

MAHLON VOTER et al.

v.

ROGER LAMBERT et al.

Submitted on Briefs November 4, 2008

Decided December 9, 2008

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

MEMORANDUM OF DECISION

Mahlon, Wendall, Vernon, Milton and James Voter and Eunice and Richard Shurtleff (the Voters) appeal from a summary judgment entered in the Superior Court (Franklin County, *Murphy, J.*) in favor of abutting landowners Roger and Kathy Lambert. Adopting the referee's report pursuant to M.R. Civ. P. 53(e)(2), which report was incorporated by reference into the judgment, the court concluded that the Voters failed to demonstrate that they have acquired any easement over, right of way upon, or other interest in the Lamberts' property, including certain roads that cross the Lamberts' land.

Reviewing de novo the court's grant of a summary judgment to the Lamberts, *see Welch v. State*, 2006 ME 121, ¶ 11, 908 A.2d 1207, 1210, we conclude, contrary to the Voters' contentions, that the Voters failed to establish a prima facie case for each element of their implied easement claim, *see Northland Realty, LLC v. Crawford*, 2008 ME 92, ¶¶ 12-13, 953 A.2d 359, 363-64 (stating the elements required to show the creation of an implied easement by a prior quasi-easement), and their prescriptive easement claim, *see Sandmaier v. Tahoe Dev. Group*, 2005 ME 126, ¶ 5, 887 A.2d 517, 518 (stating the elements required to show the creation of a prescriptive easement). *See also Burdzel v. Sobus*, 2000

ME 84, ¶ 9, 750 A.2d 573, 576; *Barnes v. Zappia*, 658 A.2d 1086, 1089 (Me. 1995) (stating that summary judgment in the defendant's favor is proper if it is clear that the defendant would be entitled to a judgment as a matter of law at trial if the plaintiff, bearing the burden of proof at trial, were to present no more evidence than is before the summary judgment court); *Eaton v. Town of Wells*, 2000 ME 176, ¶ 32, 760 A.2d 232, 244 (stating that a party asserting an easement bears the burden of proof).

The entry is:

Judgment affirmed.

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