Maine Supreme Judicial Court
Sitting as the Law Court

Docket No. Yor-25-347

Richard Lytle, Sandra Lytle, and Gregg Willson

Appellants,

v.

Douglas Lind, Louise Lind, Trustees of the Lind Family 2016 Trust,

Appellees.

On Appeal from the Maine
Superior Court, York County

Appellant's Brief

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Table of Contents

Table of Authorities

Cases

Statement of the Case

I. Procedural history.

On October 10, 2023, Richard Lytle, Sandra Lytle, and Gregg Wilson filed a three-count verified complaint against Douglas E. Lind and Louise E. Lind, trustees of the Lind Family 2016 Trust (the Linds). (A. 31-39.) The verified complaint asserted claims for a declaratory judgment (Count 1), interference with the use of a right-of-way (Count 2), and for injunctive relief (Count 3). The underlying controversy involved the Linds' construction of a fence and alleged change-of-grade in the middle of a 10-foot right-of-way located between the Linds' property and property owned by Eric Blomgren and Kristin Blomgren providing access to the Webhannet River. (A. 48-54.) On March 29, 2024, as required by the trial court, appellants amended their Verified Complaint to name the Blomgrens as parties in interest. (A. 48-54).

The Lytles and Wilson moved for summary judgment on April 29, 2024. (A. 66.) The Linds opposed summary judgment and cross-moved for summary judgment. (A. 75.) On November 12, 2024, the trial court issued an order denying appellants' motion for summary judgment and granting in part and denying in part the Linds' motion for summary judgment. (A. 29.) The trial court held that the fence neither unreasonably interferes with nor materially impairs the use of the

right-of-way. (A. 28.) As to the change-of-grade, however, the trial court found that a genuine issue of material issues of fact precluded summary judgment. (A. 25.)

On July 21, 2023, the Court entered final judgment by agreement of the parties, after appellants dismissed without prejudice their claims concerning the grade or elevation of the driveway. (A. 11, 13.) Appellants timely appealed. (A. 11.)

II. Statement of facts.

The parties are all owners of lots depicted on the Plan of the Wells Beach Improvement Company, dated March 19, 1938. (A. 91-93 [Plaintiff's Statement of Material Facts ("S.M.F.") ¶¶ 1, 2, 6].) The plan depicts a 10-foot right-of-way to the Webhannet River running between lot 327 and lot 328. (A. 101 [S.M.F. ¶¶ 5-6 [A. 92-93]; Statement of Additional Material Facts ("S.A.M.F.") ¶¶ 1-2].) Appellees/defendants, Douglas E. Lind and Louise B. Lind, Trustees of the Lind Family 2016 Trust, own lot 327. (A. 93, 101 [S.M.F. ¶ 6; S.A.M.F. ¶ 1].) Parties-in-interest, Eric and Kristen Blomgren, own lot 328. (A. 93, 101 [S.M.F. ¶ 6; S.A.M.F. ¶ 2].) A 2005 survey concluded that five feet of the right-of-way exists on lot 327 and five feet on lot 328. (A. 93, 98 [S.M.F. ¶¶ 6, 28; Opposing Statement of Material Fact (O.S.M.F.) ¶ 6].) The right-of-way culminates in a cement bulkhead and stairway along the Webhannet River. (A.94 [S.M.F. ¶ 15].)

