

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
CIVIL ACTIONS BRANCH**

NESSA COPPINGER, *et al.*,

Plaintiffs,

v.

MOZELLA BOYD JOHNSON, *et al.*,

Defendants.

Case No.: 2014 CA 7715 B
Judge: Hon. Ronna L. Beck
Next event: Initial scheduling conference
March 6, 2015

PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs Brendan and Nessa Coppinger, by their undersigned counsel and pursuant to Super. Ct. Civ. R. 65(b), apply for a temporary restraining order to immediately enjoin the ongoing nuisance of heavy secondhand marijuana and cigarette smoke in their home caused by the frequent smoking of Defendant Edwin Gray and/or his fellow residents or guests, without adequate ventilation and/or containment, at Defendant Mozella Boyd Johnson's property. The specific grounds for this application are set forth in the accompanying statement of points and authorities. A proposed order is filed herewith.

Per Super. Ct. Civ. R. 12-I(a), Plaintiffs have repeatedly asked Defendants to grant the requested relief. Defendants have consistently refused or ignored the requests.

ORAL HEARING REQUESTED

Respectfully submitted:

/s/

Eric L. Klein (Bar No. 993268)
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005-3311
202-789-6000 (o) • 202-789-6190 (f)
eklein@bdlaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2015, a copy of the foregoing Plaintiffs' Application for Temporary Restraining Order and Statement of Points and Authorities in support thereof were filed and served via CaseFileXpress, and served via first-class mail, postage prepaid, on the following parties:

Mozella Boyd Johnson
10 W Street, NW
Washington, DC 20001

Edwin Gray
830 5th Street, NE
Washington, DC 20002

Personal service of the aforementioned documents was attempted as of the same date at the same addresses, and will be pursued until confirmation of receipt in some form is obtained.

/s/
Eric L. Klein

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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TEMPORARY RESTRAINING ORDER

The Court has considered Plaintiffs' January 15, 2015 Application for a Temporary Restraining Order ("Application"), Plaintiffs' Statement of Points and Authorities in support thereof, any opposition thereto, and the applicable law.

For the reasons set forth in Plaintiffs' Statement of Points and Authorities at § I, the Court believes that the Plaintiffs are likely to succeed on the merits of their claims. The Court further believes that the Plaintiffs will suffer an irreparable injury in the absence of a Temporary Restraining Order, and that the harm to the Plaintiffs in the absence of a Temporary Restraining Order outweighs the harm to the Defendants by the injunctive relief requested. Finally, the public interest is not implicated in this case such as to affect the Court's conclusions.

Accordingly, this ____ day of _____, 2015, at ____ a.m./p.m., it is hereby

ORDERED that Plaintiffs' Application for a Temporary Restraining Order is
GRANTED. It is further

ORDERED that Defendants Mozella Boyd Johnson and Edwin Gray, as well as their tenants, fellow residents or guests at 830 Fifth Street, NE, Washington, D.C., are temporarily

prohibited from smoking or burning any chemical or substance in the interior of 830 Fifth Street, NE, or allowing any such smoking or burning to occur therein. This injunction does not include, and does not prohibit, any burning, smoking, or other cooking required to prepare food.

Honorable Ronna L. Beck
Associate Judge
Superior Court of the District of Columbia

Copy:

Mozella Boyd Johnson
10 W Street, NW
Washington, DC 20001

Edwin Gray
830 5th Street, NE
Washington, DC 20002

Brendan and Nessa Coppinger
via counsel per CaseFileXpress

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Brendan and Nessa Coppinger, by their undersigned counsel and pursuant to Super. Ct. Civ. R. 65(a), move for a preliminary injunction to enjoin the ongoing nuisance of heavy secondhand marijuana and cigarette smoke in their home caused by the frequent smoking of Defendant Edwin Gray and/or his fellow residents or guests, without adequate ventilation and/or containment, at Defendant Mozella Boyd Johnson's property. The specific grounds for this motion are set forth in the accompanying statement of points and authorities. A proposed order is attached.

