

JAMES S. KRZYWICKI et al.

v.

PAULETTE L. DAVIS

Submitted on Briefs February 26, 2013

Decided February 28, 2013

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

MEMORANDUM OF DECISION

Paulette L. Davis appeals, and James S. Krzywicki and Debra L. Scannell (the Krzywickis) cross-appeal, from a judgment of the Superior Court (York County, *Brennan, J.*) declaring that the Krzywickis have a prescriptive easement over a portion of Davis's property for ingress, egress, and parking; prohibiting Davis from interfering with their use of the easement; and denying their request that the fence along the easement be removed or relocated. Contrary to Davis's contention, the court did not err by finding that the Krzywickis proved by a preponderance of the evidence all of the elements needed to establish a prescriptive easement. *See Flaherty v. Muther*, 2011 ME 32, ¶ 78, 17 A.3d 640; *Androkites v. White*, 2010 ME 133, ¶¶ 12-14, 10 A.3d 677. Contrary to the Krzywickis' contention, the court's decision not to order Davis to remove or relocate the fence along the prescriptive easement was not in error. *See Stanton v. Strong*, 2012 ME 48, ¶ 10, 40 A.3d 1013; *Badger v. Hill*, 404 A.2d 222, 227 (Me. 1979) (observing that the principle prohibiting the servient owner from unreasonably interfering with the holder's use of the easement does not apply to activities of the holder outside the bounds of the easement).

The entry is:

Judgment affirmed.

On the briefs:

Susan B. Driscoll, Esq., Bergen & Parkinson, LLC, Kennebunk, for appellant Paulette L. Davis

James B. Smith, Esq., and Michael J. O'Toole, Esq., Woodman Edmands Danylik Austin Smith & Jacques, P.A., Biddeford, for cross-appellants James Krzywicki and Debra L. Scannell