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DOMINIC CACIOPOLI *v.* JEFFREY LEBOWITZ
(SC 18894)

Rogers, C. J., and Palmer, Zarella, Eveleigh, McDonald and Vertefeuille, Js.

Argued March 14—officially released June 25, 2013

Stuart C. Johnson, with whom, on the brief, was *Kurtis Z. Piantek*, for the appellant (defendant).

David S. Doyle, for the appellee (plaintiff).

Opinion

EVELEIGH, J. The sole issue in this certified appeal is whether General Statutes § 52-560[1] preempts a common-law cause of action for intentional trespass in situations in which the trespasser has removed trees from another person's land. The defendant, Jeffrey Lebowitz, appeals, following our grant of his petition for certification,[2] from the judgment of the Appellate Court affirming the judgment rendered by the trial court in favor of the plaintiff, Dominic Caciopoli. Following a bench trial, the trial court found that the defendant had trespassed on the plaintiff's land and removed multiple trees without the plaintiff's permission. The trial court awarded damages to the plaintiff reflecting the diminution in the value of his land as a result of the removal of the trees. On appeal in this court, the defendant claims that § 52-560 provides the exclusive measure of damages in a tree cutting case and, therefore, the Appellate Court improperly determined that § 52-560 does not preempt the common law. In response, the plaintiff claims that the Appellate Court properly concluded that § 52-560 does not preempt the common law, but instead enhances the common law by providing for treble damages when the reasonable value of the trees as timber is the proper measure of damages. We agree with the plaintiff and, accordingly, affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following facts and procedural history: "The plaintiff . . . purchased real property located at 490 Three Corners Road in Guilford . . . in October, 1978. He chose this property because it was isolated and private. The plaintiff's property was surrounded by forest on all sides, except for the area of the lot through which his driveway passed. In May, 2005, the defendant . . . purchased property located at 480 Three Corners Road, which is adjacent to the property owned by the plaintiff. The property line between the two homes was unmarked. The plaintiff's home is more than 100 yards from the property line between the two lots, and the plaintiff's view of the home located at 480 Three Corners Road was obstructed.

"In August, 2005, the defendant hired Tanner's Tree Service, LLC [Tanner's Tree Service], to clear standing dead trees from the wooded area between the two homes. The defendant believed these dead trees were on his property because they were in a grassy area located between the two homes that had been maintained by the previous owners of 480 Three Corners Road. The defendant directed Tanner's Tree Service to remove all dead timber, both standing and on the ground, to remove some small saplings, and remove some larger trees to provide more sunlight and enlarge the areas surrounding his house.

"Prior to the commencement of this landscaping work, the defendant failed to determine the actual location of the property line between the two homes. He went to the plaintiff's home to speak with him regarding the property line, but was told to return when the plaintiff was home. He did not consult his warranty deed or documents available at the town hall. The defendant discovered a marker near the plaintiff's mailbox and incorrectly assumed this marked the property line. In actuality, the property line is twenty-five feet from the house. When the plaintiff learned of the removal of the trees, he went to the defendant's home. The defendant understood that the plaintiff was irate and that the plaintiff pointed out the actual property line. The next day, Tanner's Tree Service returned to complete the work on the plaintiff's property. The removal of the trees and brush left the plaintiff with an unobstructed view of the defendant's house.

"On August 30, 2005, the plaintiff sent the defendant a letter, in which he suggested that the plaintiff and the defendant should jointly choose reasonably mature evergreens and have them planted to recapture some of the lost privacy. In November, 2005, the defendant paid a nursery to plant three white pine trees on the plaintiff's property to obscure his view of the defendant's home. These trees did little to create a sense of isolation and privacy that the plaintiff had prior to the defendant's trespass.

"In the spring of 2007, the plaintiff had the property line marked. On May 30, 2007, the defendant sent the plaintiff a letter in which he admitted he was mistaken in assuming the location of the property line. On November 13, 2007, the defendant sent another letter to the plaintiff. In that letter, the defendant admitted that he had trees removed that were partly on the plaintiff's property. In the fall of 2007, the plaintiff undertook an extensive landscaping project in a failed attempt to restore his lost privacy. During that project, the trees purchased by the defendant were moved closer to the plaintiff's house.

