MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 25-64
Docket No. Yor-24-460

LAWRENCE E. SMITH V

v.

OWEN M. FOSS et al.

Submitted on Briefs May 21, 2025
Decided June 10, 2025

Panel: MEAD, HORTON, CONNORS, and LAWRENCE, JJ.

MEMORANDUM OF DECISION

Lawrence E. Smith V appeals from a judgment entered in the Superior Court (York County, *Mulhern, J.*) denying his claim for trespass and granting prescriptive easement rights to James and Michelle Dalrymple, Owen and Kathleen Foss, Amy Hubbard, Jeffrey and Lynn Long, and Marc Patterson (collectively, the Neighbors).[1] *See* M.R. App. P. 2B(c)(1). Smith makes two arguments on appeal: he contends, first, that the court "erred by failing to allow Maine's open lands tradition, and concurrent permissive use by the public, to rebut any presumption of knowledge and acquiescence by the landowner," and second, that the court erred in granting Hubbard a prescriptive easement because Hubbard failed to establish continuous use for the requisite twenty-year period. We disagree and affirm.

"We review the trial court's factual findings as to the elements of a prescriptive easement for clear error and will affirm those findings if supported by competent record evidence, even if evidence could support alternative factual findings." *Androkites v. White*, 2010 ME 133, ¶ 12, 10 A.3d 677. "We

[1] The court concluded that Dustin and Stefanie Colson; Isinglass Rentals NH, LLC; and Dale and Amy Franklin did not obtain prescriptive easement rights.

review questions of law related to easements de novo . . . and defer to a trial court's assessment of witness credibility and resolution of conflicting testimony." *Lincoln v. Burbank*, 2016 ME 138, ¶ 26, 147 A.3d 1165 (citation omitted). When, as here, "a motion for findings has been filed and denied, we cannot infer findings from the evidence in the record. Instead, the court's decision must include sufficient findings to support its result." *Douglas v. Douglas*, 2012 ME 67, ¶ 27, 43 A.3d 965 (citation omitted).

Because we have allowed the open lands tradition to provide a foundation for a rebuttable presumption of permission—an aspect of the *adversity* element of a prescriptive easement, not of the acquiescence element—and we have allowed the presumption of permission to apply in cases of *public* easements, not private ones, we conclude that the court correctly applied the law. *See Almeder v. Town of Kennebunkport*, 2014 ME 139, ¶¶ 29-30 & n.18, 106 A.3d 1099. Because the court found, with support in the record, that the Neighbors had satisfied the elements of a prescriptive easement, we affirm the factual findings. *See Androkites*, 2010 ME 133, ¶ 14, 10 A.3d 677; *Almeder*, 2014 ME 139, ¶¶ 20-23, 106 A.3d 1099.

Because the court found, with support in the record, that Hubbard established continuous use of the Tote Road for walking from May 1999 until September 2021, more than the requisite twenty-year period, we conclude that the court did not err and affirm the judgment. *See Gutcheon v. Becton*, 585 A.2d 818, 822 (Me. 1991); *accord Almeder*, 2014 ME 139, ¶ 29 n.18, 106 A.3d 1099; *see also Restatement of Property* § 464 (1944).

The entry is:

Judgment affirmed.

Bradley C. Morin, Esq., Bourque Clegg Causey & Morin LLC, Sanford, for appellant Lawrence E. Smith V

John A. Turcotte, Esq., Ainsworth, Thelin & Raftice, P.A., South Portland, for appellees Michelle and James Dalrymple, Kathleen and Owen Foss, Amy Hubbard, Jeffrey and Lynn Long, and Marc Patterson