Per Super. Ct. Civ. R. 12-I(a), Plaintiffs have repeatedly asked Defendants to grant the requested relief. Defendants have consistently refused or ignored the requests.

ORAL HEARING REQUESTED

Respectfully submitted:

/s/

Eric L. Klein (Bar No. 993268)
BEVERIDGE & DIAMOND, P.C.
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2015, a copy of the foregoing Plaintiffs' Motion for Preliminary Injunction and Statement of Points and Authorities in support thereof were filed and served via CaseFileXpress, and served via first-class mail, postage prepaid, on the following parties:

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10 W Street, NW
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Personal service of the aforementioned documents was attempted as of the same date at the same addresses, and will be pursued until confirmation of receipt in some form is obtained.

/s/
Eric L. Klein

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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NESSA COPPINGER, et al.,

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Defendants.

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Judge: Hon. Ronna L. Beck
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March 6, 2015

ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The Court has considered Plaintiffs' January 15, 2015 Motion for Preliminary Injunction ("Motion"), Plaintiffs' Statement of Points and Authorities in support thereof, any opposition thereto, and the applicable law.

For the reasons set forth in Plaintiffs' Statement of Points and Authorities at § I, the Court believes that the Plaintiffs are likely to succeed on the merits of their claims. The Court further believes that the Plaintiffs will suffer an irreparable injury in the absence of a Preliminary Injunction, and that the harm to the Plaintiffs in the absence of a Preliminary Injunction outweighs the harm to the Defendants by the injunctive relief requested. Finally, the public interest is not implicated in this case such as to affect the Court's conclusions.

Accordingly, this ____ day of _____, 2015, at ____ a.m./p.m., it is hereby

ORDERED that Plaintiffs' Motion for a Preliminary Injunction is **GRANTED**. It is further

ORDERED that Defendants Mozella Boyd Johnson and Edwin Gray, as well as their tenants, fellow residents or guests at 830 Fifth Street, NE, Washington, D.C., are prohibited from

smoking or burning any chemical or substance in the interior of 830 Fifth Street, NE, or allowing any such smoking or burning to occur therein. This injunction does not include, and does not prohibit, any burning, smoking, or other cooking required to prepare food. This injunction shall remain in force until final disposition of the permanent injunctive relief requested in Plaintiffs' December 5, 2014 Complaint.

Honorable Ronna L. Beck
Associate Judge
Superior Court of the District of Columbia

Copy:

Mozella Boyd Johnson
10 W Street, NW
Washington, DC 20001

Edwin Gray
830 5th Street, NE
Washington, DC 20002

Brendan and Nessa Coppinger
via counsel per CaseFileXpress

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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**STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Brendan and Nessa Coppinger move for a temporary restraining order and a preliminary injunction prohibiting Defendant Edwin Gray from smoking or permitting the smoking of marijuana and cigarettes inside Defendant Mozella Boyd Johnson's property at 830 Fifth Street, NE, Washington, D.C. without adequate ventilation and/or containment. Injunctive relief is warranted under the applicable four-factor test. Specific grounds for the requested relief are set forth below.

FACTUAL BACKGROUND¹

Plaintiffs Brendan and Nessa Coppinger reside with their one-year-old daughter in a rowhouse at 832 5th St., NE in Washington, D.C., which they purchased in August 2014. The Coppingers' rowhouse shares its southern wall with another rowhouse, located at 830 5th St., NE, which upon information and belief is owned by Mozella Boyd Johnson. Upon information and belief, Ms. Boyd Johnson resides at 10 W St., NW, in the District of Columbia. The property at

¹ This statement of facts is drawn from the affidavit of Nessa Coppinger, attached as Exhibit A.

830 5th Street, NE is occupied by Ms. Boyd Johnson's brother, Defendant Edwin Gray, and may also be occupied by Mr. Gray's sons.

