

PAUL C. CREAMER

v.

KEVIN A. WILES et al.

Submitted on Briefs October 2, 2008

Decided November 13, 2008

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

MEMORANDUM OF DECISION

Kevin A. Wiles, Arnold C. Pendexter, and Verna M. Pendexter appeal from a judgment entered in the Superior Court (Oxford County, *Delahanty, J.*) denying their counterclaim for a prescriptive easement over a portion of land owned by Paul C. Creamer. Wiles and the Pendexters argue that the Superior Court either abused its discretion or committed an error of law when it concluded that their claim of right to Creamer's land was not adverse to Creamer and that therefore Wiles and the Pendexters did not have a prescriptive easement over that land. Specifically, Wiles and the Pendexters contend that the Superior Court did not recognize the legal presumption of adversity that was mandated by the court's other findings, *Lyons v. Baptist Sch. of Christian Training*, 2002 ME 137, ¶ 18, 804 A.2d 364, 370, and it therefore failed to place the burden on Creamer to prove that the use was not adverse.

We review mixed questions of law and fact de novo for errors of law and for clear error with respect to factual findings. *State v. Holloway*, 2000 ME 172, ¶ 13, 760 A.2d 223, 228. Although the court's order could have more specifically addressed the presumption of adversity and Creamer's burden of overcoming that presumption, the evidence supports a finding that the use of the land by Wiles and the Pendexters was not adverse and would overcome any presumption to the

contrary. *See In re Peter M.*, 602 A.2d 1161, 1164 (Me. 1992). Wiles and the Pendexters did not make a request for findings of fact and conclusions of law pursuant to M.R. Civ. P. 52(a). We therefore infer that the court recognized the presumption of adversity before reaching its ultimate conclusion, particularly because its conclusion was supported by the evidence. *See Weeks v. Krysa*, 2008 ME 120, ¶ 11, 955 A.2d 234, 237; *In re Peter M.*, 602 A.2d at 1164. The Superior Court did not commit error when it concluded that the use of Creamer's land by Wiles and the Pendexters was not under an adverse claim of right.

The entry is:

Judgment affirmed.

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and Verna M. Pendexter:**

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