

LEWIS E. MATTESON et al.

v.

MALCOLM BATCHELDER

Argued June 12, 2013

Decided June 20, 2013

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

#### MEMORANDUM OF DECISION

Malcolm Batchelder appeals, and Lewis E. and Betty J. Matteson cross-appeal, from a judgment entered in the Superior Court (Penobscot County, *Murphy, J.*) finding on remand from *Matteson v. Batchelder*, 2011 ME 134, 32 A.3d 1059, that Batchelder has maintained a property interest in an easement over the Mattesons' property throughout this litigation and that the location of the easement on the face of the earth is as depicted on the May 23, 2012, plan entitled "Boundary Retracement Survey of the Northerly Shoreline of French's Stream Crossing the Matteson Property." Contrary to the Mattesons' contention, the court did not err in finding that Batchelder has maintained a property interest in the easement throughout the litigation. *See Weinstein v. Hurlbert*, 2012 ME 84, ¶ 9, 45 A.3d 743. Contrary to Batchelder's contention, the court correctly understood from *Matteson* that the southerly boundary of the easement is the ordinary high-water mark. *See* 2011 ME 134, ¶ 18, 32 A.3d 1059. Therefore, the court properly disregarded evidence of the grantor's allegedly contrary intent when locating the easement on the face of the earth. *See Raymond v. Raymond*, 480 A.2d 718, 720 (Me. 1984) (observing that an appellate court's decision on a particular issue is controlling on remand). In addition, the court's decision to award the Mattesons costs was within the bounds of the court's discretion.

*See* 14 M.R.S. § 1501 (2012); M.R. Civ. P. 54(d); *Mahar v. StoneWood Transp.*, 2003 ME 63, ¶ 26, 823 A.2d 540.

The entry is:

Judgment affirmed.

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**On the briefs:**

William B. Devoe, Esq., and Adria Y. LaRose, Esq., Eaton Peabody, Bangor, for appellant Malcolm Batchelder

Knud E. Hermansen, Esq., Old Town, and Michael H. Griffin, Esq., Griffin & Jordan, LLC, Orono, for cross-appellants Lewis E. and Betty J. Matteson

**At oral argument:**

William B. Devoe, Esq., for appellant Malcolm Batchelder

Knud E. Hermansen, Esq., for cross-appellants Lewis E. and Betty J. Matteson