Since the Coppingers moved into their home in September 2014, their property has been intermittently but regularly filled with the strong odors of marijuana, cigarette smoke, and other unknown fumes. The Coppingers do not use marijuana or cigarettes, and the immediate exterior of the Coppingers' property is closed to the public. The odors emanate from Ms. Boyd Johnson's property.

The fumes are powerful; they are not mere scents or traces. The marijuana smoke, cigarette smoke, and other unknown odors regularly drift and permeate throughout the Coppingers' home, often for hours at a time. On weekends and other intermittent days, a heavy odor of cigarette and marijuana smoke often fills the Coppinger property around the clock.

The odors are highly unpleasant and alien to the clean and healthful environment the Coppingers wish to maintain in their home. Moreover, upon information and belief, the fumes are powerful enough to produce toxic and intoxicating effects on people who breathe them. The Coppingers suffer from the fumes themselves, as well as from the fear of what short-term and long-term effect the fumes may be having on their daughter, their guests, and themselves. **Ms.**

Coppinger is pregnant, and the Coppingers particularly fear the effect the secondhand smoke may be having on their one-year old daughter and unborn child, now in a highly sensitive early stage of its development. The Coppingers reasonably fear that exposing themselves, their guests, their daughter and their unborn child to powerful secondhand marijuana and cigarette smoke – and unknown other airborne chemicals – risks involuntary intoxication and exposure to dangerous toxins, including carcinogens. As a result of the intrusion of these fumes into the Coppinger home and the anxiety they produce, Brendan Coppinger has suffered symptoms including sleeplessness,

stomach pains, and elevated blood pressure. The fumes are also damaging the property itself, including fixtures and furniture, by infusing the odors permanently into the property.

The fumes are powerful and frequent enough that the Coppingers, in order to protect their health and the health of their daughter and unborn child, have been forced to abandon their home for significant periods of time. When compelled by circumstances to be home, the Coppingers cannot meaningfully use and enjoy their home. The powerful and intoxicating odors disrupt meals, sleep, and the family's social interaction.

The Coppingers have hired professionals to investigate the potential source of the smoke intrusion problem, and have been informed that a defect must exist on the 830 5th St. side of the properties' mutual wall in order for fumes to be escaping the property in the quantity they do. Upon information and belief, there may be reasonable and modest engineering solutions that would eliminate or greatly ameliorate the smoke intrusion problem, but these solutions depend on the cooperation of the Defendants. Ms. Boyd Johnson and Mr. Gray, however, refuse to consider such solutions or even to discuss them.

The Coppingers have repeatedly approached both Defendants to seek a solution to the smoke intrusion problem. For his part, Mr. Gray has apparently been unwilling to take any steps to ameliorate the issue, either by attempting to locate and address the intrusion pathway, adjusting his ventilation with a fan or otherwise, or relocating his smoking activities outdoors or elsewhere within the property in a way that would contain the smoke. The Coppingers have also repeatedly attempted to engage Ms. Boyd Johnson in a dialogue about resolving the situation. Via undersigned counsel, the Coppingers sent a letter to Ms. Boyd Johnson on October 24, 2014 requesting that the parties work together and share the cost of investigating and fixing the cause of the air circulation problem. *See* Boyd Johnson Answer, Exhibit 10. Ms. Boyd Johnson

responded on October 28, 2014 by filing complaints against undersigned counsel with the D.C. Bar, the NAACP, the American Civil Liberties Union, and the D.C. Office of Human Rights. *Id.*, Exhibit 13. The D.C. Bar dismissed the complaint without further investigation; the Coppingers then attempted a second time to reach out to Ms. Boyd Johnson by letter to seek common ground. *Id.*, Exhibit 5. Ms. Boyd Johnson refused to seek common ground and to meet to discuss these issues. The Coppingers made one more effort, in a cover letter included with service of this lawsuit, to open a dialogue that would make litigation unnecessary. *Id.*, Exhibit 1. Defendants continued to refuse to communicate outside of the litigation process.