Gregg Wilson jointly owns lot 302 with his mother. (A. 92 [S.M.F. ¶ 2].) The deed into the Wilson family provides in relevant part, "[s]aid premises are conveyed together with a right-of-way over the several ways and avenues shown on said Plan, same to be used by the Grantees, their heirs and assigns in common with others who have a similar right." (A. 92, 111 [S.M.F. ¶ 4, Ex. B. to Verified Complaint].) The Lytles purchased their lot in 1987 and have used the right-of-way consistently since that time. (A. 93 [S.M.F. ¶ 7, 8].) Lot owner Sandra MacDougal has also used the right-of-way at issue. (A. 94 [S.M.F. ¶ 11].) In 1948, she used the right-of-way leading to the Webhannet River when her grandparents owned lot 304. (A. 94 [S.M.F. ¶ 11].) In 1996, she purchased lot 304 and has since then used the right-of-way. (A. 94 [S.M.F. ¶ 11].) The Lytles, Wilson, and MacDougal have all used the right-of-way from time to time to access the Webhannet River shoreline, and have carried water-related and boating items, including but not limited to paddleboards, kayaks, paddles, and oars. (A. 93-94 [S.M.F. ¶¶ 7- 12].)[1] So too with the owners of Lot 300, who purchased their lot in 2019. (A. 94 [S.M.F. ¶ 94].)

[1] The Linds qualified that they had not seen MacDougal or Wilson carrying items. (A. 93-94.) The fact that the Linds have not seen Wilson or MacDougal carry boating items over the right-of-way does not contradict the appellants' statement of material fact.

For many years, the right-of-way was open and unobstructed. (A. 94, 136 [S.M.F. ¶ 13; Aff. of S. MacDougal ¶ 7].)[2] On May 22, 2023, the Linds erected a split-rail fence down the middle of the right-of-way. (A. 95 [S.M.F. ¶ 17].) The last section of the fence as originally constructed was slanted diagonally to block access to stairs from their property, thereby forcing foot traffic to the Blomgren side of the right-of-way. (A. 95 [S.M.F. ¶ 18].) The Linds eventually removed the last section of fence in response to complaints, but rebuffed requests to remove the entire split-rail fence. (A. 96-98 [S.M.F. ¶¶ 21-25].)

[2] The Linds objected to S.M.F. ¶ 13, which reads "Between 1948 and May 22, 2023, the Right-of-Way was open and unobstructed to foot traffic." (A. 94.) Although the objection is well taken as to the time between 1948 and 1996, MacDougal's affidavit does provide admissible evidence of the use of the right-of-way from the point at which she purchased lot 304 in 1996. (A. 136.) Moreover, nothing submitted by the Linds shows that the right-of-way has ever been obstructed up until the point at which they constructed the fence.

Issues Presented for Review

The Linds own a parcel of real estate subject to five feet of a 10-foot wide right-of-way. The right-of-way provides pedestrian access to the Webhannet River, which runs behind the Lind property. In 2023, the Linds constructed split-rail fence in the middle of the right-of-way, effectively splitting it in two. Appellants Sandra Lytle, Richard Lytle, and Gregg Wilson, are dominant estate holders and claim that the split-rail fence impairs their use and enjoyment of the right-of-way.

The issues presented for review are whether the trial court erred in (1) denying the appellants' motion for summary judgment as to the fence, and (2) granting appellees' motion for summary judgment as to the fence.

Standard of Review

This Court reviews grants of summary judgment de novo. *Dyer v. DOT*, 2008 ME 106, ¶ 14, 951 A.2d 821.

"Summary judgment is appropriate when review of the parties' statements of material facts and the referenced record evidence indicates no genuine issue of material fact that is in dispute, and, accordingly, the moving party is entitled to judgment as a matter of law." *Dyer*, 2008 ME 106, ¶ 14. A fact is "material" if it can affect the outcome of a case. *Id.* A "genuine issue of fact" exists "when the factfinder must choose between competing versions of the truth." *Id.* (internal quotations omitted).

Argument

I. Appellants were entitled to summary judgment on their claim that constructing a fence down the middle of a 10-foot right-of-way impairs the right-of-way.