"In 2008, the plaintiff commenced an action alleging trespass. The defendant filed an answer with special defenses. The plaintiff later filed an amended complaint adding a count seeking treble damages pursuant to General Statutes § 52-560. Following a trial to the court, the court in its memorandum of decision found that the plaintiff had proven the elements of an intentional trespass action. The court awarded the plaintiff $150,000 for the diminution in the value of his property caused by the defendant's trespass, plus taxable costs." (Internal quotation marks omitted.) *Caciopoli* v. *Lebowitz*, 131 Conn. App. 306, 308–10, 26 A.3d 136 (2011). The trial court declined to award any damages under § 52-560 for the reasonable value of the trees as timber because the plaintiff failed to provide sufficient evi-

dence regarding the value of the trees.

Thereafter, the defendant appealed from the judgment of the trial court to the Appellate Court, claiming, inter alia,[3] that the trial court's award of damages was improper. Specifically, the defendant claimed that § 52-560 limits the scope of damages recoverable in tree cutting cases and that diminution in property value is not an appropriate measure of damages under the statute. The Appellate Court disagreed with the defendant and concluded that § 52-560 does not preempt a common-law cause of action but, rather, provides enhancement of common-law damages by providing for treble damages in circumstances where the reasonable value of the timber is sought. This appeal followed.[4]

On appeal, the defendant claims that the plain language of § 52-560 demonstrates that it provides the exclusive remedy for intentional and unlawful removal of trees from another person's land. Specifically, the defendant contends that the statute applies to " 'any' " person who impermissibly removes trees and, therefore, the statute is applicable to all such actions. The defendant further contends that, because the statute provides that trespassers who violate the statute "*shall* pay [damages] to the party injured," the damages provided for under the statute are mandatory. (Emphasis in original.) Additionally, although the defendant acknowledges that courts in this state have recognized both a common-law cause of action as well as an action under § 52-560, the defendant contends that, in light of the plain language of the statute and the history surrounding its enactment, those cases were wrongly decided. Specifically, the defendant claims that, because the enactment of this state's first tree cutting statute in 1726 occurred before a common-law cause of action was recognized in this state, the statute was intended to provide the exclusive remedy for such trespass actions and, therefore, this court should never have recognized additional remedies under the common law.

In response, the plaintiff claims that § 52-560 does not preempt the common law, but rather enhances the common law by providing treble damages in certain situations where the reasonable value of the trees as timber is sought as damages. Thus, the plaintiff claims that parties seeking to recover damages for trespass involving the unlawful removal of timber can pursue either the remedy provided by § 52-560 or common-law damages reflecting the diminution in value of his land. The plaintiff therefore contends that he properly brought his claim under the common law and was, therefore, entitled to seek damages reflecting the diminution in the value of his property as a result of the unlawful removal of the trees. We agree with the plaintiff.

The issue in this case presents a question of statutory interpretation that requires our plenary review. See

Cogan v. *Chase Manhattan Auto Financial Corp.*, 276 Conn. 1, 7, 882 A.2d 597 (2005). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Citation omitted; internal quotation marks omitted.) Id.

The question of whether § 52-560 preempts the common-law rule of damages is an issue of first impression for this court. The issue in this case is whether the legislature, by creating an affirmative remedy for a trespass action in which trees have been unlawfully removed, has manifested an intention to occupy the field and provide the exclusive remedy for such actions. To put it another way, we must determine "whether the recognition of a common-law remedy would conflict with or frustrate the purpose of the statute . . . . See *Thibodeau* v. *Design Group One Architects, LLC*, 260 Conn. 691, 709, 802 A.2d 731 (2002); *Allard* v. *Liberty Oil Equipment Co.*, 253 Conn. 787, 800, 756 A.2d 237 (2000); *Jones* v. *Mansfield Training School*, 220 Conn. 721, 726, 601 A.2d 507 (1992)." *Craig* v. *Driscoll*, 262 Conn. 312, 323–24, 813 A.2d 1003 (2003), superseded by statute on other grounds as stated in *O'Dell* v. *Kozee*, 307 Conn. 231, 265, 53 A.3d 178 (2012); see also id. (Dram Shop Act does not occupy field so as to preclude common-law action in negligence against purveyor of alcoholic beverages for service of alcoholic liquor to adult patron who, as result of his intoxication, injures another).