Meanwhile, the regular intrusion of smoke and toxic fumes into the Coppinger home continues, and its effects on the Coppingers, their daughter, and their unborn child continue to accumulate in as-yet unknown ways.

ARGUMENT

Preliminary injunctive relief is warranted where plaintiffs can clearly demonstrate: (1) that they have a substantial likelihood of success on the merits; (2) that the plaintiffs are in danger of suffering irreparable injury if injunctive relief is denied; (3) that more harm will result to the plaintiffs from denial of the injunction than will result to the defendants if such relief is granted; and, in appropriate cases, (4) that injunctive relief would further the public interest. *See In re Estate of Reilly*, 933 A.2d 830, 834 (D.C. 2007) (quoting *Feaster v. Vance*, 832 A.2d 1277, 1287 (D.C. 2003)). These factors interrelate on a “sliding scale” and must be balanced against each other. *See Salvaterro v. Ramirez*, No. 14-FM-1006, slip op. at 3 (D.C. Dec. 15, 2014) (quoting *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1318 (D.C. Cir. 1998)). “If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak.” *Serono Labs.*, 158 F.3d at 1318 (quoting *CityFed Fin. Corp. v. Office of*

Thrift Supervision, 58 F.3d 738, 746, 313 U.S. App. D.C. 178 (D.C. Cir. 1995)).

Here, all factors are strongly in favor of the Coppingers, but one in particular stands out. **Every time Mr. Gray and/or his fellow residents and guests smoke a cigarette or marijuana, the toxic secondhand smoke may be permanently damaging the Coppingers' one-year-old daughter and unborn child.** This harm vastly outweighs any harm to Mr. Gray and/or his fellow residents or guests in being compelled to smoke outside or temporarily stop smoking altogether until an engineering solution can protect the Coppingers from the smoke that comes from his home. This is the third injunction factor, and it overwhelms all the others.

I. THE COPPINGERS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CLAIM.

The Coppingers have brought an action for negligence, nuisance, and trespass. They are likely to prevail on the merits of all three claims.

A. Negligence

A negligence claim requires the party bringing the claim to show “(1) that the defendant owed a duty to the plaintiff, (2) breach of that duty, and (3) injury to the plaintiff that was proximately caused by the breach.” *Aguilar v. RP MRP Wash. Harbour, LLC*, 98 A.3d 979, 982 (D.C. 2014) (quoting *Hedgepeth v. Whitman Walker Clinic*, 22 A.3d 789, 793 (D.C. 2011)).

A landowner, like Ms. Boyd Johnson, has a legal duty of “common prudence” to maintain property in such a way as to prevent injury to a neighbor. *See Tolu v. Ayodeji*, 945 A.2d 596, 604 (D.C. 2008); *see also id.* at 603 n.5 (quoting *Brown v. Consolidated Rail Corp.*, 717 A.2d 309, 316 (D.C. 1998); *Dudley v. Meadowbrook, Inc.*, 166 A.2d 743, 744 (D.C.1961)). Similarly, an occupant of property like Mr. Gray has a duty to refrain from activities on that property which he should realize involve an unreasonable risk of physical harm to people outside

the property. *See* Restatement (Second) of Torts, § 371.² There is no question that both Mr. Gray and Ms. Boyd Johnson should realize – particularly now, after innumerable warnings that the Defendants’ secondhand smoke is heavy and noxious in the Coppinger home, where a small child and a pregnant woman live – that the smoke fumes generated at the Defendants’ property involve an unreasonable risk of physical harm to the Coppingers. The harmful effects of secondhand smoke are “well known.” *Brashear v. Simms*, 138 F. Supp. 2d 693, 694 (D. Md. 2001). *See generally United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1106, 386 U.S. App. D.C. 49, 60 (D.C. Cir. 2009) (“[T]he government alleged that Defendants fraudulently denied that... secondhand smoke causes lung cancer and endangers children's respiratory and auditory systems...[.]”) (emphasis added). Even the Supreme Court has held that state actors may face liability under 42 U.S.C. § 1983 for failing to protect prisoners from secondhand smoke. *Id.* (citing *Helling v. McKinney*, 509 U.S. 25 (1993)).

