

ASHTONBROOKE, LLC

v.

ROBERT ALAN WAKE et al.

Submitted on Briefs April 23, 2015  
Decided April 28, 2015

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

#### MEMORANDUM OF DECISION

Robert Alan Wake and Marcia Wake appeal from a judgment entered by the Superior Court (Cumberland County, *Clifford, J.*) on Ashtonbrooke, LLC's complaint and the Wakes' counterclaims. Through their pleadings, both parties sought a declaratory judgment of the boundary lines between their properties and to quiet title. The court found that the boundary lines were as depicted in the only measured survey presented in evidence.

Contrary to the Wakes' contentions, the court based its findings on competent evidence in the record and did not commit clear error in reaching those findings, *see Grondin v. Hanscom*, 2014 ME 148, ¶ 8, 106 A.3d 1150; the court did not misinterpret deed language, *see Goudreau v. Pine Springs Rd. & Water, LLC*, 2012 ME 70, ¶ 17, 44 A.3d 315, even if that language differed from part of one of the parties' pretrial stipulations, *see TI Fed. Credit Union v. DelBonis*, 72 F.3d 921, 928 (1st Cir. 1995); the court did not err in considering evidence that differed in some respects from the original allegations of the complaint and counterclaims, *see M.R. Civ. P. 8(a); Nadeau v. Frydrych*, 2014 ME 154, ¶ 5, 108 A.3d 1254; and it was within the court's discretion to allow the amendment of the complaint at trial when the Wakes were on notice of the position that Ashtonbrooke's expert was taking with respect to the location of the boundary lines on the face of the earth,

*see In re Sen*, 1999 ME 83, ¶ 10, 730 A.2d 680; *John W. Goodwin, Inc. v. Fox*, 642 A.2d 1339, 1341 (Me. 1994). None of the Wakes' other arguments are persuasive. Although Ashtonbrooke has requested that we award sanctions on the ground that the Wakes' appeal is frivolous, we decline to do so. *See* M.R. App. P. 13(f).

The entry is:

Judgment affirmed.

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**On the briefs:**

Robert Alan Wake, Esq., Windham, and Michael J. O'Toole, Esq., Woodman Edmands Danylik Austin Smith & Jacques, P.A., Biddeford, for appellants Robert Alan Wake and Marcia Wake

William C. Knowles, Esq., and Seth S. Coburn, Esq., Verrill Dana, LLP, Portland, for appellee Ashtonbrooke, LLC