Our analysis begins with several familiar principles. Interpreting a statute to preempt a common-law cause of action is appropriate only if the language of the legislature plainly and unambiguously indicates such an intent. "[W]hen a statute is in derogation of common law or creates a liability where formerly none existed, it should receive a strict construction and is not to be extended, modified, repealed or enlarged in its scope by the mechanics of [statutory] construction. . . . *Ahern* v. *New Haven*, 190 Conn. 77, 82, 459 A.2d 118

(1983). In determining whether or not a statute abrogates or modifies a common law rule the construction must be strict, and the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope. *Willoughby* v. *New Haven*, 123 Conn. 446, 454, 197 A. 85 (1937). Although the legislature may eliminate a common-law right by statute, the presumption that the legislature does not have such a purpose can be overcome only if the legislative intent is clearly and plainly expressed. *State* v. *Sanchez*, 204 Conn. 472, 479, 528 A.2d 373 (1987). We recognize only those alterations of the common law that are clearly expressed in the language of the statute because the traditional principles of justice upon which the common law is founded should be perpetuated. The rule that statutes in derogation of the common law are strictly construed can be seen to serve the same policy of continuity and stability in the legal system as the doctrine of stare decisis in relation to case law. 3 J. Sutherland, Statutory Construction (5th Ed. Singer 1992 Rev.) § 61.01, pp. 172–73." (Internal quotation marks omitted.) *Vitanza* v. *Upjohn Co.*, 257 Conn. 365, 381–82, 778 A.2d 829 (2001).

In accordance with these principles, we first examine the language of § 52-560 to determine whether it clearly abrogates a common-law cause of action in trespass actions when trees are unlawfully removed from another person's land. Section 52-560 provides in relevant part: "Any person who cuts, destroys or carries away any trees, timber or shrubbery, standing or lying on the land of another . . . without license of the owner . . . shall pay to the party injured . . . three times the reasonable value of any other tree, timber or shrubbery; but, when the court is satisfied that the defendant was guilty through mistake and believed that the tree, timber or shrubbery was growing on his land, or on the land of the person for whom he cut the tree, timber or shrubbery, it shall render judgment for no more than its reasonable value." We note that, unlike other statutes, § 52-560 does not contain an exclusivity provision or otherwise contain language indicating that it is the exclusive remedy. See, e.g., General Statutes § 31-284 (a) ("[a]ll rights and claims between an employer who complies with the requirements of subsection [b] of this section and employees . . . arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this chapter"); General Statutes § 52-572n (a) ("[a] product liability claim as provided in sections 52-240a, 52-240b, 52-572m to 52-572q, inclusive, and 52-577a may be asserted and shall be in lieu of all other claims against product sellers, including actions of negligence, strict liability and warranty, for harm caused by a product"); General Statutes § 52-557n (a) ("no cause of action shall be maintained for damages resulting from injury to any person or property by

means of a defective road or bridge except pursuant to section 13a-149"); see also *Craig* v. *Driscoll*, supra, 262 Conn. 326–27 (noting import of legislature's failure to designate statute as exclusive remedy); *Jones* v. *Mansfield Training School*, supra, 220 Conn. 729 (same). Consequently, there has been no expressed intent of the legislature " 'as found by the words employed' " to eliminate a claim rooted in the common law. See *Lynn* v. *Haybuster Mfg., Inc.*, 226 Conn. 282, 290, 627 A.2d 1288 (1993). As this court has repeatedly stated, "[t]he legislature is capable of providing explicit limitations when that is its intent." (Internal quotation marks omitted.) *Vitanza* v. *Upjohn Co.*, supra, 257 Conn. 382; see also *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 299, 933 A.2d 256 (2007) (legislature knows how to convey its intent expressly); *Lynn* v. *Haybuster Mfg., Inc.*, supra, 290 (same). In the absence of explicit language indicating that the statute is the exclusive remedy, we will not presume that the legislature intended to occupy the field and preempt a common-law cause of action. See *Lynn* v. *Haybuster Mfg., Inc.*, supra, 290 ("[t]he legislature's intent is derived not in what it meant to say, but in what it did say" [internal quotation marks omitted]).

