

DOUGLAS M. MYERS et al.

v.

MICHAEL W. DESCHENES et al.

Submitted on Briefs June 2, 2005

Decided September 29, 2005

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS,  
and LEVY, JJ.\*

#### MEMORANDUM OF DECISION

Douglas M. Myers and Sue Ellen P. Myers, co-trustees, appeal from the entry of a summary judgment in the Superior Court (Penobscot County, *Mead, J.*) in favor of Michael W. Deschenes, Joseph P. Walsh, and Elizabeth R. Walsh pursuant to the Myerses' M.R. Civ. P. 80C appeal from a decision of the Maine Land Use Regulation Commission. Contrary to the Myerses' contentions, the court did not err in granting a summary judgment on the basis that the Walshes' proposed use of the rights-of-way is not subject to the restrictive covenants, *see Alexander v. Fairway Villas, Inc.*, 1998 ME 226, ¶¶ 15-16, 719 A.2d 103, 107; the

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\* Justice Paul L. Rudman participated in the initial conference, but retired before this memorandum decision was certified.

rights-of-way were not extinguished by merger, *see Dority v. Dunning*, 78 Me. 381, 387, 6 A. 6, 9 (1886); *see also Hall v. Pippin*, 984 S.W.2d 617, 622 (Tenn. Ct. App. 1998); and the rights conveyed by Deschenes were those rights reserved and later conveyed by the original grantor. Moreover, because the Myerses have not prevailed as to their other assertions, we do not need to address their contentions that they are entitled to injunctive relief, and to costs. *See Burbank v. H.D. Goodall Hosp.*, 656 A.2d 1209, 1211 (Me. 1995).

The entry is:

Judgment affirmed.

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