Just as duty and breach are clear in this case, so too are proximate causation and damages. Setting aside the slow-to-manifest – but real – physical effects of secondhand smoke, the Coppingers will unquestionably establish that Brendan Coppinger has suffered emotional distress as a result of his fear for his own physical health and safety, as well as for the physical health and safety of his wife, daughter, and unborn child. Mr. Coppinger has suffered symptoms including sleeplessness, stomach pains, and elevated blood pressure as a result of the Defendants’

² Section 371 states: “A possessor of land is subject to liability for physical harm to others outside of the land caused by an activity carried on by him thereon which he realizes or should realize will involve an unreasonable risk of physical harm to them under the same conditions as though the activity were carried on at a neutral place.” The latter phrase means “...as though the activity were carried on [in a place in which both parties have an equal right or privilege to be].” *Id.*, cmt. a. Breathing secondhand cigarette and marijuana smoke would certainly be dangerous to a small child and a pregnant woman in such a place, particularly if the secondhand smoke collected in an enclosed space like the Coppingers’ home, from which there is no obligation to retreat.

breaches of their duty. *See* Exhibit A at ¶ 8. Because he must breathe the toxic secondhand smoke on a regular basis, Mr. Coppinger is in the “zone of physical danger” that allows him to be compensated for the emotional distress caused by his fear for his own safety and his fear for the safety of his immediate family endangered by the Defendants’ negligence. *See Hedgepeth v. Whitman Walker Clinic*, 22 A.3d 789, 798-99 (D.C. 2011); *see also id.* at 799 n.12 (citing *Williams v. Baker*, 572 A.2d 1062, 1069 (D.C. 1990) (en banc)).

B. Nuisance

A private nuisance is “a substantial and unreasonable interference with private use and enjoyment of one’s land... for example, by interfering with the physical condition of the land, disturbing the comfort of its occupants, or threatening future injury or disturbance.” *B&W Mgmt., Inc. v. Tasea Inv. Co.*, 451 A.2d 879, 881 (D.C. 1982) (citing Restatement (Second) of Torts, § 821D (1979); W. Prosser, *Handbook of the Law of Torts*, at 591 (4th ed. 1971)). A private nuisance requires an offense with “some degree of permanence such that the continuousness or recurrence of the things, facts, or acts which constitute the nuisance give rise to an unreasonable use.” *Wood v. Neuman*, 979 A.2d 64, 78 (D.C. 2009) (citing *Reese v. Wells*, 73 A.2d 899 (D.C. 1950)).³

The Coppingers are enduring a classic form of nuisance. The toxic fumes and odors in the Coppinger home occur regularly and repeatedly, and are so strong that the Coppingers feel forced to abandon the property when they can, for fear of the poisonous effects of the secondhand smoke on themselves, their daughter, and their unborn child. *See* Exhibit A at ¶ 10.

³ The Court of Appeals has not yet decided whether private nuisance is a standalone tort, or a type of damage requiring otherwise tortious conduct as a predicate. *See Ortberg v. Goldman Sachs Group*, 64 A.3d 158, 166-68 (D.C. 2013). The Coppingers’ nuisance claim is viable and likely to succeed in either case, however, as Defendants have committed the predicate tort of negligence, as described *supra*, in allowing Mr. Gray’s smoking activities to pass through an inadequate wall, with inadequate ventilation, to physically and emotionally harm the Coppingers.

This is certainly a “substantial and unreasonable interference” with the use of their home. It “interfere[s] with the physical condition” of the home by permanently tagging furniture with the odor of cigarettes and marijuana; it “disturb[s] the comfort of its occupants” by regularly subjecting them to highly unpleasant, alien sensations and potentially even unwanted intoxication, to the point where they feel compelled to vacate their own home whenever possible; and it “threaten[s] future injury or disturbance” in the form of potential cancers, birth defects, or other health problems for the Coppingers. 451 A.2d at 881. The smoke intrusion is a serious and threatening problem and the Coppingers are highly likely to prevail on their nuisance claim.