Moreover, even assuming, arguendo, that the 1726 version of the tree cutting statute[5] stood, at one time, as the exclusive remedy for tree cutting cases, the subsequent action of this court and the legislature indicates that common-law remedies exist today. Courts in this state have recognized a common-law cause of action when trees are unlawfully cut or removed from another person's land since the late nineteenth century. The common-law rule has its origins in *Hoyt* v. *Southern New England Telephone Co.*, 60 Conn. 385, 22 A. 957 (1891). In *Hoyt*, the plaintiffs, owners of real property, sought damages from the defendant as compensation for the unlawful cutting of an elm tree that stood on their land. Id., 387–88. The defendant, by and through its agents, removed the entire top of the tree without the permission of the plaintiffs. Id., 388. The trial court concluded that the cutting destroyed the tree as an " 'ornamental [or] shade tree,' " but did not diminish its value, to any material extent, for timber or firewood. Id. The trial court awarded the plaintiffs $150 in damages, which reflected the value that the tree added to the lot as an ornamental shade tree. Id., 388–89. The defendant appealed from that judgment, claiming that the proper measure of damages was the tree's value as timber or firewood, which the trial court determined was only $5. Id. On appeal, this court affirmed the judgment of the trial court. Id., 393. In concluding that the plaintiffs were entitled to recover the diminution in the value of their land as a result of the removal of the tree, this court stated: "There are of course cases where the value of the tree [as timber or firewood] would cover the entire damage. It may have no important

relation to the property upon which it is growing, and be of no use except for firewood. But an ornamental shade tree upon land available for dwelling houses has a very different relation to the land and may give it a special value." Id., 390. This court further stated that " '[s]urely the damage would not be in all cases accurately measured by the market value of the wood or timber when cut. The trees might be a highly valuable appendage to the farm for the purpose of shade or ornament; or for other reasons they might have a special value as connected with the farm, altogether independent of and superior to their intrinsic value for purposes of building or fuel.[6] As well might you remove the columns which supported the roof or some part of the superstructure of a splendid mansion, and limit the owner in damages to the value of these columns as timber or cord-wood, as to adopt the parallel rule in this case.' " Id., 391, quoting *Van Deusen* v. *Young*, 29 Barb. Ch. 9, 19–20 (1858), rev'd on other grounds, 29 N.Y. 9 (1864). Accordingly, this court concluded that, because the tree at issue had a special relationship to the property, apart from the tree's value as firewood, the trial court's award of damages reflecting the diminution in the market value of the plaintiffs' property was proper. *Hoyt* v. *Southern New England Telephone Co.*, supra, 393.

In the beginning of the twentieth century, this court further clarified the remedies available under the common law in an intentional trespass action when trees are unlawfully removed. In *Eldridge* v. *Gorman*, 77 Conn. 699, 700, 60 A. 643 (1905), the plaintiffs owned a tract of land, which contained a large amount of pine, chestnut and oak trees. The plaintiffs sold a portion of the pine trees to the defendant, and gave the defendant authority to enter upon the land in order to remove them. Id. Instead of removing the pine trees, however, the defendant removed a large number of the plaintiffs' chestnut and oak trees. Id. The plaintiffs claimed that they were entitled to recover the value of the chestnut and oak trees as "shade trees" because the trees added value to the land as a building lot, while the defendant claimed that the proper measure of damages was the value of the trees as timber. Id., 701. The trial court agreed with the plaintiffs and awarded damages accordingly. Id.

On appeal, this court stated in *Eldridge*: "This is an action for a trespass to the land to which the trees in question were appurtenant. It is an appropriate remedy either for the recovery of damages for the mere unlawful entry upon the plaintiff's land; for the recovery of the value of the trees removed, considered separately from the land; or for the recovery of damages to the land resulting from the special value of the trees as shade or ornamental trees while standing on the land. For a mere unlawful entry upon land nominal damages only would be awarded. If the purpose of the action is only

to recover the value of the trees as chattels, after severance from the soil, the rule of damages is the market value of the trees for timber or fuel. For the injury resulting to the land from the destruction of trees which, as a part of the land, have a peculiar value as shade or ornamental trees, a different rule of damages obtains, namely, the reduction in the pecuniary value of the land occasioned by the act complained of." Id., citing *Hoyt* v. *Southern New England Telephone Co.*, supra, 60 Conn. 390. This court further stated that "the judgment of the trial court was not based upon the value of the trees as timber, but was for 'the damage done to the land.' It was for the damages resulting from the reduced pecuniary value of the land for building purposes, caused by the special value of the trees as shade or ornamental trees while standing upon this land. Such injury was undoubtedly a legitimate element of damage if properly alleged in the complaint." *Eldridge* v. *Gorman*, supra, 77 Conn. 701. The court concluded, however, that the plaintiffs had failed to adequately allege such damages in their complaint and, therefore, reversed the judgment of the trial court and remanded the case for further proceedings. Id., 705.

