MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 12-89
Docket No. BCD-11-415

FARNHAM POINT ASSOCIATION

v.

MARY C. HAMILTON et al.

Argued May 8, 2012
Decided July 24, 2012

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

MEMORANDUM OF DECISION

Farnham Point Association appeals and Mary C. Hamilton cross-appeals from a partial final judgment, entered in the Superior Court (Business and Consumer Docket, *Horton, J.*) pursuant to M.R. Civ. P. 54(b) following rulings on summary judgment and after trial, on the parties' various claims for declaratory judgment and injunction concerning a right-of-way on Farnham Point Road in the Town of Boothbay. The court did not abuse its discretion in directing the entry of a partial final judgment, and we therefore reach the merits of the appeal. *See Marquis v. Town of Kennebunk*, 2011 ME 128, ¶¶ 13-15, 36 A.3d 861. We affirm the judgment in all respects after reviewing the summary judgment record in the light most favorable to the nonprevailing party and the trial record in the light most favorable to the prevailing party. *See Flaherty v. Muther*, 2011 ME 32, ¶ 4, 17 A.3d 640. Specifically, we conclude that the court did not err in:

(1) granting defendants Jeffrey T. DiMauro and Joanne A. DiMauro a summary judgment on the Association's claim of a fee interest in the right-of-way or the right to exclude others from the right-of-way over the DiMauros' property and denying the Association's motion. *See Matteson v. Batchelder*, 2011 ME 134, ¶ 16, 32 A.3d 1059 ("The scope of a party's easement rights must be determined

from the unambiguous language on the face of the deed.") (quotation marks omitted);

(2) finding by clear and convincing evidence that the DiMauros and the Association, through their predecessors-in-title, intended the location of the right-of-way to be where it exists on the face of the earth as described in the court's findings, rather than as described by metes and bounds in the relevant deeds, and concluding that the Association did not acquire through adverse possession, prescriptive easement, or acquiescence, portions of the right-of-way that lay outside the metes and bounds description of the right-of-way. *See Matteson*, 2011 ME 134, ¶¶ 17, 21, 32 A.3d 1059 (holding that the trial court erred in reforming a deed when there was no mutual mistake of fact and that the doctrine of boundary by acquiescence is not applicable to rights-of-way); *Davis v. Bruk*, 411 A.2d 660, 664 (Me. 1980) (holding that in general an easement may not be relocated without the consent of the owners of both the dominant and servient estates);

(3) finding that the Association trespassed on the DiMauros' property by removing vegetation outside the right-of-way. *See* 14 M.R.S. §§ 7551-52 (2011); *Medeika v. Watts*, 2008 ME 163, ¶¶ 5-6, 957 A.2d 980 (noting the elements of a cause of action for common law trespass);

(4) finding that the DiMauros' use of their property has not interfered with the Association's use and enjoyment of the right-of-way, and that the Association failed to prove that any of the deeds involving the DiMauros' property restrict the DiMauros from using their property for commercial purposes. *See Flaherty*, 2011 ME 32, ¶ 63, 17 A.3d 640;

(5) concluding that as regards the claims between the Association and David Alley and based on the court's conclusion that the Association does not have exclusive access to the right-of-way over the DiMauros' property, David Alley has an appurtenant easement giving him access over the right-of-way and Farnham Point Road for the benefit of his "Jackson" parcel only;

(6) concluding that the Association lacks standing to pursue its claims that defendants Daniel and Angela Alley have no right, title, or interest in the right-of-way portion of the Farnham Point Road, based on the court's finding that the Association itself does not have a fee interest or exclusive rights to the Farnham Point Road in the location at issue. Furthermore, the court did not err in

finding that Daniel and Angela Alley's use of the right-of-way and the road did not interfere with the Association's use and enjoyment;

(7) entering a summary judgment in favor of the Association and defendant Robert Newding and against Hamilton on the basis that Hamilton has no deeded right to use Farnham Point Road, Schooner Ridge Road or Nickerson Pond Road to access her land that lies outside the V. Allen Brown chain of title; and

(8) finding that Hamilton is a member of the Association with the right to use Association property, including the Association's roads, and the court did not abuse its discretion in concluding that the Association is estopped from denying Hamilton membership when for a period of time it billed her for membership and treated her as a member, and she detrimentally relied on the Association's conduct and statements. *See Dep't of Health and Human Servs. v. Pelletier*, 2009 ME 11, ¶ 15, 964 A.2d 630 (noting the standard of review of abuse of discretion as to the application of principles of equity); *Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 38, 967 A.2d 690 (stating that equitable estoppel may be based on misleading statements, conduct, or silence that induces detrimental reliance).

The entry is:

Judgment affirmed.

On the briefs:

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Business and Consumer Docket docket number RE-2010-22, 23, and 24
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