that there was sufficient evidence for a jury to find that the Joneses' conduct amounted to a private nuisance because they engaged in a sustained and intentional campaign to annoy and harass Hart in connection with his use and enjoyment of his property. Finally, we conclude that there was sufficient evidence for a jury to find that Hart was entitled to $30,000 in noneconomic annoyance-and-discomfort damages.

A. Jury Instructions

¶ 23. First, the Joneses argue that although the trial court relied upon evidence that they took pictures of Hart and parked a motorhome in the Route 5 right-of-way to support the jury verdict, the jury instructions on private nuisance omitted any reference to that conduct and, therefore, the jury should not have considered it. We conclude that the trial court did not abuse its discretion in relying upon this evidence to conclude that the private-nuisance verdict was supported

by the evidence. When viewed in their entirety, the jury instructions directed the jury to consider all the evidence presented, which included testimony that the Joneses took pictures of Hart and parked their motorhome in the Route 5 right-of-way.

¶ 24. It is true that in the general introduction to the various claims, the jury instructions explained that Hart's private-nuisance claim alleged that the Joneses "interfered with snowplowing, made disparaging comments toward [Hart], and/or blocked the easement so as to substantially interfere with [his] use and quiet enjoyment of [his] property." In the specific charge on the private-nuisance claim, however, the instructions did not refer to specific conduct. Instead, they provided that to prevail on his private-nuisance claim, Hart had to prove, among other things, that the Joneses "by their action or actions, interfered with [his] use or enjoyment of his land." In addition, the jurors were generally instructed that their decision should be based on the evidence presented, which included the "sworn testimony [they] heard from the witnesses and exhibits admitted into evidence during th[e] trial." Multiple witnesses testified about the Joneses' motorhome and picture taking.

¶ 25. To the extent the Joneses are now challenging the jury instructions on private nuisance, they have failed to preserve that claim because they did not object below. Pcolar v. Casella Waste Sys., Inc., 2012 VT 58, ¶ 29, 192 Vt. 343, 59 A.3d 702 (holding that plaintiff failed to preserve challenge to jury instructions on appeal because he did not object to instructions below).

B. Private Nuisance

¶ 26. The Joneses also argue that the trial court erred in concluding that the private-nuisance verdict was supported by the evidence. "The law of private nuisance springs from the general principle that it is the duty of every person to make a reasonable use of his own property so as to occasion no unnecessary damage or annoyance to his neighbor." Myrick v. Peck Elec. Co., 2017 VT 4, ¶ 4, 204 Vt. 128, 164 A.3d 658 (quotation omitted). A private nuisance is

accordingly defined as a substantial and unreasonable interference with a person's interest in the use and enjoyment of land. Coty, 149 Vt. at 457, 546 A.2d at 201; accord Post & Beam Equities Grp., LLC v. Sunne Vill. Dev. Prop. Owners Ass'n, 2015 VT 60, ¶ 24, 199 Vt. 313, 124 A.3d 454. An interference is substantial if it exceeds "the customary interferences a land user suffers in an organized society," Coty, 149 Vt. at 457, 546 A.2d at 201 (quotation omitted), and unreasonable if "the gravity of the harm outweighs the utility of the actor's conduct," Post & Beam Equities Grp., LLC, 2015 VT 60, ¶ 25 (quotation omitted).

¶ 27. In denying the Joneses' motion for a new trial, the trial court concluded that there was sufficient evidence for a jury to find that the Joneses engaged in private nuisance because they:

> [R]emained present in the Welch Loop where their presence interfered with the snow plower's ability to clear the Welch Loop of snow; that the Joneses cleared areas of snow outside of their easement areas, and entered and cleared snow from portions of Welch Loop beyond their car parking spot and access easements where they had no right to go; and that for a time, the Joneses parked a long recreational vehicle on Main Street, near the Welch Loop ingress/egress road cut, such that the parked vehicle restricted views as Mr. Hart or his property users exited Welch Loop. The alleged conduct of the Joneses also included their taking pictures of Mr. [Hart] when he was in or around Welch Loop, and Mr. Jones allegedly driving into the Welch Loop while Mr. Hart was present, at an unsafe speed. During the operative time of the events (after the last trial), each side contended the other had made certain unkind comments towards the other.

¶ 28. The Joneses argue that by concluding this conduct amounted to a private nuisance, the trial court expanded the scope of traditional private nuisance—which is based on a substantial and unreasonable interference with land—and turned it into a "catch-all cause of action" that "would expose any person who has a dispute with his or her neighbor to a lawsuit and damages for annoyance and discomfort." Citing § 399 of D. Dobbs et al., The Law of Torts (2d. ed 2021), the Joneses submit that a private nuisance typically requires activities that cause "pollution of air, water, or land by dust or smoke, odors, chemicals, or noise." By contrast, the Joneses argue, the

acts and conduct at issue here are the exact kind of unpleasant and minor inconveniences that accompany everyday life in modern society.