Cases subsequent to *Eldridge* have also allowed for damages for diminution in market value of land, either in principle or in practice.[7] See *Ventres* v. *Goodspeed Airport, LLC*, 275 Conn. 105, 160, 881 A.2d 937 (2005) ("damages for the reduction in pecuniary value of the land . . . were available under the common law"), cert. denied, 547 U.S. 1111, 126 S. Ct. 1913, 164 L. Ed. 2d 664 (2006); *Fitzgerald* v. *Merard Holding Co.*, 106 Conn. 475, 481, 138 A. 483 (1927) ("[i]n an action for damages for wrongfully cutting trees on lands of [the] plaintiff, the measure of damage would ordinarily be the market value of the trees for timber or fuel, but when the trees have a peculiar value for purposes of shade or ornament, the damage may be measured by the reduced pecuniary value of the land because of the special damage suffered by the owner"); see also *Hardie* v. *Mistriel*, 133 Conn. App. 572, 575–76, 36 A.3d 261 (2012) ("[t]he proper measure of damages is either the market value of the tree, once it is severed from the soil, or the diminution in the market value of the . . . real property caused by the cutting"); *Palmieri* v. *Cirino*, 90 Conn. App. 841, 850, 880 A.2d 172, cert. denied, 276 Conn. 927, 889 A.2d 817 (2005) (same); *Stanley* v. *Lincoln*, 75 Conn. App. 781, 787, 818 A.2d 783 (2003) (same); *Canton Village Construction, Inc.* v. *Huntington*, 8 Conn. App. 144, 147, 510 A.2d 1377 (1986) (same).

Since *Hoyt* was decided, the legislature has amended § 52-560 several times, with the most recent amendment occurring in 2006. See Public Acts 2006, No. 06-89, § 2;[8] see also Public Acts 1963, No. 123;[9] Public Acts 1961, No. 548.[10] Despite the fact that a common-law cause of action has been recognized by this court for more than

one century, the legislature has never seen fit, in any of its previous amendments to the statute, to insert an exclusivity clause into § 52-560 or otherwise indicate that the statute provides the exclusive remedy for tree cutting cases. We may infer that the failure of the legislature to take corrective action within a reasonable period of time following a definitive judicial interpretation of a statute signals legislative agreement with that interpretation. See, e.g., *Mahon* v. *B.V. Unitron Mfg., Inc.*, 284 Conn. 645, 665–66, 935 A.2d 1004 (2007). "Although we are aware that legislative inaction is not necessarily legislative affirmation . . . we also presume that the legislature is aware of [this court's] interpretation of a statute, and that its subsequent nonaction may be understood as a validation of that interpretation." (Internal quotation marks omitted.) Id., 665. This principle has particular force when both the court and the legislature have repeatedly addressed the subject matter over a period of many years. Thus, regardless of whether the 1726 version of the tree cutting statute stood as the exclusive measure of damages, we presume that the failure of the legislature to insert an exclusivity clause into § 52-560 during any of the numerous amendments to the statute since *Hoyt* constitutes legislative approval of this court's recognition of a common-law cause of action.[11]

We find the 2006 amendment to the statute particularly significant. That amendment was passed in response to this court's decision in *Ventres* v. *Goodspeed Airport, LLC*, supra, 275 Conn. 105.[12] In *Ventres*, the cross claim plaintiffs owned undeveloped property that contained a large number of trees. Id., 111. The cross claim defendants trespassed on the property and unlawfully cut down approximately 340 trees. Id. The cross claim plaintiffs sought treble damages under § 52-560 based on the replacement cost of the trees, rather than the reasonable cost of the trees as timber. Id., 158. The cross claim plaintiffs claimed that, because the value of the property depended on its place within the environment, rather than as a potential building lot, the reasonable value of the trees as timber would not provide an adequate measure of damages. Id., 161. The trial court disagreed with the cross claim plaintiffs, and concluded that their claim for treble damages based on the replacement cost of the trees was precluded by the Appellate Court's decision in *Stanley* v. *Lincoln*, supra, 75 Conn. App. 781.[13] *Ventres* v. *Goodspeed Airport, LLC*, supra, 160–61. Accordingly, the trial court awarded only nominal damages on the trespass claim.[14] Id., 113.

