

JUSTINE CARVER-BROOKS et al.

v.

WENDY ANNIS et al.

Submitted on Briefs April 27, 2017
Decided May 11, 2017

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

MEMORANDUM OF DECISION

Justine Carver-Brooks and Travis Brooks (collectively, Carver-Brooks) appeal from a judgment of the Superior Court (Cumberland County, *Warren, J.*¹) denying their request for a declaratory judgment to establish a private prescriptive easement. Carver-Brooks argues on appeal that the court erred by declining to find that the privately-owned way over which she alleges the easement runs had been used continuously for the prescriptive period.

¹ Carver-Brooks commenced this action in the District Court (Rumford), which transferred the case (*Dow, J.*) to the Superior Court (Cumberland County) for trial. The Superior Court then treated the case as one that was permanently transferred to that court and court location, which included assigning the case a new docket number specific to Cumberland County. The transfer appears to have been an effort to implement an established administrative process that allows certain types of District Court cases requiring a significant amount of trial time to be placed on a Superior Court trial list. When that process is implemented, however, the District Court case does not become a Superior Court case; it remains a District Court action, and if a Superior Court justice presides at trial, he or she does so sitting as a District Court judge. *See* Authority of Judges/Justices to Sit in Either District or Superior Court, Me. Admin. Order JB-07-3 (effective Nov. 1, 2007) (authorizing all state court justices and judges to sit in either trial court). The manner in which this case became a Superior Court action—an issue not raised by the parties—does not affect the validity of the judgment because it is not jurisdictional. *See* 4 M.R.S. § 105 (2016).

The party claiming a prescriptive easement must prove the following elements: “(1) continuous use for at least twenty years; (2) under a claim of right adverse to the owner; (3) with the owner’s knowledge and acquiescence, or with a use so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed.” *Androkites v. White*, 2010 ME 133, ¶ 14, 10 A.3d 677. “We will vacate the trial court's conclusion that the party with the burden of proof failed to prove a prescriptive easement only if the evidence compelled a contrary conclusion.” *Id.* ¶ 12. Here, particularly in light of affirmative evidence presented by the defendants that the way had not been used continuously for at least twenty years, the record did not compel the court to find that Carver-Brooks satisfied her burden of proof.

The entry is:

Judgment affirmed.

David A. Goldman, Esq., Norman, Hanson & DeTroy, LLC, Portland, for appellants Justine Carver and Travis Brooks

Sigmund D. Schutz, Esq., Preti Flaherty Beliveau & Pachios LLP, Portland, for appellee Chadbourne Tree Farms, LLC

Jonathan L. Goldberg, Esq., MittelAsen, LLC, Portland, for appellees Wendy Annis and Scott Annis

Andrew W. Sparks, Esq., Drummond & Drummond, LLP, Portland, for appellee Maureen Swain