¶ 29. Based on general principles of nuisance law, and decisions from other jurisdictions, we conclude that a sustained and intentional campaign to annoy a neighbor by interfering with the use and enjoyment of the neighbor's property can amount to a private nuisance. Affording the trial court's decision denying the Joneses' motion for a new trial all presumptive support, we conclude that the trial court did not abuse its discretion because there was legally sufficient evidence for a jury to find that the Joneses' conduct amounted to a private nuisance on the basis that they engaged in a sustained and intentional campaign to annoy and harass Hart.[6]

¶ 30. Nuisance law, as the Joneses correctly observe, "does not concern itself with trifles, or seek to remedy all the petty annoyances of everyday life in a civilized community." Rattigan v. Wile, 841 N.E.2d 680, 686 (Mass. 2006) (quotation omitted). As the Restatement emphasizes:

> Life in organized society and especially in populous communities involves an unavoidable clash of individual interests. Practically all human activities unless carried on in a wilderness interfere to some extent with others or involve some risk of interference, and these interferences range from mere trifling annoyances to serious harms. It is an obvious truth that each individual in a community must put up with a certain amount of annoyance, inconvenience and interference and must take a certain amount of risk in order that all may get on together. The very existence of organized society depends upon the principle of "give and take, live and let live," and therefore the law of torts does not attempt to impose liability or shift the loss in every case in which one person's conduct has some detrimental effect on another. Liability for damages is imposed in those cases in which the harm or risk to one is greater than he ought to be required to bear under the circumstances . . . .

[6] Although we review the trial court's denial of the Joneses' motion for a new trial for abuse of discretion, we review the trial court's resolution of legal questions folded into that determination without deference. See Golden v. Worthington, 2020 VT 71, ¶ 7, __ Vt. __, 239 A.3d 259 ("Our review of questions of law is nondeferential and plenary" (alteration omitted) (quotation omitted))). Sufficiency of evidence is a legal question that we review without deference to the trial court. See State v. Bourgoin, 2021 VT 15, ¶ 23, __ Vt. __, __ A.3d __ ("[W]e review appeals challenging the sufficiency of the evidence without deference to the trial court.")

Restatement (Second) of Torts: Nuisance § 822 cmt. g (1979). It follows that a private nuisance requires a substantial and unreasonable interference with the use and enjoyment of land. Post & Beam Equities Grp., LLC, 2015 VT 60, ¶ 24.

¶ 31. Most of Vermont case law on private nuisance, as the Joneses also correctly observe, involves either physical interference with the use of land or a category of invasions—as Professor Dobbs characterizes them—that "can be loosely called pollution." Dobbs et al., supra, § 398; see, e.g., Post & Beam Equities Grp., LLC, 2015 VT 60, ¶ 25 (upholding determination that blocking access to property with guardrail constituted nuisance); Coty, 149 Vt. at 454, 457-58, 546 A.2d at 200, 201-02 (affirming trial court's conclusion that defendant's farm amounted to private nuisance because, among other things, defendant left hundreds of animal carcasses to rot and placed excessive manure, which created "powerful stench" and contaminated drinking wells); Pierce v. Riggs, 149 Vt. 136, 139, 540 A.2d 655, 657 (1987) (concluding that plaintiff's affidavit, which alleged in part that defendants kept number of dogs on property that barked so loudly as to prevent plaintiff from sleeping, made out sufficient case for nuisance); Gifford v. Hulett, 62 Vt. 342, 346-47, 19 A. 230, 231 (1890) (holding that barn was private nuisance because manure was placed near plaintiff's property, causing offensive smells).

¶ 32. But it is well recognized that nuisance law protects the "interest in the use and enjoyment of land," which includes both "the actual present use of land for residential, agricultural, commercial, industrial" and similar purposes, as well as "the pleasure, comfort and enjoyment that a person normally derives from the occupancy of land." Restatement (Second) of Torts: Nuisance § 821D cmt. b. The latter "is often as important to a person as freedom from physical interruption with his use or freedom from detrimental change in the physical condition of the land itself." Id.; see also id. § 827 cmt. d ("The loss or detriment to a person from personal discomfort or annoyance may be, and often is, just as serious to him as the loss or detriment from the destruction or

impairment of the physical things he is using."). Private nuisance is accordingly not limited to pollution-based or physical interferences in the use and enjoyment of land.

¶ 33. There are several caveats, however, to the principle that nuisance law protects the interest in pleasure, comfort, and enjoyment in land. First, freedom from annoyance and discomfort in the use of land, "is to be distinguished from the interest in freedom from emotional distress," which is "purely an interest of personality and receives limited legal protection." Myrick, 2017 VT 4, ¶ 5 (quotation omitted). As we illustrated in Myrick, "a complaint that solar panels are casting reflections and thereby interfering with a neighbor's ability to sleep or watch television" involves "a potential interference with the use or enjoyment of property," whereas a claim that solar panels are unattractive involves merely emotional distress. Id.

