

C.P. A FLORIDA PARTNERSHIP

v.

JOHN HURD II et al.

Submitted on Briefs July 8, 2009

Decided July 28, 2009

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

MEMORANDUM OF DECISION

C.P. A Florida Partnership (C.P.) appeals from a judgment of the Superior Court (Hancock County, *Cuddy, J.*) concluding that C.P. is not entitled to an easement by necessity over the property of John Hurd II and Janice Hurd, and that C.P.'s claim for equitable estoppel is barred by the doctrine of unclean hands. Contrary to C.P.'s contentions, the court did not commit clear error or err as a matter of law in concluding that C.P. does not have an easement by necessity. *See Murch v. Nash*, 2004 ME 139, ¶ 10, 861 A.2d 645, 649 (stating that we review the trial court's factual findings for clear error and its legal conclusions de novo). Because the C.P. lot was not conveyed out of a larger parcel of land by a grantor who did not provide road access to and from the conveyed lot, C.P. failed to meet the first of three requirements for establishing an easement by necessity. *See id.* ¶ 18, 861 A.2d at 651 (stating that the three elements for an easement by necessity are: (1) conveyance of a lot out of a larger parcel of land; (2) a lack, for all practical purposes, of access to the conveyed lot, which includes reasonable access by water; and (3) the availability of relief in the form of an easement across the retained land of the conveyor or the conveyor's successor in title).¹ Also, contrary to C.P.'s argument, the court did not err in applying the unclean hands doctrine to

¹ Because we agree with the court's conclusion that C.P. does not have an easement by necessity because it failed to meet the first element for establishing such an easement, it is unnecessary for us to address the Hurds' argument on cross-appeal that the court committed clear error in finding that C.P. lacked, for all practical purposes, reasonable access to its lot by water.

bar C.P.'s claim for equitable estoppel. Although the Hurds did not plead the doctrine as an affirmative defense,

[i]t is an elementary principle of equity jurisprudence that whenever a party who as actor seeks to set the judicial machinery in motion and obtain some remedy, *has violated conscience or good faith, or other equitable principle in his prior conduct*, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right or to award him any remedy.

Hamm v. Hamm, 584 A.2d 59, 61 (Me. 1990) (quotation marks omitted). When deciding whether to award C.P. equitable relief, the court was required to consider the extent to which C.P. engaged in conduct that violates conscience or good faith. *See Dr. Jose S. Belaval, Inc. v. Perez-Perdomo*, 488 F.3d 11, 15 (1st Cir. 2007); *see also Liberty Group v. 73 India St. Assocs.*, 642 A.2d 1344, 1345 (Me. 1994) (noting that the application of the unclean hands doctrine is within the sound discretion of the court).

The entry is:

Judgment affirmed.

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