

JORDAN I. KOBRITZ

v.

ELLEN L. SEVERANCE

Submitted on Briefs January 28, 2010

Decided February 4, 2010

Panel: ALEXANDER, LEVY, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Jordan I. Kobritz appeals from a judgment entered in the Superior Court, (Penobscot County, *Anderson, J.*), dismissing his complaint as time-barred pursuant to 14 M.R.S. § 801 (2009). Kobritz contends that the court erred: (1) by considering testimony at trial regarding whether a fraud had been committed; (2) by finding no fraud had been committed; and (3) otherwise determining that his claims are barred by the statute of limitations.¹

Contrary to Kobritz's contentions, the court could properly revisit in a contested hearing issues previously addressed in a summary judgment proceeding that had not resulted in a final judgment because of the prior appeal. *See* M.R. Civ. P. 54(b)(1) (a decision is subject to revision at any time before entry of judgment adjudicating all the claims and the rights and liabilities of all parties). In addition, the court did not abuse its discretion by considering testimony related to the existence of fraud because the law of the case doctrine is inapplicable to factual determinations. *Blance v. Alley*, 404 A.2d 587, 589 (Me. 1979); *see also Lord v. Murphey*, 561 A.2d 1013, 1016 (Me. 1989) (stating that one of the grounds

¹ The case was before the court on remand following our decision in *Kobritz v. Severance*, 2007 ME 3, 912 A.2d 1237.

justifying reconsideration of an issue is the availability of new evidence). Furthermore, the court concluded that Kobritz had failed to establish the existence of fraud, and that conclusion is supported by the court's findings. *Sturtevant v. Town of Winthrop*, 1999 ME 84, ¶ 9, 732 A.2d 264, 267. Because the court found no fraud, the statute of limitations was not tolled and Kobritz's claim must be dismissed. 14 M.R.S. § 801 (2009).

The entry is:

Judgment affirmed.

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