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Friday, December 3, 2004



Todd McInturf / The Detroit News

Randall Kolodziejski hopes to recoup the \$28,000 he spent fixing the problems caused by the massive tree in front of his home through a lawsuit filed against the city of Warren.

## Tree is at the root of home's problem

Warren homeowner sues the city for damages caused by a 40-foot silver maple.

By Gene Schabath / The Detroit News

**WARREN** -- There are two ways to look at the 40-foot high silver maple in front of Randy Kolodziejski's neat ranch style home on tree-lined Reid street in the 13 Mile-Ryan area of Warren. In the summer, the symmetrically sculpted tree is a thing of beauty, giving plenty of shade for Kolodziejski and his family, and also providing a home to a family of friendly, fat squirrels.

But the out-of-sight portion of the maple tree is a different



Todd McInturf / The Detroit News

Kolodziejski holds a cast iron sewer line that was removed from his basement. Over the years, it had been pierced by a tree root.

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matter. The massive root system has caused the Kolodziejskis a lot of grief during the 25 years they have lived on Reid. And it also has cost them \$28,000 to correct problems caused by the maple's roots.

Kolodziejski hopes to get his money back through a lawsuit filed against the city of Warren.

If Kolodziejski and other residents win the case, it could be a costly bill for the city.

Macomb Circuit Judge James M. Biernat recently ruled that litigation against Warren over the tree issues could have class-action status, meaning that as many as 6,950 residents could join the lawsuit.

Residents have complained for years that tree roots have broken up the sidewalks, damaged basements walls and blocked sewer pipes, causing sewage and rainwater to back up into basements.

At the heart of the lawsuit is an ambitious tree-planting program undertaken by Warren almost three decades ago, said Troy attorney Gerard Mantese, who is representing the residents.

"The city of Warren created the problem because they planted the trees," Mantese said. "They even passed a law which said the people couldn't cut the trees down. It's the city's problem. By the city's own estimates there were more than 7,000 trees planted. A lot of these people are senior citizens on fixed incomes and can't afford to fix their sidewalks and basements."

But Robert Gillooly, the Detroit attorney hired by Warren to defend the city, said only 39 residents have joined the class-action lawsuit, and he questions how many of them have valid claims.

"Many said they had nuisance trees, but they didn't even know what type of trees they had," Gillooly said.

Gillooly said Biernat's ruling will be appealed to the State Court of Appeals and is confident the class action classification will be overturned. He said Biernat had originally denied the class-action certification.

"Our basic argument is that the alleged damages are individualized," Gillooly said. "You have to take each one on its own merits. You can't lump them all together."

Gillooly said it is the responsibility of the property owners to fix sidewalks and basements if they are damaged by roots.

"We don't believe the city has done anything wrong," Gillooly said. But Mantese said the facts are on his side.

Warren planted a forest of trees, many of them silver maples, on the easements of many streets such as Reid in a campaign to beautify the city, he said.

But along with the beauty came the hidden ugliness of roots, Kolodziejski said.

"We moved in here about 25 years, a few years after they planted the trees," Kolodziejski said. "A few years after we moved is when we

#### What's next

- The city of Warren will file an appeal, challenging a ruling by Macomb Circuit Court Judge James Biernat that created the class-action litigation against the city.
- John Gillooly, a Detroit attorney hired to represent Warren, said the appeal could be filed as early as next week.
- Gerard Mantese, attorney for the residents, said depositions soon will begin in preparation for trial.
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started to have problems when it rained" and water backed up into the Kolodziejskis' basement.

"The city came out and ran a snake through the pipe and there was no problem," Kolodziejski said. "They did that two or three times a year. The city said the problem is that big tree out front with its roots going to the drain."

Kolodziejski told the city he had the solution: "I said let me cut down the tree but the city said no, there's nothing wrong with the tree. They threatened jail time if I cut down the tree."

"It's a nice-looking tree -- it gives you shade," Kolodziejski said. "It also gives me a headache."

And large bills.

The largest cost Kolodziejski incurred was to have his basement and lawn torn up to replace the old cast-iron sewer pipe that went from his basement to the main line in front of his house. Roots penetrated the old line, blocking the flow of sewage. The crumbling iron pipe had to be replaced with plastic-type pipe.

Kolodziejski has remnants from that ordeal. He has an 18-inch section of the old pipe, along with a six-inch wide, 1 1/2 -inch diameter root that workers found impaled in the pipe.

"The company that did the work said, 'Here, we have a souvenir for you -- a piece of silver maple root,' " Kolodziejski said.

*You can reach Gene Schabath at (586) 468-3614 or [gscshabath@detnews.com](mailto:gscshabath@detnews.com).*



Todd McInturf / The Detroit News

**Kolodziejski, his wife, Linda, and Kolodziejski's father, Harry, all agree it's a nice looking tree, aside from the headaches it's caused. The city denies any fault.**

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