

WENDALL E. VOTER

v.

RONALD D. ELLIOTT et al.

Argued June 13, 2019

Decided June 20, 2019

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

#### MEMORANDUM OF DECISION

Wendall E. Voter appeals from a judgment of the Superior Court (Franklin County, *Mullen, J.*) entered after a nonjury trial. Voter asserts that the court erred in (1) concluding that he failed to show that he acquired an easement by necessity, (2) failing to address specific language in a 1997 deed, and (3) determining that he was not entitled to a jury trial with respect to his claim for tortious interference with a business relationship.

First, the court did not err in concluding that Voter failed to establish an easement by necessity. The existence of an easement is a question of fact, *see Lyons v. Baptist Sch. of Christian Training*, 2002 ME 137, ¶ 13, 804 A.2d 364, and where, as here, there was no request for further findings of fact, we assume that the trial court made all findings necessary to support its judgment. *Glidden v. Belden*, 684 A.2d 1306, 1316 (Me. 1996). There is sufficient evidence to support the court's determination that Voter failed to demonstrate that his property was landlocked and unreachable by road or highway at the time that it was conveyed to him by the Town of Strong in 1979, and that he has no alternative practical access to the property. *See Welch v. State*, 2006 ME 121, ¶12, 908 A.2d

1207; *Amodeo v. Francis*, 681 A.2d 462, 465 (Me. 1996); *Morrell v. Rice*, 622 A.2d 1156, 1160 (Me. 1993).

Second, contrary to Voter's argument, the court was not required to parse the language of a 1997 deed from Ronald D. Elliott to his son, Robert C. Elliott. The deed provides no evidence of the Town's ownership of the discontinued Hunter Road, *see Piper v. Voorhees*, 130 Me. 305, 310, 155 A, 556, 559 (Me. 1931) ("Whenever the public interest is relinquished, the owner of the soil is restored to his original dominion over the same."), and does not aid Voter's claims for an easement over the Elliotts' property or a declaratory judgment of the same.

Finally, the court did not err in concluding that Voter had no right to a jury trial with respect to his claim for tortious interference with a business relationship. Although Voter's claim includes a request for damages, such damages do not entitle him to a jury trial because they are incidental to the equitable relief he seeks in Counts 1-4. *See* Me. Const. art I, § 20; *DesMarais v. Desjardins*, 664 A.2d 840, 844 (Me. 1995) ("[W]hen the primary recovery pursued is equitable, the inclusion of a request for money damages does not convert the proceeding into an action at law."); *King v. King*, 507 A.2d 1057, 1059 (Me. 1986); *Cyr v. Cote*, 396 A.2d 1013, 1016, 1019 (Me. 1979).

The entry is:

Judgment affirmed.

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Gene Sullivan Jr., Esq. (orally), Bangor, for appellant Wendall Voter

David M. Sanders, Esq. (orally), and Ashley T. Perry, Esq., Sanders & Hanstein, P.A., Farmington, for appellee Ronald D. Elliott et al.