

MILL POND CONDOMINIUM ASSOCIATION

v.

RICHARD MANALIO et al.

Argued: September 15, 2011
Decided: September 22, 2011

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,
GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Richard and Anne Manalio appeal and the Mill Pond Condominium Association cross-appeals from a declaratory judgment of the Superior Court (York County, *Fritzsche, J.*) that (1) enjoined the Manalios from paving a portion of an easement providing ingress and egress to their property; (2) declined to order that a grass surface be restored to the easement area; and (3) directed removal of items placed above a fence that exceeded the six-foot height limit of Maine's Spite Fence Statute, 17 M.R.S. § 2801 (2010).

We have reviewed our prior opinion addressing this dispute, *Mill Pond Condominium Association v. Manalio*, 2006 ME 135, 910 A.2d 392, and the extensive record developed in this matter. After that review, we conclude that, contrary to the Manalios' contentions, the court did not clearly err or abuse its discretion when it (1) prohibited them from paving the right of way; (2) found that they had violated the Spite Fence Statute; (3) found that the Association's continued use of the right of way did not interfere with the Manalios' rights; and (4) granted the Association's post-judgment motion for clarification. *See Stickney v. City of Saco*, 2001 ME 69, ¶ 13, 770 A.2d 592 (clear error review); *Pettinelli v. Yost*, 2007 ME 121, ¶ 11, 930 A.2d 1074 (abuse of discretion review). Contrary to

the Association's contentions, the court did not clearly err or abuse its discretion in considering remedies when it (1) declined to order the Manalios to restore to grass the portion of the easement used for ingress and egress; (2) refused to award the Association compensatory damages for nuisance when there was no evidence of reduction in property values; (3) declined to award the Association punitive damages; and (4) denied the Association's request for an award of costs. *See Charlton v. Town of Oxford*, 2001 ME 104, ¶ 36, 774 A.2d 366.

The entry is:

Judgment affirmed.

On the briefs:

Gregory J. Orso, Esq., Orso Law, P.A., York Harbor, for
Richard Manalio and Anne Manalio.

Jens-Peter W. Bergen, Esq., Law Office of Jens-Peter W.
Bergen, Kennebunk, for Mill Pond Condominium Association.

At oral argument:

Gregory J. Orso, Esq., for Richard Manalio and Anne Manalio.

Jens-Peter W. Bergen, Esq., for Mill Pond Condominium
Association.