C. Trespass

Trespass is “an unauthorized entry onto property that results in interference with the property owner's possessory interest therein.” *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1060 (D.C. 2014) (quoting *Sarete, Inc. v. 1344 U St. Ltd. P'ship*, 871 A.2d 480, 490 (D.C. 2005)). Courts are divided on whether intangible intrusions such as smoke or particulate matter can effect a trespass. *See generally Schuman v. Greenbelt Homes, Inc.* 212 Md. App. 451, 475 (Md. Spec. App. 2013). Under the traditional theory, “the intrusion of smoke, gas, noise, or other invisible particles onto another’s property is not actionable as a trespass, but only as a private nuisance.” *Darney v. Dragon Prods. Co., LLC*, 640 F. Supp. 2d 117, 124 (D. Me. 2009). The modern theory, by contrast, holds that intangible airborne particulates are actionable in trespass if they cause substantial damage to the plaintiff’s property, “sufficient to be considered an infringement on the plaintiff’s right to exclusive possession of the property.” *Id.* at 124-25 (collecting cases). The D.C. Court of Appeals has not yet chosen between these two theories.

In the context of this case, the modern theory is clearly the most sensible, and the Coppingers therefore have a substantial likelihood of prevailing on their trespass claim. The intruding particles are not merely abstractions. They are small, but real. They have the capacity

to inflict serious and long-term damage on the family's lungs and other organs – particularly on the still-developing organs of the Coppingers' daughter and unborn child. By contrast, the traditional theory of trespass with respect to particulates was developed during an era before the particulate nature of odors and vapors was readily observable and quantifiable, and before the physical impacts of such particles were fully understood. Now we can see and measure the tiny particles that are carried in the smoke from Defendants' property, and we know that they settle into furniture, objects, and human tissues, with potentially grave consequences. These particles are trespassing from the Defendants' property into the Coppingers' home, where they are causing fear, anxiety, and physical damage to objects and people.

II. THE COPPINGERS ARE BEING IRREPARABLY INJURED.

The intruding smoke and fumes are not merely a matter of annoyance to the Coppingers. As noted above, it is now beyond question that secondhand smoke is dangerous, particularly to a developing fetus. The U.S. Health and Human Services Department estimates that since 1964, 2.5 million nonsmokers have died from exposure to secondhand smoke.⁴ In children, secondhand smoke causes ear infections, more frequent and severe asthma attacks, respiratory symptoms and infections, and a greater risk for Sudden Infant Death Syndrome. In children age 18 months and younger, secondhand smoke causes up to 15,000 hospitalizations annually. In nonsmoking adults, secondhand smoke exposure increases the risk of heart attacks and strokes, and increases the risk of heart disease by 25-30%. An estimated 34,000 deaths annually from heart disease are caused by secondhand smoke exposure. It increases lung cancer risk by 20-30% and causes an estimated 7,300 lung cancer deaths annually.

Moreover, the health damage potentially created by secondhand smoke – whether cancer,

⁴ See http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts (last visited January 13, 2015). The statistics in the first paragraph of § II are all drawn from this source, which is a page on the website of the Centers for Disease Control and Prevention.

a birth defect, or some other terrible consequence – is not reversible. Every day that Mr. Gray and/or his fellow residents and guests release more toxic secondhand smoke into the Coppingers’ home represents an increased risk of damage that cannot be reduced. This is the clearest possible example of irreparable injury.

III. THE BALANCE OF EQUITIES FAVORS THE COPPINGERS.

The third prong of the preliminary injunction standard is the most important one in this case, and its overwhelming force in favor of the Coppingers outweighs any other consideration.

