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

Reply Brief

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Argument

No decision of this Court establishes the Linds' foundational proposition that the dominant estate holder claiming interference with a right of way must prove that removal of an object placed in the right of way is "required" for ingress and egress. (Red Br. at 9.) For that point, the Linds cite dicta from a footnote in *Kinderhaus N. LLC v. Nicolas,* 2024 ME 34, 314 A.3d 300, referring to *Mill Pond Condo. Ass'n v. Manalio*, 2006 ME 135, 910 A.2d 392. But *Mill Pond Condo Ass'n* could not be clearer in its statement of the law: 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." 2006 ME 135, ¶ 6. If a dominant estate holder "is not limited to what is necessary or convenient" for ingress and egress, then a dominant estate holder cannot be limited to what is required for ingress or egress.

The language the Linds rely on is *Kinderhaus'*s observation in dicta that "[i]n *Mill Pond Condominium Association v. Manalio*, we sanctioned the existence of a sign in a small space that the dominant estate owners failed to establish was required for their ingress and egress." 2024 ME 34, ¶ 34, n.8. Though a reasonable shorthand description, *Mill Pond Condo Ass'n* conditioned its holding on the fact that the dominant estate holders "current use" of the right of way did not even

implicate the small space used by the sign:

> Thus, the Manalios correctly argue that where the metes and bounds of an easement are explicitly described in the deed, the easement holder has the right to use the full extent of the described land for purposes consistent with the deeded easement. On this record, however, the 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. *Cf. Rotch*, 91 Me. at 475, 40 A. at 432. Nothing in the trial court's decision suggests that the Manalios may not, or cannot, use the land for the stated purpose of the easement, namely ingress and egress. The court simply found that the Manalios had not established that *their current use required the small space used by the sign*. On these facts, we will not disturb the trial court's decision.

2006 ME 135, ¶ 7 (emphasis added). Put simply, there was no real controversy because the Manalios were not even using the small spot they were complaining about. The sign was located at the far corner of a 176-by-42-foot right of way—a spot that "*cannot* be reasonably used for purposes of ingress and egress" by the dominant estate holders. *Id.* ¶¶ 2-4 (emphasis added). Unlike the unusable pinpoint location of the sign in *Mill Pondo Condo Ass'n*, the location of the fence here runs down the middle of a comparatively narrow right of way and *is* used for ingress and egress by dominant estate holders.

Adding to the distinction is *Mill Pond Condo Ass'n's* cf. citation to *Rotch v. Livingston*, 91 Me. 461, 40 A. 426 (1898). As explained in the opening brief, *Rotch* sanctioned the dominant estate holder's plan to expand the width of a 30-foot road that was already "ample for all present needs[.]" 91 Me. at 473, 40 A. at 431.

Although an expanded road was not required for ingress and egress, long-held principles of Maine law mandated that "we must hold that the defendants, and all the other owners of the easement, have under their grant the full right to use the entire width of fifty feet including the ten feet strip in front of the plaintiffs' lot for purposes of passage at their discretion, and are not limited in such right to what is necessary or convenient. They hold by express grant and not by implication from necessity or convenience." *Id.* at 431. Thus, *Mill Pond Condo Ass'n*'s cf. citation to *Rotch* signals that the result may be different if the small space taken up by the fee owner's sign actually impacted the dominant estate holder's current or desired use of the right of way.

The Linds frame controversy as applying a case-by-case approach versus a "woddenly appl[ied] blanket rule that any object placed in an easement by the servient estate is impermissible." Appellants are not advocating for a woodenly applied blanket rule that any object placed in an easement by the servient estate is impermissible. The appellant's brief speaks for itself, the gist of the argument is as follows:

(1) Long-held Maine law establishes that a dominant estate holder is entitled to use the entire width of a right of way and is not limited to what is necessary or convenient.

(2) Putting a fence down the middle of the 10-foot wide right of way materially interferes with the appellants' actual use of the right of way.

(3) By splitting the right of way in half, the Linds alter the dimensions and convenience of the right of way to a degree that it constitutes a material interference with appellant's easement rights as a matter of law.

Thus, the issue is not the strawman argument presented by the Linds that any object placed in the right of way is automatically an interference.

