

RUDOLPH KELLEY et al.

v.

JAMES L. DOW

Submitted on Briefs February 25, 2010

Decided March 18, 2010

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

MEMORANDUM OF DECISION

James L. Dow appeals from a judgment in favor of Rudolph Kelley, Andrea Kelley, and Chandler M. Kelley Jr. entered in the Superior Court (Hancock County, *Cuddy, J.*), following a non-jury trial, in which the court declared that Dow had no rights in a private road by which he accessed his property, and found that Dow had trespassed on the private road and committed nuisance by using his property for commercial purposes. Contrary to his contention, the court did not err in determining that Dow had failed to establish an easement by necessity over the private road because Dow may only obtain an easement by necessity across land retained by his conveyor. *See Welch v. State*, 2006 ME 121, ¶ 12, 908 A.2d 1207, 1210; *Jordan v. Shea*, 2002 ME 36, ¶ 27, 791 A.2d 116, 123. The court also properly concluded that the deed from Dow's grantors could not convey a right of way for all purposes because their right to use the road was limited by deed to residential purposes. *See Ware v. Pub. Serv. Co. of N.H.*, 412 A.2d 84, 87 (Me. 1980).

Further, the court did not err in concluding that Dow had not established a prescriptive easement over the road because Dow did not meet the time requirement of twenty years through his own use or through tacking the prescriptive use of his predecessor. *See Sandmaier v. Tahoe Dev. Group, Inc.*, 2005 ME 126, ¶ 5, 887 A.2d 517, 518; *Blackmer v. Williams*, 437 A.2d 858, 860 (Me. 1981).

Because Dow's only challenge on appeal to the trespass finding was that he had established a prescriptive easement, we will not disturb the court's finding of trespass.

Dow's final contention is that the court's findings on the nuisance claim were insufficient to support the judgment; Dow requested further findings on this issue, but the court did not address nuisance in its response to Dow's post-judgment motion. When a party requests further findings of fact pursuant to M.R. Civ. P. 52, "we review the original findings and any additional findings made in response to the motion . . . to determine if they are sufficient, as a matter of law, to support the result and if they are supported by the evidence in the record." *Jarvis v. Jarvis*, 2003 ME 53, ¶ 18, 832 A.2d 775, 779. Although the court found that Dow was a fisherman, and that he stored fishing equipment and bait tubs on his property, the court made no finding as to how this interfered with the Kelleys' use or enjoyment of their land. *See Town of Stonington v. Gallilean Gospel Temple*, 1999 ME 2, ¶ 15, 722 A.2d 1269, 1272 ("The essence of a private nuisance is an interference with the use and enjoyment of land." (quotation marks omitted)). These findings are insufficient as a matter of law to support the nuisance portion of the judgment. *See Sargent v. Braun*, 2006 ME 96, ¶ 11, 902 A.2d 839, 843; *Jarvis*, 2003 ME 53, ¶ 18, 832 A.2d at 779.

The entry is:

Judgment vacated as to the finding of nuisance,
and affirmed in all other respects.

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