The equities to the parties must be balanced, and the Court must consider whether more harm will result to the plaintiffs from denial of the injunction than will result to the defendants if such relief is granted. *See In re Estate of Reilly*, 933 A.2d at 834. Here, the daily threat to the health of the Coppingers’ daughter and unborn child – caused by repeated, uninvited toxic cigarette and marijuana fumes that the Coppingers are powerless to escape short of moving – **simply dwarf the minor inconvenience that Edwin Gray or his fellow residents or guests would experience** in being required to smoke outside – or temporarily refrain – until an engineering solution can be implemented that will solve the problem for good. The Coppingers believe such a solution is possible at a modest and reasonable cost if the Defendants would cooperate, but the Defendants refuse even to discuss it. This refusal **even to discuss the issue** waives any possible equitable argument in Defendants’ favor. Defendants insist on their right to smoke where they want, when they want, without discussion or consequence, even though Mr. Gray and his family live in a property that does not adequately contain the toxins that are vented into the air they share with the Coppingers – and even though Mr. Gray and Ms. Boyd Johnson **know** that they are endangering the health of the Coppingers’ daughter and unborn child. The Court must act to protect the Coppingers and put a stop to the Defendants’ conduct immediately.

IV. THE PUBLIC INTEREST IS NOT IMPLICATED IN THIS CASE.

This is not a case that impacts the public; only the parties involved have an interest in the outcome. While there are public values at stake – freedom of action, and freedom from danger, on private property – these are in balance and do not weigh for or against injunctive relief.

CONCLUSION

Defendants’ December 26, 2014 Answer in this case includes exhibits that make clear that Brendan and Nessa Coppinger have gone to great lengths to solve this problem with dialogue instead of litigation. Every effort to discuss the smoke issue, however, has been met with rejection or silence – and more smoke. Since Mr. Gray and Ms. Boyd Johnson are unwilling to take even the smallest step – a simple discussion – to respect the Coppingers’ concerns as neighbors, parents, and property owners, Plaintiffs respectfully ask the Court to take such a step now. The Court should simply enjoin the Defendants from smoking or allowing smoking inside Ms. Boyd Johnson’s property until the parties can implement an engineering solution that will allow them to smoke without poisoning their neighbors.

Immediate injunctive relief is warranted in this case for the legal and equitable reasons set forth above. The form of the requested injunctive relief is set forth in the proposed order.

ORAL HEARING REQUESTED

Respectfully submitted:

/s/

Eric L. Klein (Bar No. 993268)
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W., Suite 700
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2015, a copy of the foregoing Statement of Points and Authorities in Support of Plaintiffs' Application for Temporary Restraining Order and Motion for Preliminary Injunction was filed and served via CaseFileXpress, and served via first-class mail, postage prepaid, on the following parties:

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/s/
Eric L. Klein

EXHIBIT A

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
CIVIL ACTIONS BRANCH**

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Plaintiffs,

v.

MOZELLA BOYD JOHNSON, *et al.*,

Defendants.

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Judge: Hon. Ronna L. Beck

Next event: Initial scheduling conference
March 6, 2015

AFFIDAVIT OF NESSA COPPINGER

I, Nessa Elise Horewitch Coppinger, upon personal knowledge, state as follows:

1. I reside with my husband, Brendan Coppinger, and our one-year-old daughter in a rowhouse at 832 5th St., NE in Washington, D.C., which I purchased in August 2014.

2. Our rowhouse shares its southern wall with another rowhouse, located at 830 5th St., NE, which property records indicate is owned by Mozella Boyd Johnson. I believe that Ms. Boyd Johnson resides at 10 W St., NW, in the District of Columbia.

3. The property at 830 5th Street, NE is occupied by Ms. Boyd Johnson's brother, Defendant Edwin Gray. Other people come and go from the property, and I understand from Ms. Boyd Johnson's correspondence that these people may include Mr. Gray's four sons. I do not know whether they are residents or guests.

