

A retired couple had lived in their home in a residential neighborhood for 20 years when a large family moved into the house next door and built a swimming pool in the backyard. The family's four young children frequently played in the pool after school. They often were joined by other neighborhood children. The retired couple was in the habit of reading and listening to classical music in the afternoons. Sometimes the couple took naps. The boisterous sounds of the children playing in the pool disturbed the couple's customary enjoyment of quiet afternoons.

In a nuisance action for damages against the family, is the couple likely to prevail?

- A. No, because the children's interest in healthy play has priority over the couple's interest in peace and quiet.
- B. No, unless the noise constituted a substantial and unreasonable disturbance to persons of normal sensibilities.
- C. Yes, because the couple's interest in the quiet enjoyment of their home takes precedence in time over the family's interests.
- D. Yes, if the children's noise constituted a substantial interference with the couple's use and enjoyment of their home.

Explanation:

A plaintiff can sue for **private nuisance** when a person interferes with the plaintiff's **use and enjoyment of his/her property**. To prevail in that suit, the plaintiff must show that the **interference** was both:

substantial – offensive, annoying, or intolerable to a **normal person** in the community *and* **unreasonable** – the severity of the plaintiff's harm outweighed the utility of the defendant's conduct.

An interference is **not substantial** if the plaintiff's **unusual sensitivity** causes him/her to regard the interference as offensive, annoying, or intolerable when a person with normal sensibilities would not.

Here, the boisterous sounds of the family's children playing next door interfered with the couple's enjoyment of quiet afternoons at home. But the couple will not prevail on their nuisance claim unless that interference was both substantial (eg, residents with normal sensibilities would be annoyed) *and* unreasonable (ie, the severity of the couple's harm outweighs the utility of the children's conduct) **(Choice D)**.

(Choice A) The children's interest in healthy play (utility) does not necessarily have priority over the couple's interest in peace and quiet (harm) since courts weigh multiple **factors** to determine whether an interference was unreasonable. And even if the interference was unreasonable, the couple will prevail only if the interference was also substantial.

(Choice C) Courts may consider precedence in time (ie, whether the plaintiff came to the nuisance) when determining if a nuisance is actionable. Therefore, the fact that the couple's interest in the quiet enjoyment of their home takes precedence in time over the family's interests helps show that the couple's claim is *actionable*. But they will only *prevail* if the children's interference was substantial and unreasonable.

Educational objective:

An interference with the plaintiff's use and enjoyment of his/her property is not substantial—and will not support a private nuisance claim—unless a person with normal sensibilities would regard the interference as offensive, annoying, or intolerable.

References

Restatement (Second) of Torts §§ 821D, 822 (Am. Law Inst. 1979) (private nuisance).

Restatement (Second) of Torts § 821F (Am. Law Inst. 1979) (substantial harm requirement).

Restatement (Second) of Torts § 826 (Am. Law Inst. 1979) (unreasonable interference requirement).

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Private nuisance claim