This Court reviews the construction of a deed de novo. *Mill Pond Condo. Ass'n v. Manalio*, 2006 ME 135, ¶ 6, 910 A.2d 392. If a right-of-way "expressly details its specific boundaries . . . the owner of the right-of-way is entitled to use the entire granted area, and is not limited to what is necessary or convenient." *Id.* (citing *Rotch v. Livingston*, 91 Me. 461, 472-73, 40 A. 426, 431 (Me. 1898)). This reaffirms long-existing Maine law that the owners of a right-of-way have the "full right to use the entire width" of a right-of-way "for purposes of passage at their discretion, and are not limited in such right to what is necessary or convenient." *Rotch*, 91 Me. at 472-73, 40 A. at 431. The owner of the servient estate, on the other hand, "may not make a use of the servient land which impairs effective use of the easement within the bounds of the easement." *Stanton v. Strong*, 2012 ME 48, ¶ 10, 40 A.3d 1013 (quoting *Badger v. Hill,* 404 A.2d 222, 227 (Me. 1979)).

For example, *Rotch* considered whether a dominant estate holder could change the surface of a 10-foot strip of a 50-foot wide right-of-way, even though an existing 30-foot road was "admittedly ample for all present needs." *Id.* at 431. This

Court held that the dominant estate holder had the right to use the entire 50-foot strip, despite the claim that the existing 30-foot-wide passage was ample:

> If the grant is of the right to use the whole of a specified width of land for a road it follows logically, in the absence of restrictive words in the grant, that the grantee can fit the entire width for use. His right to make a road is as wide as his right to a road so far as width of road is concerned. We do not find any restrictive words in the grant in these cases, and our conclusion is that the defendants have the right to fit the ten feet strip into a suitable road in connection with the road already made.

Id.

More recently, in *Kinderhaus N. LLC v. Nicolas*, 2024 ME 34, ¶ 5, 314 A.3d 300, this Court considered a subdivision plan that established a 20-foot-wide right-of-way for vehicular and foot traffic. *Id.* ¶ 5. The dominant estate owner cut several trees in the right-of-way obstructing the location of an intended gravel drive, even though "none of [those trees] blocked vehicular or walking traffic within the ROW because approximately eleven feet of open travel space remained available." *Id.* ¶¶ 7-9. This Court held that, although eleven feet of open travel space remained available, the dominant estate had the unrestricted right to use the full extent of the right-of-way. *Id.* ¶ 34. "The trees located within the easement would require the Fullertons to zig-zag *or otherwise use only a portion of the twenty-foot right of way to avoid the trees*." *Id.* (emphasis added). And although "[i]t may be argued that this is a trifling inconvenience," the owners of the dominant estate "have the unrestricted

right to use the full extent of the described land for purposes consistent with the deeded easement." *Id.* (internal quotation marks omitted). Thus, cutting the trees was done "done under an existing right of access provided by the express terms of the easement." *Id.*

This case is a natural extension of *Rotch* and *Kinderhaus*. Although lacking a formal metes-and-bounds description, the right-of-way is expressly bounded for purposes of the rule. There is no dispute that the contemplated use of the easement was for pedestrian access to the Webhannet River, which includes carrying water-related and boating items over the right-of-way. (Def.'s Opp. to M. for Summ. J. at 1-2 [A. 75-76].) The Wilson deed provides, "[s]aid premises are conveyed together with a right-of-way over the several ways and avenues shown on the plan …." (A. 111.)[3] For its part, the Plan pictorially describes the right-of-way between lots 327 and 328 with a handwritten "10" symbol between them. (A. 109.) Thus, as determined by the trial court, the right-of-way is expressly described as a 10-foot passage between lots 327 and 328.

Like the trees in *Kinderhaus*, the split-rail fence impairs the use of the 10-foot right-of-way. By erecting a split rail fence down the middle of the right-of-way, the

[3] The Lytles' deed does not contain similar language, but the trial court properly concluded that the Lytles established rights to the right-of-way by meeting both common law requirements and the statutory requirements set forth in the Paper Streets Act. (A. 22-25.)

