

ERNEST A. WHITEHOUSE et al.

v.

DALE L. WATCHOWSKI, TRUSTEE et al.

Submitted on Briefs May 12, 2020
Decided May 19, 2020

Panel: MEAD, GORMAN, HUMPHREY, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

Ernest A. and Susan Y. Whitehouse appeal from a judgment of the Superior Court (Lincoln County, *Billings, J.*) in favor of Dale L. Watchowski and Randi C. Williams as trustees of their respective revocable trusts (the Watchowskis) on the Whitehouses' complaint for declaratory judgment of ownership of a strip of land. The Watchowskis cross-appeal from the court's denial of their counterclaim for injunctive relief.

Contrary to the Whitehouses' contentions, the court did not err as a matter of fact or law in concluding that the Whitehouses' deed to a parcel known as the "Nubbles" did not include any land now in dispute.¹

¹ We decline to consider the other theories by which the Whitehouses attempt to undermine the Watchowskis' ownership of the disputed land because the Whitehouses failed to plead or assert—and even expressly disavowed—those arguments at trial. See *Johnson v. Town of Dedham*, 490 A.2d 1187, 1189 (Me. 1985); cf. M.R. Civ. P. 9(b). Furthermore, to the extent that the Whitehouses did not waive certain arguments regarding the validity of a default judgment that the Watchowskis obtained in 2010 in another proceeding, the Whitehouses have failed to establish standing to challenge that judgment. See *Mortg. Elec. Registration Sys., Inc. v. Saunders*, 2010 ME 79, ¶ 7, 2 A.3d 289.

See Gravison v. Fisher, 2016 ME 35, ¶¶ 38-39, 134 A.3d 857. We also decline to disturb, on the Watchowskis' cross-appeal, the court's conclusion that the Whitehouses' planting of vegetation between their property and the Watchowskis' was predominantly motivated by "privacy, wind break, and personal aesthetic enjoyment," rather than by malice. *See* 17 M.R.S. § 2801 (2018); *Tranfield v. Arcuni-English*, 2019 ME 135, ¶ 10, 215 A.3d 222; *Peters v. O'Leary*, 2011 ME 106, ¶¶ 15-17, 30 A.3d 825.

The entry is:

Judgment affirmed.

Gordon R. Smith, Esq., Verrill Dana, LLP, Portland, for appellants Ernest A. and Susan Y. Whitehouse

Judy A.S. Metcalf, Esq., Eaton Peabody, Brunswick, for cross-appellants Dale L. Watchowski and Randi Williams