

STEPHEN SHEA et al.

v.

EBERHARDT DUSCHEK et al.

Submitted on Briefs October 24, 2005

Decided February 1, 2006

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

MEMORANDUM OF DECISION

Stephen and Kenneth Shea appeal from a judgment entered in the Superior Court (Hancock County, *Mead, J.*) denying injunctive relief and some requests for damages. Contrary to the Sheas' contention, the court did not err as a matter of law when it determined the Sheas are collaterally estopped from claiming that the Stabawl Road is entirely upon their property. See *Macomber v. MacQuinn-Tweedie*, 2003 ME 121, ¶ 22, 834 A.2d 131, 138-39; *Tungate v. Gardner*, 2002 ME 85, ¶ 4, 797 A.2d 738, 740. Furthermore, surveyor Richard Salsbury generally followed the appropriate rules of construction as to the location

of the road; therefore, the court's acceptance of his testimony was not clearly erroneous. *See Wells v. Powers*, 2005 ME 62, ¶¶ 2-3, 873 A.2d 361, 363; *Sproul v. Foye*, 55 Me. 162, 164-65 (1867). Finally, the court's determination that Jordan's and Duschek's use of the existing easement does not overburden the easement is supported by competent evidence.¹ *See Gutcheon v. Becton*, 585 A.2d 818, 822 (Me. 1991).

The entry is:

Judgment affirmed.

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¹ Our holding does not infringe upon the Sheas' right to raise the issue of overburdening in the future if use of the easement changes significantly.