¶ 34. Second, while nuisance law protects the interest in pleasure, comfort, and enjoyment in land, it is also a bedrock principle of nuisance law that "each individual in a community must put up with a certain amount of annoyance, inconvenience and interference." Restatement (Second) of Torts § 822 cmt. g. The interest in the pleasure, comfort, and enjoyment in land is accordingly invaded only when there is an interference that involves more than "the petty annoyances of everyday life in a civilized community." Rattigan, 841 N.E.2d at 686 (quotation omitted). As compared to other categories of invasions, however, it is generally harder to demonstrate that an interference causing annoyance and discomfort is both substantial and unreasonable. As the Restatement explains, as a general principle "[p]hysical damage to things involves a more tangible, obvious loss than discomfort and annoyance." Restatement (Second) of Torts § 827 cmt. d. While "there is seldom any doubt as the significant character" of an interference that "involves a detrimental change in the physical condition of land," when an interference "involves only personal discomfort or annoyance, it is sometimes difficult to determine whether the invasion is significant." Id. § 821F cmt. d.

¶ 35. Similarly, it is more difficult to show that an interference involving discomfort or annoyance is unreasonable because the "gravity of harm through destruction of physical things is generally greater than the gravity of harm through mere annoyance or discomfort." Id. § 826 cmt. d. Accordingly, if an interference "involves physical damage to tangible property, the gravity of the harm is ordinarily regarded as great even though the extent of the harm is relatively small." Id. § 827 cmt. d. By contrast, if the interference "involves only minor and temporary personal discomfort and annoyance, the gravity of the harm may be regarded as slight." Id. The general rule that emerges is that "[m]inor interferences that are not repeated or continued for any length of time do not ordinarily involve much harm." Id. § 827 cmt. c.

¶ 36. On the other hand, if the activity causing the interference has no utility, less harm is required to demonstrate that an interference causing discomfort and annoyance is unreasonable. Id. § 828 cmt. e ("If . . . the primary purpose of the conduct is malicious, illegal or contrary to common standards of decency, it quite clearly lacks social value since the achievement of malicious, illegal or indecent purposes and objectives is destructive of the general public good."). One specific example of an activity that has no utility is a person intentionally annoying and harassing a neighbor. Id. § 829 cmt. c (explaining that where one's sole purpose is to annoy and harm his neighbor, "conduct has no utility which the law will recognize"); see also Coty, 149 Vt. at 458, 546 A.2d at 202 ("[T]he great majority of jurisdictions have held that where a defendant has acted solely out of malice or spite, such conduct is indefensible on social utility grounds, and nuisance liability attaches.").

¶ 37. Consistent with these general principles of nuisance law, several jurisdictions have recognized that a sustained and intentional campaign to annoy a neighbor can amount to a private nuisance. Although such campaigns primarily involve only discomfort and annoyance—and therefore cause relatively little harm, as compared to other categories of interferences—they

qualify as a private nuisance because the harassment and annoyance is repeated over a prolonged period and the activity causing the interference has no utility.

¶ 38. For example, in Griffin v. Northridge, the defendants appealed a jury verdict that they had engaged in a private nuisance, arguing that there was not a sufficient evidentiary basis to support a private-nuisance claim in part because they committed no specific unlawful acts. 153 P.2d 800, 801 (Cal. Dist. Ct. App. 1944). The court disagreed, explaining that if "the contention were established that defendants did no unlawful acts and therefore created no nuisance, the maintenance of a comfortable home in a city would be imperiled by the presence of a neighbor who would wil[l]fully frustrate the peace and comfort of another." Id. at 803. By continuously harassing and annoying plaintiffs, and therefore interfering with the plaintiffs' "comfortable enjoyment of life and of their home," the court concluded that defendants' actions amounted to private nuisance. Id. The trial court found that defendants, among other things, maliciously trampled plaintiffs' flower beds; placed a "malodorous garbage can" in close proximity to plaintiffs' dining room windows; slung paint on plaintiffs' house; approached the property line on many occasions shouting epithets at plaintiffs; marked the property boundary with a line to which they tied can tops, which constantly clanged; screamed into plaintiffs' windows when they were hosting guests; and dissuaded a buyer from purchasing plaintiffs' home after she had deposited $1000 on the purchase price. Id. at 801-02.

¶ 39. Similarly, in Burnett v. Rushton, the Florida Supreme Court concluded that the appellant engaged in a private nuisance because the record disclosed "a deliberate course of conduct carried on more than three years, heaping abuse and insult upon [her neighbor] and his family." 52 So. 2d 645, 646 (Fla. 1951). The record specifically indicated that the appellant, among other things, had willfully "operated her lawn mower in an unnecessarily noisy manner at an early hour of the morning in close proximity" to her neighbor's bedroom; "operated her radio in a loud tone" for long periods of time at various times a day, including at night; directed obscene

gestures at her neighbor's family; and committed other "acts with the deliberate purpose of harassing [her neighbor] and his family." Id. at 645.

