

FRANK SMITH et al.

v.

DUANE ROLERSON et al.

and

DUANE ROLERSON et al.

v.

BIRUTE SMITH et al.

Submitted on Briefs October 5, 2004

Decided January 5, 2005

Revised January 6, 2005

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

## MEMORANDUM OF DECISION

Frank and Birute Smith appeal from a judgment entered in the District Court (Wiscasset, *Westcott, J.*) following a bench trial. Contrary to the Smiths' argument, the court did not err in interpreting the language in the deed granting Duane and Catherine Rolerson a fifteen-foot-wide easement appurtenant. The

court did not err when it found the deed provision ambiguous, nor did it clearly err in interpreting it. *See Stickney v. City of Saco*, 2001 ME 69, ¶¶ 53, 54, 770 A.2d 592, 610. Further, the court did not err in determining that the Smiths failed to rebut the presumption that the easement is appurtenant rather than in gross. *See Anchors v. Manter*, 1998 ME 152, ¶ 10, 714 A.2d 134, 138. Finally, the record does not compel a finding that the Rolersons' actions constituted a nuisance. *See Charlton v. Town of Oxford*, 2001 ME 104, ¶¶ 36-40, 774 A.2d 366, 377-78.

The entry is:

Judgment affirmed.

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