On appeal, this court acknowledged that, in *Stanley*, the Appellate Court suggested that the common-law rule, which allowed an injured party to recover the diminution in his property value as a result of the trespass, had been embodied in § 52-560. Id., 160. Further, this court noted that the court in *Stanley* suggested that, under the common law, the replacement value of

the trees was not a proper measure of damages and, therefore, replacement value could not be recovered under § 52-560. Id. This court, however, did not entirely agree with that analysis. Id. Rather, this court concluded that, "although damages for the reduction in pecuniary value of the land—determined by the replacement cost of the trees, if appropriate—were available under the common law, the plain language of § 52-560 authorizes treble damages only for the value of the trees as commodities, not for the reduction in the pecuniary value or for the replacement cost of the trees." Id. Accordingly, this court concluded that § 52-560 does *not* entirely embody the common-law remedies for tree cutting cases but, instead, authorizes treble damages for the reasonable value of the trees as timber. Id., 160–61. Thus, this court concluded that the trial court properly determined that the replacement cost of the trees was not a proper measure of damages under § 52-560. Id.

Moreover, in *Ventres*, this court noted that, while § 52-560 only provides for damages based on the reasonable value of the trees as timber, under the common law an injured party could recover damages based on the reduction in pecuniary value of the land. Id., 159–61. This court went on to state that, because the cross claim plaintiffs only sought damages under § 52-560, and made no claim under the common law, there was no need to decide whether the enactment of § 52-560 preempted a common-law cause of action. Id., 160 n.42.

Thus, in *Ventres*, this court noted that damages for the diminution in property value were an available remedy under the common law, and also highlighted the potential preemption issue. In light of the fact that the legislative history of the 2006 amendment to § 52-560 definitively shows that it was made in direct response to this court's decision in *Ventres*, we conclude that, by failing to insert an exclusivity clause into the statute, the legislature validated this court's determination that diminution in property value is a proper measure of damages under the common law in a tree cutting case.

Finally, we note that the recognition of a common-law remedy allowing an injured party to recover the diminution in the value of his land neither conflicts with § 52-560 nor frustrates its underlying purpose. See *Craig* v. *Driscoll*, supra, 262 Conn. 312; cf. *Thibodeau* v. *Design Group One Architects, LLC*, supra, 260 Conn. 717–18 (limited exemption for small employers in comprehensive employment discrimination scheme preempts common-law discrimination remedy). Section 52-560 allows an injured party to recover three times the reasonable value of the tree as timber in situations where the trespasser did not persuade the court that he mistakenly believed that the trees were situated on his property or on the land of the person for whom he cut the tree.[15] Under the common law, however, an injured party could not recover treble damages, but

could only recover the reasonable value of the trees as timber or the diminution in the value of his property as a result of the trespass, depending on which damages were sought and proven. Thus, by allowing for the recovery of treble damages in certain instances, the statute merely enhances the common-law remedy where the value of the trees as timber is sought. Accordingly, it is not inconsistent to simultaneously recognize the existence of a common-law remedy for the diminution in property value and a statutory remedy that provides treble damages based on the reasonable value of the trees as timber. Consequently, on the basis of the foregoing, we conclude that the Appellate Court properly determined that § 52-560 does not preempt a common-law cause of action.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[1] General Statutes § 52-560 provides: "Any person who cuts, destroys or carries away any trees, timber or shrubbery, standing or lying on the land of another or on public land, except on land subject to the provisions of section 52-560a, without license of the owner, and any person who aids therein, shall pay to the party injured five times the reasonable value of any tree intended for sale or use as a Christmas tree and three times the reasonable value of any other tree, timber or shrubbery; but, when the court is satisfied that the defendant was guilty through mistake and believed that the tree, timber or shrubbery was growing on his land, or on the land of the person for whom he cut the tree, timber or shrubbery, it shall render judgment for no more than its reasonable value." We note that § 52-560 was amended by the legislature subsequent to the events underlying the present appeal. See footnote 8 of this opinion. For purposes of convenience and clarity, however, all references to § 52-560 within this opinion are to the current revision of the statute unless otherwise indicated.