¶ 40. More recently, the Georgia Court of Appeals affirmed a jury verdict of private nuisance, reasoning that the defendant deprived the plaintiffs' use and enjoyment of their property by harassing them—specifically, entering their property with a gun and asking the plaintiff to get a gun to resolve their differences right then and there, and on other occasions, pulling his vehicle onto the plaintiffs' property and just sitting there. Wooten v. Williams, 803 S.E.2d 782, 785 (Ga. Ct. App. 2017). In a brief opinion, a New York appellate court affirmed a trial court's conclusion that a tenant committed a private nuisance by engaging in a course of conduct over several years to harass, annoy, threaten, and intimidate her neighbors. The trial court found that the tenant engaged in confrontational and verbally abusive behavior by provoking arguments and cursing at building occupants and employees. The tenant also allowed her dogs to jump at people in a way that looked like they would bite, and, at least two occasions, the police were called because of the tenant's behavior. 405 E. 56th St., LLC v. Morano, 860 N.Y.S. 2d 784, 784-85 (App. Term 2008).

¶ 41. Applying these principles to this case, the trial court did not abuse its discretion in denying the Joneses' motion for a new trial because, viewing the evidence in the light most favorable to Hart, there was sufficient evidence for a jury to find that the Joneses committed a private nuisance by engaging in a prolonged and intentional scheme to annoy and harass Hart over a six-year period. Hart testified that following the 2012 trial, the Joneses harbored ill will towards him because they were unhappy with the result of the jury verdict, and, as a result, engaged in vicious, malicious, and abusive conduct that deprived him of the use and enjoyment of his property. He explained that the Joneses were trying to hurt him and bury him financially and morally.

¶ 42. Hart testified to the numerous ways that the Joneses made him uncomfortable and fearful for his physical safety while he was on his property. He testified that Janet threatened to hire a hitman to kill him, menacingly approached him with a shovel, hit his feet with a shovel, and

threw snow at his face. Hart further testified that after two hearings, a court concluded that Janet's conduct amounted to a prima facie case of stalking. Hart explained that he thought Janet might "go off" and physically harm him at any moment. In addition, Matthew Wood, Hart's plow driver, testified that he witnessed Janet standing in the easement, appearing to take pictures of Hart's home, and Hart thought that she was trying to take pictures of him while he was in his bedroom, which made Hart uncomfortable. In regard to Robert, Hart testified that he was on edge when he was in the Welch Loop because on several incidents Robert intentionally drove by Hart at a high rate of speed, almost hitting him. Hart further testified that Robert gets angry and expressed his concern that Robert would physically harm him.

¶ 43. There was also significant evidence that, as part of an effort to assert ownership over the Welch Loop and keep the costs of plowing down, the Joneses knowingly and repeatedly interfered with Hart's ability to plow his driveway and shoveled in violation of the orders issued after the 2012 trial. Hart testified that following the 2012 trial, he bought a plow truck and hired Wood to plow the Welch Loop. However, the Joneses repeatedly interfered with Hart's ability to plow the driveway. Hart testified that, while he and his drivers would attempt to plow the driveway, the Joneses repeatedly would "jump[] in and out of the plow truck[]," take pictures, and yell at them. The Joneses would often get within a few feet of the blade of the plow truck and then threaten to sue Hart and his drivers if anybody got hurt in the driveway. As a result, Hart explained that he had gone through three snowplow drivers since 2012. He testified that the Joneses "verbally assaulted" Wood, his first plow driver, for six years until he ultimately quit because he was worried that the Joneses would sue him.

¶ 44. Wood similarly testified that "[j]ust about every time" he pulled in the driveway, Janet would come out and frantically start taking pictures. The Joneses would regularly be in the general vicinity of the truck while Wood would try to plow, and Wood was concerned that he would hit Janet, especially because the Joneses would threaten to sue him. Hart's mother testified

that she would receive calls from Wood asking what to do because the Joneses were in the driveway and he did not want to hit anyone. In 2018, Wood explained that he stopped plowing because "[i]t became too stressful for [him] to go down there."

¶ 45. In addition, although the orders issued after the 2012 jury trial clarified that the Joneses were only allowed to shovel their easement if they had to leave and the easement was not yet plowed, Hart testified that the Joneses regularly cleared the entire Welch Loop area. This shoveling, he explained, occurred at all hours of the night, including at one or two in the morning. Wood similarly testified that when he arrived, the Joneses would often have done significant shoveling, and shoveled so completely, he did not need to plow. Once or twice, the Joneses told Wood that the easement did not need to be plowed because they were shoveling it. Other times, the Joneses had shoveled, but he plowed to clean up the rest of the loop. And other times, the Joneses shoveled so completely that Wood did not need to plow.