4. Since we moved into our home in September 2014, our property has been intermittently but regularly filled with the strong odors of marijuana, cigarette smoke, and other unknown fumes. We do not use marijuana or cigarettes, and the immediate exterior of our property is closed to the public. The odors emanate from Ms. Boyd Johnson's property.

5. The fumes are powerful; they are not mere scents or traces. The marijuana smoke, cigarette smoke, and other unknown odors regularly drift and permeate throughout our home, often for hours at a time. On weekends and other intermittent days, a heavy odor of cigarette and marijuana smoke often fills our property around the clock.

6. The odors are highly unpleasant and alien to the clean and healthful environment we wish to maintain in our home. We also believe that the fumes are powerful enough to produce toxic and intoxicating effects on us when we breathe them. My husband and I suffer from the fumes ourselves, as well as from the fear of what short-term and long-term effect the fumes may be having on our daughter, our guests, and ourselves.

7. I am thirteen weeks pregnant, and my husband and I particularly fear the effect the secondhand smoke may be having on our one-year old daughter and our unborn child, currently in a highly sensitive early stage of its fetal development. We fear that exposing ourselves, our guests, our daughter and our unborn child to powerful secondhand marijuana and cigarette smoke – and unknown other airborne chemicals – risks involuntary intoxication and exposure to dangerous toxins, including carcinogens.

8. As a result of the intrusion of these fumes into our home and the anxiety they produce, my husband has suffered symptoms including sleeplessness, stomach pains, and elevated blood pressure.

9. The fumes are also damaging the property itself, including fixtures and furniture, by infusing the odors permanently into the property.

10. The fumes are powerful and frequent enough that my husband and I, in order to protect our health and the health of our daughter and our unborn child, have been forced to abandon our home for significant periods of time. When compelled by circumstances to be home, we cannot

meaningfully use and enjoy our home. The powerful and intoxicating odors disrupt our meals, our sleep, and our family's social interaction.

11. We have hired professionals to investigate the potential source of the smoke intrusion problem, and have been informed that a defect must exist on the 830 5th St. side of the properties' mutual wall in order for fumes to be escaping the property in the quantity they do. We believe that there may be reasonable and modest engineering solutions that would eliminate or greatly ameliorate the smoke intrusion problem, but these solutions depend on the cooperation of the Defendants. Ms. Boyd Johnson and Mr. Gray, however, refuse to consider such solutions or even to discuss them.

12. We have repeatedly approached both Defendants to seek a solution to the smoke intrusion problem. For his part, Mr. Gray has apparently been unwilling to take any steps to ameliorate the issue, either by attempting to locate and address the intrusion pathway, adjusting his ventilation with a fan or otherwise, or relocating his smoking activities outdoors or elsewhere within the property in a way that would contain the smoke.

13. We have also repeatedly attempted to engage Ms. Boyd Johnson in a dialogue about resolving the situation. Our lawyer sent a letter to Ms. Boyd Johnson on October 24, 2014 requesting that the parties work together and share the cost of investigating and fixing the cause of the air circulation problem. Ms. Boyd Johnson responded on October 28, 2014 by filing a complaint against our lawyer before the D.C. Bar, the NAACP, the American Civil Liberties Union, and the D.C. Office of Human Rights. The D.C. Bar dismissed the complaint without further investigation. We then attempted a second time to reach out to Ms. Boyd Johnson by letter to seek common ground. Ms. Boyd Johnson refused to seek common ground and to meet to discuss these issues. We made one more effort, in a cover letter included with service of this

lawsuit, to open a dialogue that would make litigation unnecessary. Defendants continued to refuse to communicate outside of the litigation process.

14. Meanwhile, the regular intrusion of smoke and toxic fumes into our home continues, and its effects on us, our daughter, and our unborn child continue to accumulate in as-yet unknown ways.

I solemnly declare and affirm under the penalty of perjury that the contents of the foregoing are true and correct to the best of my knowledge, information and belief.



Nessa Horewitch Coppinger

1/15/2015

DATE