MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 09-179
Docket No. Yor-09-19

JILL K. SNOW
v.

TIMOTHY R. FOSTER et al.

Submitted on Briefs September 30, 2009
Decided October 22, 2009

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

MEMORANDUM OF DECISION

Jill K. Snow appeals from a judgment entered in the Superior Court (York County, *Brennan, J.*) finding that Timothy R. and Judith Foster have a prescriptive easement for the use of a garage and a driveway over Crystal Lane, a right-of-way held by Snow and other property owners. Contrary to Snow's contention, there is sufficient record evidence that supports both the court's finding that a prior owner of the Foster property acquired the prescriptive easement and its determination that the scope of the easement permits parking for two vehicles in the driveway. *See S.D. Warren Co. v. Vernon*, 1997 ME 161, ¶ 5, 697 A.2d 1280, 1282 (stating that we review a trial court's factual findings regarding the acquisition of a prescriptive easement for clear error). Additionally, the court did not commit clear error in not finding subsequent unity of title to the servient and dominant estates in support of Snow's argument that the prescriptive easement had been extinguished by operation of the merger doctrine. *See Murray v. Murray*, 529 A.2d 1366, 1368 n.1 (Me. 1987) ("In the absence of a motion for specific findings of fact and conclusions of law pursuant to Rule 52(a), or for further findings under Rule 52(b), we assume that the trial justice found all of the facts necessary to support the decision; these assumed findings will not be set aside unless clearly erroneous.") (citation omitted); *LeMay v. Anderson*, 397 A.2d 984, 988 n.3 (Me. 1979) ("Unity of title to the dominant and servient estate . . . extinguishes an easement."). We do not address Snow's argument that the prescriptive easement was abandoned because this issue was raised for the first time on appeal. *See Foster v. Oral*

Surgery Assocs., P.A., 2008 ME 21, ¶ 22, 940 A.2d 1102, 1107 ("An issue raised for the first time on appeal is not properly preserved for appellate review.").

In their cross-appeal, the Fosters contend that the court committed clear error in failing to find that Snow was liable for statutory trespass, 14 M.R.S. § 7551-B(1)(A) (2008). However, there is competent record evidence to support the court's judgment on this counterclaim. *See Taylor v. Hanson*, 541 A.2d 155, 160 (Me. 1988) (stating that we review factual findings about trespass for clear error).

The entry is:

Judgment affirmed.

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