Linds effectively slice the right-of-way in half requiring pedestrians to "use only a portion of the [ten]-foot right of way to avoid the [fence]" while walking to the Webhannet River. *Kinderhaus*, 2024 ME 34, ¶ 32. It may be argued that pedestrians can still walk on either side of the fence, but this argument ignores the principle that the dominant estate holders have a right to enjoy the full width of the right-of-way depicted on the plan—especially so here where users often carry boats, paddles, and other water-related items to the Webhannet River.

Plus, as a practical matter, rights-of-way are often subject to unanticipated blockages or physical impediments. Free passage through the right-of-way may, at times, be partially obstructed by debris, puddles, delivery trucks, parked vehicles from tenants or visitors unaware of the right-of-way, or pedestrians walking in the opposite direction. Photographs from the record reflect the narrow passage:

(A. 43, 44, 166) As granted and originally envisioned in the plan, the right-of-way allows users extra space to avoid obstructions. But the fence eliminates that flexibility and makes the right-of-way more difficult to traverse. Indeed, rainstorms sometimes flood the Blomgren-side of the right-of-way, and vehicles on the Blomgren-side occasionally or even frequently obstruct part of the right-of-way. (A. 98, 100 [S.M.F. ¶ 26; O.S.M.F. ¶ 26; S.A.M.F. ¶ 12].) As depicted in the above photograph, one user needed to hoist a paddleboard above his head while

navigating the narrow space between the fence and a parked car. In short, the fence makes the 10-foot right-of-way less convenient for passage to and from the Webhannet River. *See Kinderhaus N. LLC*, 2024 ME 34, ¶ 34; *Rotch*, 40 A. at 431. In the words of *Kinderhaus*, appellants here "have the unrestricted right to use the full extent of the described land for purposes consistent with the deeded easement[,]" even if the Linds think that the fence is no more than a mere inconvenience. 2024 ME 34, ¶ 34.

The other authorities analogized below do not support the Linds' position and are all distinguishable. In *Mill Pond Condo. Ass'n*, the servient estate holder placed a sign at the southeast corner right-of-way that was 176-feet long and forty-two feet wide. 2006 ME 135, ¶ 2. The appeal followed a bench trial, and this Court held "[o]n this record . . . the [trial court] did not err in finding that the space taken up by the fee owner's sign did not, as a matter of fact, interfere with the Manalios' ingress or egress across the easement." *Id.* ¶¶ 1, 7. Unlike this case, no evidence established that the sign interfered with the intended use of the right-of-way. Indeed, a sign in the corner of a 20-foot wide right-of-way is a far-cry from a split rail fence cleaving a 10-foot right-of-way in half.

Next, in *Flaherty v. Muther*, the servient estate holder installed a fence and locking gate across the entrance to an easement. 2011 ME 32, ¶ 19, 17 A.3d 640. As

the Court observed, "[w]hether a gate across a right-of-way is reasonable is a mixed question of fact and law." *Id.* ¶ 63. The record showed that, "[s]ince its installation, the electronic gate system has not been operational, and the gate has remained open. Therefore, despite the J-Lot owners' concerns, there was no evidence that Woods has abused his control of the gate or that keeping track of a gate key is inconvenient." *Id.* ¶ 65. As the Court observed, similar access systems are "widely used by businesses throughout the State[,]" that the gate did not have "any extraordinary functional features that would create an impediment or burden on its users that is anything but slight[,]" and that the easement itself provides ingress and egress to a scenic area that attracts trespassers. *Id.* ¶¶ 65, 71. As discussed above, those observations are inapplicable to the fence at issue here. If anything, the initial layout of the fence—which blocked access to the stairs leading to the Webhannet River—suggests that the Linds' desire when constructing the fence was to prevent people from walking on that portion of the right-of-way existing on their property.

