

JEAN PERKINS

v.

ELIZABETH EVANS

Submitted on Briefs June 4, 2009
Decided June 30, 2009

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

MEMORANDUM OF DECISION

Elizabeth Evans appeals from a judgment entered in the Superior Court (Waldo County, *Hjelm, J.*) in favor of Jean Perkins. Contrary to Evans's contentions, the court: (1) did not err as a matter of law nor abuse its discretion in concluding that the doctrine of judicial estoppel did not apply to bar Perkins's contention at trial that a deed in question created a joint tenancy, *see Me. Educ. Ass'n v. Me. Cmty. College Sys. Bd. of Trs.*, 2007 ME 70, ¶¶ 16, 18, 20, 923 A.2d 914, 917, 918; (2) did not err in determining that Evans waived the affirmative defense of release by failing to raise it in her pleading as required by M.R. Civ. P. 8(c), *see R. C. Moore, Inc. v. Les-Care Kitchens, Inc.*, 2007 ME 138, ¶ 24, 931 A.2d 1081, 1086, and, in any event, the court did not err in concluding, in the alternative, that the language of the release did not apply to bar Perkins's claim, *see Shostak v. Shostak*, 2004 ME 75, ¶ 11, 851 A.2d 515, 518; (3) did not abuse its discretion in ordering Evans to sell her interest in the property to Perkins, *see Rinehart v. Schubel*, 2002 ME 53, ¶ 10, 794 A.2d 73, 76; *Libby v. Lorrain*, 430 A.2d 37, 38-40 (Me. 1981); and (4) did not err in determining the expenses to be deducted, based on amounts Perkins paid to maintain the property, in determining the value the parties' shares in the property, *see Palanza v. Lufkin*, 2002 ME 143, ¶¶ 9, 11-12, 14-15, 804 A.2d 1141, 1144, 1145-46. As to Evans's contention that the court was mistaken in calculating the amount of each parties' proportionate

share of the value of the property, the court did not err in rounding the values to be awarded.

The entry is:

Judgment affirmed.

Attorney for Elizabeth Evans:

Edward C. Russell, Esq.
Russell & Silver, P.A.
145 Exchange Street, Suite 3
Bangor, Maine 04401

Attorney for Jean Perkins:

Terry W. Calderwood, Esq.
Gibbons & Calderwood, L.L.P.
9 Washington Street
PO Box 616
Camden, Maine 04843