¶ 46. On cross-examination, Robert acknowledged that he shoveled other times than when he needed to leave, understood that Hart objected to that, and that he and his wife have "been pretty much unwilling to work [with Hart] on anything." When asked if he ever blocked Hart's ability to plow the easement, Robert acknowledged that his actions "could be seen that way." He explained that he was not trying to prevent plowing, but many times "we'd ask them why they were plowing when it was already . . . shoveled." Similarly, Robert acknowledged that he had "done quite a bit of snow removal" and that he understood Hart was objecting to that.

¶ 47. Finally, there was also evidence that the Joneses intentionally parked their motorhome in the Route 5 right-of-way to annoy Hart, which interfered with access to the Welch Loop. Hart testified that during the August 2012 site visit, the judge told the Joneses they could not park their motorhome in the Welch Loop in front of their home because it was in the way. Following the site visit, however, Hart testified that the Joneses parked their motorhome in the

right-of-way to taunt him. On cross-examination, Robert acknowledged that he knew Hart did not like the motorhome parked there, but he did so anyway.

¶ 48. Several witnesses testified that the motorhome posed a danger because it impeded access to and from the Welch Loop. Hart testified that when the motorhome was in the right-of-way it impeded access because it was almost sticking out into the loop and posed a level of danger because you could not see past it when pulling out of the loop onto Route 5. As a result, on one occasion, he almost hit someone biking by. Hart's mother and sister similarly testified that when the motorhome was parked in the right-of-way, it obstructed the entrance and exit because you could not see cars coming either way. Wood testified that the motorhome posed a danger in the right-of-way because you could not "see past it until you're out in the road." The Joneses' next-door neighbor also testified that the motorhome created visibility problems in the right-of-way.

¶ 49. In sum, considering the totality of the circumstances, there was sufficient evidence for a jury to find that the Joneses' conduct amounted to a private nuisance because over a six-year period they engaged in a sustained and intentional campaign to annoy and harass Hart.

C. Damages

¶ 50. Finally, the Joneses argue that the trial court abused its discretion in denying their motion for a new trial because the jury's award of $30,000 in damages for private nuisance ($15,000 individually against Janet and Robert) is not supported by the evidence and indicates jury confusion. In their motion for a new trial, the Joneses argued, among other things, that the damage award was not justified because Hart did not present any evidence of actual damages. The court agreed with the Joneses that Hart presented no evidence that their conduct caused Hart "any significant new out-of-pocket expenses," and Hart was therefore not entitled to compensatory damages for economic losses. However, the court concluded that the $30,000 verdict was supported by the evidence of the "nontangible harmful impact . . . the Joneses' conduct [had] on [Hart's] use and enjoyment of [his] property."

¶ 51. On appeal, the Joneses argue that the damage award is not supported by the evidence because Hart presented no evidence of economic injury. Furthermore, because the named plaintiff is the Hart Trust, not Hart in his individual capacity, they contend that Hart is not entitled to noneconomic damages. Even if Hart is entitled to noneconomic damages, the Joneses argue that there is no evidence of such damages. Finally, the Joneses argue that the jury may have improperly awarded deterrence damages based on Hart's counsel's closing argument.

¶ 52. We conclude that the parties agreed by consent to treat Hart as a named plaintiff in his individual capacity. In addition, we conclude that the jury's award of damages is supported by the evidence. Finally, we conclude that the jury did not award deterrence damages because we presume the jury followed the court's instructions, which provided that the jury could not award such damages.

1. Noneconomic Damages

¶ 53. The Joneses first argue that Hart is not entitled to noneconomic damages because he is not a named plaintiff in his individual capacity, and the Hart Trust is a legal fiction that cannot suffer personal injury. While there was discussion about amending the pleadings, the Joneses point out that Hart never actually filed a motion to amend the pleadings to name Hart, in his individual capacity, as a named plaintiff. In addition, while the jury instructions sometimes refer to claims brought by Hart and the Hart Trust, they specifically say that the private-nuisance claim is brought by the Hart Trust. We conclude that the record indicates that the parties agreed to proceed with Hart as a named plaintiff in his individual capacity.

¶ 54. "Although parties are generally required to identify their legal claims and specify their requests for judgments in their pleadings, courts may address issues tried by consent." VTRE Investments, LLC v. MontChilly, Inc., 2020 VT 77, ¶ 13, __ Vt. __, 249 A.3d 646; see also V.R.C.P. 8(a) (providing that complaint shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and "a demand for judgment for the relief the pleader

seeks"). Vermont Rule of Civil Procedure 15(b) provides that "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." "[T]o find consent for an unpleaded issue, it must appear that the injured party understood the evidence was introduced to prove the unpleaded issue." In re Waitsfield-Fayston Tel. Co., 2007 VT 55, ¶ 19, 182 Vt. 79, 928 A.2d 1219 (alteration omitted) (quotation omitted).