[2] We granted the defendant's petition for certification to appeal limited to the following question: "Does . . . § 52-560 preempt the common-law rule of damages for cutting down trees located on another person's property?" *Caciopoli* v. *Lebowitz*, 303 Conn. 913, 32 A.3d 965 (2011).

[3] The defendant also claimed that the trial court improperly: (1) denied his motion for judgment with respect to his special defense of the statute of limitations set forth in General Statutes § 52-584; (2) denied his special defenses of waiver and equitable estoppel; (3) found that the element of intent with respect to the tort of trespass was satisfied; and (4) awarded damages on the basis of the plaintiff's appraiser's testimony. The Appellate Court resolved these claims in favor of the plaintiff. See *Caciopoli* v. *Lebowitz*, supra, 131 Conn. App. 308. These additional claims are not, however, at issue in the present appeal.

[4] See footnote 2 of this opinion.

[5] The 1726 version of the tree cutting statute was entitled "An Act for the more effectual Detecting and Punishing Trespass" and provided in relevant part: "That from and after the last day of December next, no person or persons do or shall cut, fell, destroy or carry away, any tree or trees, timber or underwood whatsoever, standing, lying or growing on the land of any other person or persons, or off or from any sequestered land for town commons, or any common or undivided lands in any town, without leave or license of the owner or owners of such lands whereon such trees, wood, timber or underwood was standing, lying or growing; on pain that every such person so cutting, felling, destroying or carrying away the same, or that shall be aiding or assisting therein, shall for every such trespass forfeit and pay to the party or parties injured or trespassed upon the sum of twenty shillings for every tree of one foot over, and for all trees of greater dimensions three times the value thereof besides twenty shillings as aforesaid, and ten shilling for every tree or pole under the dimensions of one foot diameter . . . ." 7 Colonial Records of Connecticut 1726-1735, p. 80.

[6] We note that the special value trees may add to real property is not limited to situations where they provide simply shade or ornamentation. The special value added will have to be determined as a factual matter in

any particular case. It suffices, in the present case, that the trees that were removed had the functional utility of enhancing the privacy of the plaintiff's property and inhibiting the ability of the defendant to view the plaintiff's residence.

[7] "Cases quite frequently mention the theoretical availability of damages for diminution in [property] value but reject the possibility of such damages in the particular case under discussion because of evidentiary lapses." *Caciopoli* v. *Lebowitz*, supra, 131 Conn. App. 312 n.3.

[8] General Statutes § 52-560a, which was enacted by No. 06-89, § 1, of the 2006 Public Acts, enables an owner of "open space land" to recover, inter alia, the cost of restoring the land to its condition prior to the trespass. General Statutes § 52-560a (c). " '[O]pen space land' " is defined, generally, as "any park, forest, wildlife management area, refuge, preserve, sanctuary, green or wildlife area owned by the state, a political subdivision of the state or a nonprofit land conservation organization . . . ." General Statutes § 52-560a (a). Number 06-89, § 2 of the 2006 Public Acts amended § 52-560 to indicate that the proper remedy for any trespass to "open space land" lies under § 52-560a, rather than under § 52-560. See General Statutes § 52-560; General Statutes § 52-560a.

[9] Number 123 of the 1963 Public Acts amended § 52-560 so that, in situations where the trespasser cuts down any tree intended for use as a Christmas tree, the injured party can recover five times the value of such tree.

[10] Number 548 of the 1961 Public Acts made technical changes to § 52-560. Most notably, the act amended the damages recoverable under the statute so that an injured party can recover three times the reasonable value of any tree removed from his property, in situations where the court is not persuaded that the trespasser mistakenly believed that the trees were growing on his land, or on the land of the person for whom he cut the tree.

