

G. KIRK HANSEN et al.

v.

DAVID C. WELLER

Submitted On Briefs April 30, 2008  
Decided May 29, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, LEVY, SILVER, and MEAD, JJ.

#### MEMORANDUM OF DECISION

In this dispute over the location of the boundary between the land of G. Kirk Hansen and Carol Hansen and the land of David C. Weller, the Hansens appeal from a declaratory judgment entered in the Superior Court (Knox County, *Wheeler, J.*) declaring the location of that boundary line. The Hansens contend that the court improperly determined the location of the boundary because it (1) misapplied the rules of deed construction; (2) disregarded the Hansens' action to quiet title; (3) erred in determining that Weller did not waive the defense he had against the action to quiet title; and (4) abused its discretion when it denied the Hansens the opportunity to amend their pleadings in order to present alternative legal theories. Contrary to the contentions of the Hansens, the Superior Court thoroughly analyzed the issues surrounding this boundary dispute, and it neither erred in its legal conclusion of what constituted the boundary line, nor in its factual finding as to where that boundary line was on the face of the earth. *See Hennessy v. Fairley*, 2002 ME 76, ¶ 21, 796 A.2d 41, 48.

Furthermore, the court committed no error, nor did it abuse its discretion, in: (1) utilizing the declaratory judgment action as the procedural vehicle to resolve the boundary dispute and determine the location of the boundary, *see McGrath v. Hills*, 662 A.2d 215, 217 (Me. 1995) (stating that an action to quiet title is not the most appropriate vehicle to resolve boundary disputes and that an action for declaratory judgment would have been more fitting); (2) finding that Weller did

not fail to defend the quiet title action brought by the Hansens, *see Hedges v. Pitcher*, 2008 ME 55, ¶ 20, 942 A.2d 1217, 1223; and (3) denying the Hansens' second and untimely motion to amend their complaint, *see County Forest Prods., Inc. v. Green Mountain Agency, Inc.*, 2000 ME 161, ¶ 56, 758 A.2d 59, 73.

The entry is:

Judgment affirmed.

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