¶ 55. After the Joneses filed suit against Hart in January 2015, Hart filed several counterclaims against the Joneses. In Hart's complaint, however, he only referred to claims brought by Hart, as trustee of the James H. Hart Realty Trust. In January 2017, Hart moved for a restraining and protective order against the Joneses, arguing that because of the long history of animosity and abuse, the trust was entitled to some sort of protection. In an entry order denying the motion, the court explained that, based on Hart's allegations and the proposed order, Hart was seeking a protective order in his individual capacity. The problem, the court continued, was that Hart was only a party in his capacity as trustee of the James H. Hart Realty Trust, not in in his individual capacity. Because the allegations in the motion for a protective order related to Hart's personal interactions with the Joneses and did not implicate the trust, the court denied the motion and directed Hart to file a separate action to pursue a protective order under Vermont's anti-stalking statute.

¶ 56. This issue reemerged the day before trial when the court issued an order, explaining that while preparing draft jury instructions, it became apparent that there was an outstanding issue regarding the proper party for certain claims. It explained that in the amended complaint and counterclaim, the defendant was identified as James Hart in his trustee capacity, as opposed to his individual or personal capacity, and issues existed as to whether certain claims could be "asserted against, or by, a trustee in his or her representative capacity, versus a person in an individual capacity." The court informed the parties it would address the issue at the pretrial conference.

¶ 57. At the pretrial conference, the court reiterated that it wanted to straighten out the "party-in-interest" issue because if monetary relief was "awarded to the [Joneses], . . . it may be very important if the party in interest had [a] judgment against [defendant] as the trust or the individual." While Hart's counsel responded that he had an amended complaint, the court said that "if everyone is agreeing, on the record, that [Hart] is both being sued, in pursuing the suits, as trustee and individually . . . I think we covered the issue." A few minutes later, as the court was reading through the preliminary jury instructions, Hart's counsel requested additional clarification on who the Joneses were suing, explaining that he thought the only relief the Joneses were "seeking [was] against the trust, not against Mr. Hart." The Joneses' counsel responded that he was persuaded by the court "that it was wiser" to seek relief against Hart as trustee and in his individual capacity. The record clearly indicates that notwithstanding the pleadings, the Joneses agreed to treat Hart as a named plaintiff in his individual capacity.

2. Sufficiency of the Evidence

¶ 58. The Joneses alternatively assert that there is no evidence Hart suffered inconvenience and annoyance damages arising out of interference with land because Hart only testified to suffering emotional stress and worry from the ongoing litigation. He did not testify, according to the Joneses, that the conduct creating the private nuisance caused inconvenience, annoyance, or discomfort. Our review is limited to considering "whether the jury could reasonably have found its verdict for damages on the evidence before it." Madden, 2008 VT 25, ¶ 14 (quotation omitted). "First the jury, and then the court in ruling on the motion to set aside [the verdict], have the liberty of broad discretionary judgment." Lorrain v. Ryan, 160 Vt. 202, 209, 628 A.2d 543, 548 (1993) (alteration omitted) (quotation omitted). Viewing the evidence in the light most favorable to Hart, we conclude that the trial court did not abuse its discretion in denying the Joneses' motion for a new trial because the $30,000 verdict can be justified on a reasonable view of the evidence. Hart testified to numerous incidents where the Joneses' general campaign

to annoy and harass caused him annoyance, discomfort, and inconvenience. Coty, 149 Vt. at 464, 546 A.2 at 205 ("Where an abatable nuisance is found to exist, the award of damages can properly include . . . compensation for personal injuries such as annoyance, discomfort, and inconvenience."); Riggs, 149 Vt. at 140, 540 A.2d at 658 (recognizing that damages for private nuisance can include "special damages for discomfort and inconvenience").

3. Deterrence Damages

¶ 59. Finally, the Joneses argue that the jury may have improperly awarded deterrence damages. The remedy for trespass may include either nominal damages, compensatory damages, or a permanent injunction if "damages are inadequate to address the wrong." Evans v. Cote, 2014 VT 104, ¶ 8, 197 Vt. 523, 107 A.3d 911; see also Doria v. Univ. of Vt., 156 Vt. 114, 119, 589 A.2d 317, 319 (1991) (distinguishing between nominal and compensatory damages). The Joneses argue, however, that the jury may have improperly awarded deterrence damages based on Hart's counsel's closing arguments, in which he told the jury:

> As far as the nuisance damages are concerned, it's important to just assess sufficient damages in the aggregate. So you're going to have different spaces for damages. And I just would encourage you to look at what those add up to, so that in the aggregate you are awarding sufficient damages to stop the wrongful conduct. It's not your role to issue injunctions; that's a role only for the court. So all you can do is say, did these things occur, and if so, for the past conduct, what is the reasonable amount to award? And so we'd ask you to come up with an amount that's reasonable but certainly sufficient to deter the conduct, which has not been deterred to date.

