

TERRENCE E. PINKHAM

v.

DEPARTMENT OF TRANSPORTATION

Submitted on Briefs May 31, 2018
Decided June 12, 2018

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

MEMORANDUM OF DECISION

On the second appeal¹ in this action to determine just compensation for land taken by eminent domain, *see* 23 M.R.S. § 157 (2017), Terrence E. Pinkham appeals and the Maine Department of Transportation cross-appeals from a judgment awarding Pinkham \$107,800, entered by the Superior Court (Hancock County, *R. Murray, J.*) after a jury trial. *See* M.R. App. P. 2B(c). We affirm the judgment.

Contrary to Pinkham's contention, the court did not err by denying his request for an award of attorney fees because they are not an element of just compensation for a taking, *see Fullerton v. Knox Cty. Comm'rs*, 672 A.2d 592, 594 (Me. 1996); because, given the procedural history of this case, there is no statutory authority for an award of attorney fees, *see* 23 M.R.S. § 157; *Foremost Ins. Co. v. Levesque*, 2007 ME 96, ¶ 6, 926 A.2d 1185 (explaining that Maine courts follow the "American Rule," which "provides that parties are responsible

¹ *See Pinkham v. Dep't of Transp.*, 2016 ME 74, 139 A.3d 904.

for their own attorney fees absent a statutory or contractual provision stating otherwise”); and because the record does not reveal any other basis for an award of attorney fees to Pinkham.

Further, the court did not err by fixing the rate of prejudgment interest pursuant to 14 M.R.S. § 1602-B(3) (2017). *See Avery v. Kennebec Millwork, Inc.*, 2004 ME 147, ¶ 8, 861 A.2d 634 (“[O]ne is entitled to interest as a matter of right at the rate provided in the statute.” (alterations omitted)).

Finally, to the extent that MDOT preserved its argument concerning the jury instruction on the measure of damages despite MDOT’s acquiescence at trial to the instruction that was given, MDOT’s argument regarding error in this context is unpersuasive. *See Pinkham v. Dep’t of Transp.*, 2016 ME 74, ¶ 18, 139 A.3d 904 (stating that the measure of just compensation in this partial takings case is the difference between the fair market value of the property before and after the taking); *Timberlands, Inc. v. Me. State Highway Comm’n*, 284 A.2d 894, 898 (Me. 1971); *see also Advanced Constr. Corp. v. Pilecki*, 2006 ME 84, ¶ 20, 901 A.2d 189 (stating the standard of review for jury instructions).

The entry is:

Judgment affirmed.

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