

KNAUER FAMILY LIMITED PARTNERSHIP

v.

MATTHEW DELISLE

Submitted on Briefs June 4, 2009

Decided June 9, 2009

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

MEMORANDUM OF DECISION

Knauer Family Limited Partnership appeals from a judgment, entered in the Superior Court (Kennebec County, *Jabar, J.*), granting Knauer money damages for a property encroachment but denying injunctive relief. Knauer argues that the court erred in declining to impose a mandatory injunction upon Matthew Delisle to remove the encroachment.

The standard of review for the denial of an injunction is abuse of discretion. *See Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 40, 967 A.2d 690, 702 (applying abuse of discretion standard of review to judgment granting injunction). Facts are reviewed for clear error, whereas conclusions of law are reviewed de novo. *Id.* ¶ 42, 967 A.2d at 702. “The power of equity is broad and flexible. Equitable remedies may be fashioned to meet the needs of the parties in a particular case.” *Littlefield v. Adler*, 676 A.2d 940, 942 (Me. 1996) (citing *Levasseur v. Dubuc*, 229 A.2d 201, 204 (Me. 1967)). We have held that “[d]espite the irreparable injury resulting from . . . an encroachment, a court acting in equity may refuse to grant a mandatory injunction when the effect of the encroachment is negligible compared to the cost of correcting it.” *Gaffny v. Reid*, 628 A.2d 155, 157-58 (Me. 1993). Contrary to Knauer’s contentions, the court did not abuse its

discretion in finding that the effect of the encroachment was negligible compared with the cost of removing it or in declining the mandatory injunction on that basis.

Knauer additionally alleges, for the first time in a supplemental reply brief, that the court made two factual errors. Knauer did not identify these as an issue on appeal and did not raise these issues prior to a supplemental reply brief. It therefore has failed to preserve these issues for appeal. *See DeSomma v. Town of Casco*, 2000 ME 113, ¶ 7 n.1, 755 A.2d 485, 487.

The entry is:

Judgment affirmed.

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