¶ 60. In reviewing a jury verdict, "we must presume that the jury has followed the trial court's instructions." Johnson v. United Parcel Serv., 2006 VT 57, ¶ 10, 180 Vt. 513, 904 A.2d 1089 (mem.). Here, the court instructed the jury on damages as follows:

> The basic principle of damages is that a person who has been wronged may recover just and adequate monetary compensation for all of the losses that were proximately caused by the defendant. The purpose of compensation is to restore a person damaged, as nearly as possible, to the position he or she would have been in had the wrong not occurred. The party damaged is not entitled to be put in

> a better position than she would have been in had there been no wrongful conduct by the opposing party.
>
> . . .
>
> Please note that any amount of recovery which may have been suggested by the attorneys is not evidence. You need not adopt the approaches they have suggested. As the jury, it is your obligation to arrive at an amount which is supported by the evidence.

Based on these jury instructions, we presume that the jury did not award deterrence damages because they were specifically and repeatedly told that they could only award damages to compensate for losses, whether economic or for discomfort and inconvenience, based on the evidence and not on the attorney's arguments.

III. Motion for Remittitur on Private Nuisance

¶ 61. Finally, the Joneses argue that the trial court erred in denying their motion for remittitur on the private-nuisance claim because the $30,000 verdict was clearly excessive. "Remittitur is within the sound discretion of the trial court, and its ruling will not be set aside on appeal absent abuse of discretion." Follo v. Florindo, 2009 VT 11, ¶ 55, 185 Vt. 390, 970 A.2d 1230 (quotation omitted). "Remittitur is appropriate only if the jury's verdict is outside the universe of possible awards which are supported by the evidence." Mathieu Enters., Inc. v. Patsy's Cos., 2009 VT 69, ¶ 10, 186 Vt. 557, 978 A.2d 481 (mem.) (quotation omitted). "Unless grossly excessive, this Court will not interfere with an award of damages . . . where exact computation is impossible." Madden, 2008 VT 25, ¶ 23 (quotation omitted).

¶ 62. Following the jury verdict, the Joneses filed a motion for remittitur arguing that because Hart presented no actual evidence of damages, he was at most entitled to nominal damages. The trial court denied the Joneses' motion, concluding that they misconstrued the scope of compensatory damages in a private-nuisance claim. While the court agreed that there was no evidence to support economic damages, it explained that discomfort and inconvenience damages are available in private nuisance. Considering the "nontangible harmful impact of the Joneses'

conduct on [Hart's] use and enjoyment of [his] property," the court concluded that the $30,000 verdict was not outside the universe of possible awards.

¶ 63. On appeal, citing Coty, the Joneses argue that the $30,000 verdict is clearly excessive. In Coty, the trial court concluded that the defendant's pig farm was a private nuisance that interfered with his neighbors' use and enjoyment of their property. 149 Vt. at 456-57, 546 A.2d at 200-01. It explained that for over two-and-a-half years, the defendant maliciously operated the farm to annoy his neighbors. The farm contained hundreds of sickly animals that were not properly cared for and decomposing carcasses were left in an uncovered pit. The defendant also placed excessive manure, resulting in flies, a powerful stench, and the contamination of the neighbors' wells. Two neighbors were awarded $50,000 and $60,000 in compensatory damages because the defendant's conduct deprived them the full use and enjoyment of their property, which we affirmed on appeal. Id. at 463-64; 546 A.2d at 205.

¶ 64. The Joneses argue that Coty indicates the $30,000 award in this case is grossly excessive because the conduct in Coty was "several orders of magnitude worse" than the conduct here, and the neighbors were only awarded $50,000 and $60,000 in compensatory damages. We disagree. Our analysis in Coty with respect to the award of $50,000 and $60,000 in compensatory damages had nothing to do with whether those awards were excessive because the defendant did not argue that the compensatory damages were excessive; instead, he argued they were duplicative because the court separately awarded those two neighbors $15,500 and $15,300 for business losses. Id. We rejected this argument, explaining that the trial court distinguished between the neighbors' "proprietary damages and personal damages" and awarded "full compensatory damages for all plaintiffs as residents and then awarded specific, additional amounts to [neighbors] as compensation for their business losses." Id. This conclusion, as the trial court explained below in this case, "does not answer the question [of] whether an even greater award for annoyance, discomfort and inconvenience damages would have withstood a challenge on appeal as being

excessive." In sum, Coty does not require a conclusion that the trial court abused its discretion in denying the Joneses' motion for remittitur.

