

WILLIAM C. BERRY JR. et al.

v.

TOWN OF YARMOUTH et al.

Briefed July 29, 2008  
Decided September 4, 2008

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

#### MEMORANDUM OF DECISION

William C. Berry Jr. and Pamela Berry appeal from a summary judgment entered in the Superior Court (Cumberland County, *Cole, J.*) finding that the Town of Yarmouth owns in fee simple a parcel of land previously accepted as a public way. Assuming, without deciding, that it is possible for a municipality to discontinue a way by implication, the Superior Court did not err in concluding that where a municipality discontinues a way, the interest passing to the abutting property owners is restricted to the “interests held by [the municipality] for highway purposes” and does not extend to the underlying fee simple. 23 M.R.S. § 3026(1) (2007). Accordingly, the Town’s underlying fee interest in the parcel did not pass to the Berrys as the abutting landowners when the Town “vacated” the accepted way.

The entry is:

Judgment affirmed.

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and Pamela Berry:**

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