Finally, *Beckerman v. Conant* is a unique case in which the parties came before this Court three times in connection with an ongoing dispute regarding a deeded right-of-way over a horseshoe-shaped driveway connecting the three lots at issue. 2024 ME 36 ¶¶ 2-3, 315 A.3d 689. After an evidentiary hearing on a motion

for contempt, the trial court adjudged the servient estate holder (the Conants) in contempt of a 2016 judgment. *Id.* ¶¶ 12-13. Among other arguments, the Conants argued on appeal that the trial court's interpretation of the 2016 judgment "deprives them, as the owners of the servient estate, of the reasonable use of their own driveway and that their use, as a matter of law, cannot constitute a violation of the injunction." *Id.* ¶ 15. Rejecting this argument, this Court acknowledged that Beckerman enjoys the use of the driveway but did not have the right to preclude the Conants from reasonable use of their driveway, including parking vehicles that do not block passage. *Id.* ¶ 23. Rather, "[w]hat the 2016 judgment enjoined was the use of the driveway in any manner—for parking, storage, or otherwise—that 'block[s], imped[es], or in any way interfer[es] with' Beckerman's right to use the driveway for ordinary ingress to or egress from his property." *Id.*

Thus, none of these cases control the result here. Like the dominant estate holders in *Kinderhaus* and *Rotch*, the appellants have the right to use the entire right-of-way for travel to the Webhannet River, and the Linds have obstructed the most functional part of that right-of-way by erecting the fence. Considering that the dominant estate holders in *Rotch* and *Kinderhaus* were entitled to construct roads in places of their choosing in the right-of-way despite other adequate methods of access, it naturally follows that appellants here have *at least* a right to walk near the

center of a right-of-way unimpeded by a fence.[4] In contrast, the circumstances in *Mill Pond*, *Flaherty*, and *Beckerman* did nothing to limit the dominant estate holders' use of the easements at issue. And *Beckerman* wasn't even an easement case. It was a contempt case, and the operative language from the judgment dealt with whether the contemnor blocked, impeded, or interfered with the movant's right to use the driveway for ordinary ingress or egress.

At bottom, this is a situation where the whole is greater than the sum of its parts. Two five-foot wide rights-of-way are not the same as one 10-foot wide right-of-way—especially factoring in the space consumed by the fence itself. A 10-foot right-of-way is what was contemplated in the plan and accepted by the Linds in acceptance of their deed. This Court should hold that constructing the split rail fence splicing the right-of-way in two and obstructing the right-of-way's most natural path interferes with the right-of-way as a matter of law.

II. At a minimum, the trial court should have denied the Linds' motion for summary judgment and scheduled a trial to determine the reasonableness of a fence down the middle of the right-of-way.

Even if the Court concludes that appellants were not entitled to summary judgment, the same holds true for the Linds. *Mill Pond, Flaherty*, and *Beckerman*

[4] The appellants arguably have the right to simply remove the fence, consistent with the tree clearing in *Kinderhaus* and the road construction in *Rotch*.

were all decided after evidentiary hearings and suggest, at best, that the trial court should have held an evidentiary hearing to determine whether the fence in fact interfered with the right-of-way. *See Flaherty*, 2011 ME 32, ¶ 63, 17 A.3d 640 (stating that the reasonableness of a gate across a right-of-way is a mixed question of law and fact). None of those cases support concluding on a motion for summary judgment "that the fence does not materially impair, unreasonably interfere with, or prevent users from accessing the Webhannet River[,]" as the trial court did here. (A. 29.) So whatever view the Court takes as to appellants' motion for summary judgment, one thing is certain here: the Linds' motion for summary judgment should have been denied.

Conclusion

This Court should reverse the judgment below and direct summary judgment in appellants' favor. Otherwise, this Court should vacate that portion of the judgment granting summary judgment to the Linds, and remand for an evidentiary hearing on whether the split-rail fence interferes with appellants' rights to the right-of-way.

Respectfully submitted,

Dated: October 8, 2025

/s/ Tyler Smith

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Certificate of Service

I hereby certify that on the date stated below I caused an electronic copy of this document to be served on the following counsel via email. In addition, upon acceptance of this brief by the Court, two paper copies of this brief will be served on the following counsel.

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