Similarly, the Linds quote part of a sentence from *Kinderhaus* about how trees located within a right of way in that case "would require the [easement holder] to zig-zag" to drive around the easement, as the setup for a punchline that "Appellants' apparent objection to the Linds' fence is that it precludes their ability to zig-zag back and forth over the Right of Way." (Red Br. at 19.) But the quip buries the lede: the full sentence from *Kinderhaus* reads, "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." 2024 ME 34, ¶ 34 (emphasis added). This italicized language is important. In *Kinderhaus*, there was about eleven feet of open travel space available apart from the cut trees by the dominant estate holder, so avoiding those trees was little more than a "trifling inconvenience." *Id.* ¶¶ 9, 15, 34. But still, as the dominant estate holders, the Fullertons were entitled to use the right of way, including those portions not required for ingress and egress. *Id.* That scenario parallels the facts here: Just as the

Fullertons could "otherwise use only a portion of the twenty-foot right of way to avoid the trees," *id.*, appellants here can use only a portion of the ten-foot right of way to avoid the Linds' newly constructed fence.

Finally, even if the Court concludes that summary judgment would have been improper for the appellants, that does not mean that the trial court should have jumped to the other extreme by granting summary judgment to the Linds. The Linds criticize that "after arguing that the Linds' fence interferes with the Easement 'as a matter of law,' Appellants then argue that the Superior Court erred by awarding summary judgment to the Linds on the same legal issue without further fact finding." (Red Br. at 20 (internal citations omitted).) This is just an argument in the alternative: Appellants contend that the obstruction is substantial enough to constitute an impairment as a matter of law, but if not, the alternative is the trial court must make a factual determination about whether the fence in fact interferes with the right of way on an evidentiary record. (Blue Br. at 18-19.)[1] The

[1] That issue—whether the fence impairs the use of the right of way—is not automatically decided by the trial court's conclusion that "parking in the ROW materially impairs pedestrian access over the ROW and constitutes an interference with the rights of easement users." (A. 29, 84-85.) (Red Br. at 18, n.2 (arguing that appellants have ignored a "critical aspect" of the proceeding).) In a perfect world, nobody would park in or otherwise obstruct anyone's right of way. But in reality, obstructions are bound to occur, and grantors are entitled to consider that reality when crafting rights of way to allow breathing room ensuring a right of way's effective use. And it is far from clear why a car parked on one side of a right of way would be an unreasonable obstruction, but a fence down the middle of the right of way would not. If anything, the trial court's holding that parking in the easement is an unreasonably obstruction would seem to apply equally to the Linds' recently constructed fence.

latter is consistent with what happened in *Mill Pond Condo Ass'n, Flaherty v. Muther*, 2011 ME 32, 17 A.3d 640, and *Beckerman v. Conant*, 2024 ME 36, 315 A.3d 689, because the reasonableness of an impediment presents a mixed-question of law and fact. *Flaherty*, 2011 ME 32, ¶ 63.[2] So if the Court accepts the Linds' case-by-case determination argument, the correct result is to vacate the summary judgment order and remand so a factfinder can scrutinize just how reasonable (or unreasonable) it was for the Linds to construct their fence down the middle of the right of way which, we must recall, originally included a section designed to block pedestrian access to the bulkhead and stairs from the Lind property and force pedestrians to the Blomgren side of the right of way. (A. 95.)

[2] The out-of-state cases cited by the Linds offer little about Maine substantive law but do lend support the procedural proposition that factfinding may be necessary to determine the reasonableness of an obstruction in a right of way, such as the Lind's fence. Indeed, all but one involved an appeal after a trial or evidentiary hearing. *Martin v. Simmons Props., LLC*, 467 Mass. 1, 6, 2 N.E.3d 885, 891 (Mass. 2014); *Craft v. Weakland*, 174 Or. App. 185, 188, 23 P.3d 413, 414 (Ore. App. 2001); *Skow v. Goforth*, 618 N.W.2d 275, 277 (Iowa 2000) ; *Kwolek v. Swickard*, 944 N.E.2d 564, 569 (Ind. Ct. App. 2011); *Gaw v. Seldon*, 85 So. 3d 312, 318 (Miss. App. 2012); *Briggs v. Di Donna*, 176 A.D.2d 1105, 1106, 575 N.Y.S.2d 407, 408 (N.Y. App. Div. 1991). The one exception is a case decided on a stipulated record, which still entails factfinding. *Briggs v. Di Donna*, 176 A.D.2d 1105, 1106, 575 N.Y.S.2d 407, 408 (N.Y. App. Div. 1991). These cases amply undermine the trial court's decision to enter summary judgment for the Linds.

Respectfully submitted,

Dated: December 17, 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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