IV. Motion for Remittitur on Private Trespass

¶ 65. On cross-appeal, Hart argues that the trial court erred in granting the Joneses' motion for remittitur on the private-trespass claim because the $30,000 verdict was not grossly excessive. As outlined above, "[r]emittitur is within the sound discretion of the trial court, and its ruling will not be set aside on appeal absent abuse of discretion." Florindo, 2009 VT 11, ¶ 55 (quotation omitted). We conclude that Hart has not demonstrated that the trial court abused its discretion in granting the Joneses' motion for remittitur.

¶ 66. "A person who intentionally enters or remains upon land in the possession of another without a privilege to do so is subject to liability for trespass." Harris v. Carbonneau, 165 Vt. 433, 437, 685 A.2d 296, 299 (1996). Unlike private nuisance, which requires "substantial harm as a liability threshold," trespass is "liability-producing regardless of the degree of harm the invasion cause[s]." Adams v. Cleveland-Cliffs Iron Co., 602 N.W.2d 215, 219 n.9. (Mich. Ct. App. 1999) (quotation omitted). This is so because repeated trespass "might be used as evidence of title" and thereby infringe the rights of a property owner. Evans, 2014 VT 104, ¶ 17 (quotation omitted). Accordingly, even when there is no evidence of damages, invasion of private property rights still requires "some recognition, even if only by way of nominal damages." Clark v. Aqua Terra Corp., 133 Vt. 54, 58, 329 A.2d 666, 668 (1974); see also John Larkin, Inc. v. Marceau, 2008 VT 61, ¶ 9, 184 Vt. 207, 959 A.2d 551 ("Plaintiffs showing a direct and tangible invasion of their property may obtain injunctive relief and at least nominal damages without proof of any other injury." (citing Adams, 602 N.W.2d at 219)). "Unlike compensatory damages, nominal damages do not compensate the injured party for any actual loss, but rather, are a trivial amount awarded for the infraction of a legal right, where the extent of the loss is not shown, or where the right is

one not dependent upon loss or damage." Doria, 156 Vt. at 119, 589 A.2d at 319 (quotation omitted).

¶ 67. Following the jury verdict, the Joneses filed a motion for remittitur arguing that the private-trespass verdict was clearly excessive because Hart presented no evidence of actual damages to his property and damages for pain and suffering are not permitted for private trespass. In reply, Hart asserted that the verdict was reasonable based on the evidence at trial, especially given Hart's counsel's closing argument that the $15,000 jury verdict for private trespass in the 2012 trial was insufficient to curb the Joneses' wrongful conduct.

¶ 68. The trial court granted the motion. First, the court explained that because deterrence is not an element of damages for private trespass, it did not direct the jury to consider deterrence in awarding damages. Thus, the question was whether the jury award " '[could] be justified on any reasonable view of the evidence,' devoid of any deterrence damage component." The evidence viewed in the light most favorable to Hart, the court summarized, indicated that the Joneses trespassed by "placing parking spot snow in the easement area; removing snow from the easement area beyond reasonable times needed to use the parking spots; and being and remaining present in the easement area while the plow person tried to clear away snow."

¶ 69. Based on this evidence, the court concluded that the private trespass damage verdict was clearly excessive because there was no evidence Hart suffered damages as a result of the Joneses' trespasses. The court explained that there was no evidence the Joneses' trespass caused any significant damage to Hart's property. Furthermore, citing § 929 of the Restatement (Second) of Torts,[7] the court acknowledged that annoyance and discomfort damages may be available in a

[7] Section 929 of the Restatement provides that damages for "harm to land" may include compensation for "(a) the difference between the value of the land before the harm and the value after the harm, or at his [or her] election in an appropriate case, the cost of restoration that has been or may be reasonably incurred, (b) the loss of use of the land, and (c) discomfort and annoyance to him [or her] as an occupant." Restatement (Second) of Torts § 929.

private-trespass claim, but concluded that Hart presented no evidence of such damages. It explained that while annoyance and discomfort damages are available in both private nuisance and trespass, the scope of such damages is narrower for private trespass and is limited to trespasses that "cause substantial bodily harm or serious sickness." Without any evidence of damages, the court determined that Hart was only entitled to nominal damages and offered him a remittitur of $1000.

¶ 70. On appeal, Hart appears to concede that the Joneses' trespasses did not cause property damage; instead, he argues that $30,000 is a reasonable assessment of the harm caused because the Joneses' repeated trespasses interfered with his ability to plow the driveway. As compared to the nuisance claim, however—which involved a series of actions that interfered with Hart's use and enjoyment of his property—interfering with plowing involves relatively minor harm. In addition, Hart presents no legal argument as to why the court erred in concluding that the scope of annoyance and discomfort damages for private trespass is limited to substantial bodily harm or serious sickness. Because the only harm that Hart argues the Joneses' trespasses caused was interfering with plowing, and he does not challenge the court's legal conclusions regarding the scope of annoyance and discomfort damages, he has not demonstrated that the court abused its discretion in granting the Joneses' motion for remittitur.

Affirmed.

FOR THE COURT:

Associate Justice