[11] The defendant also claims that *Hoyt* has been undermined by subsequent decisions of this court and, therefore, we should conclude that it was wrongly decided. Specifically, the defendant points to *Avery* v. *Spicer*, 90 Conn. 576, 583, 98 A. 135 (1916), where this court stated that the tree cutting statute "prescribe[s] the measure of damages in cases where compensatory damages would, in the absence of the statute, be recoverable." The defendant claims that the clear import of this statement is that compensatory damages would be available only "in the absence of the statute" and, therefore, the existence of § 52-560 precludes an injured party from recovering common-law damages. We disagree that *Avery* has any influence on our decision in the present case.

In *Avery*, this court explained that, in order for a landowner with a present interest in the land to recover under a trespass claim, he needed to show actual or constructive possession of the land. *Avery* v. *Spicer*, supra, 90 Conn. 576, 578–81. The plaintiff claimed, however, that the tree cutting statute created an independent cause of action and allowed a landowner to recover simply by showing that he had title to the land. Id., 582. This court rejected that claim, and concluded that "[t]he authorities, as far as we have observed them, hold, with substantial unanimity, that [tree cutting] statutes similar to ours do not give a new and independent right of action, and that their sole office is to prescribe the measure of damages in cases where compensatory damages would, in the absence of the statute, be recoverable." Id., 583. Contrary to the defendant's assertion, this statement does not contradict the allowance of common-law damages in *Hoyt*. First, the *Avery* decision does not expressly or impliedly reference *Hoyt*. Second, the statement in *Avery* reaffirms our conclusion that § 52-560 enhances the remedies available at common law by providing for treble damages when the reasonable value of the trees as timber is sought. As we explain more fully herein, under common law, an injured party seeking damages based on the reasonable value of the trees as timber could not recover treble damages. Thus, § 52-560 prescribes an enhanced measure of damages—treble damages—that would not be recoverable in the absence of the statute.

The defendant additionally claims that *Hoyt* relied on dubious authority and, therefore, it should be overruled. Namely, the defendant contends that, in *Hoyt*, this court inappropriately relied on *Van Deusen* v. *Young*, supra, 29 Barb. 9, a New York case that was subsequently reversed by the New York Court of Appeals. See *Van Deusen* v. *Young*, supra, 29 N.Y. 9. While this argument might have had some persuasive value at one point in time, any such value has dissipated as a result of this court's subsequent reaffirmation of the common-law rule set forth in *Hoyt*; see, e.g., *Fitzgerald* v. *Merard Holding Co.*, supra, 106 Conn. 481; *Eldridge* v. *Gorman*, supra, 77 Conn. 701; and, as discussed previously in this opinion, our legislature's failure to

insert an exclusivity clause into § 52-560. We therefore conclude that those common-law principles expressed in *Hoyt* remain good law in this state.

[12] Representative Roberta Willis, rising in support of the bill, stated: "The [b]ill before us concerns encroachment on open space lands. . . . [A] recent 2005 . . . State Supreme Court decision on an East Haddam case involving the cutting of 340 trees on land trust land encouraged the [l]egislature to reexamine this issue of land encroachment on preserved and protected open space, particularly in light of the [c]ourt's inability to really effectively provide an adequate remedy." 49 H. Proc., Pt. 9, 2006 Sess., p. 2647.

[13] In *Stanley* v. *Lincoln*, supra, 75 Conn. App. 78, the Appellate Court concluded that "[the] common-law rule [for damages in a tree cutting case] has been embodied in § 52-560. . . . The statute does not give a new and independent cause of action, but prescribes the measure of damages in cases where compensatory damages would, in the absence of the statute, be recoverable." (Citation omitted; internal quotation marks omitted.) The court went on to state that, under § 52-560, "[t]he proper measure of damages, therefore, is either the market value of the trees, once they are severed from the soil, or the diminution in the market value of the real property caused by the cutting." Id., 787. Thus, the court concluded that the replacement value of the trees is not a proper measure of damages under § 52-560. Id., 788–89.

[14] Nominal damages were awarded because the cross claim plaintiffs did not introduce any evidence as to the reasonable value of the trees as timber, nor as to the diminution in the value of their property. *Ventres* v. *Goodspeed Airport, LLC*, supra, 275 Conn. 158.

[15] If, however, the court is persuaded that the trespasser mistakenly believed that the trees were situated on his land, or on the land of the person for whom he cut the trees, the injured party cannot recover treble damages, but can only recover the reasonable value of the trees as timber. General Statutes § 52-560.