

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KNO-25-534

H. PRESCOTT SMITH, ET AL.

Plaintiffs-Appellees

v.

PHILIP L. SMITH, II, ET AL.

Defendants-Appellants

On Appeal from Knox County Superior Court
Docket No. RE-2021-10

REPLY BRIEF OF APPELLANTS
PHILIP L. SMITH, II, STEPHEN G. SMITH, DONALD E. MEKLIN AND
SONS EXCAVATING, LLC, AND HERITAGE BUILDERS, INC.

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Introduction

The Appellants file this Reply Brief to oppose the Appellees' Cross-Appeal. The Appellees have challenged the conclusions by the Referee that the long-standing roadway, which has always had a circular terminus near the dock to which it leads is, in fact, the easement granted under the deeds to the various parties. Similarly, despite the clear words of the dock easement which includes the right to maintain and improve the dock as desirable and despite the evidence of water and electrical utility service to that dock for generations, the Appellees seek to reverse the conclusion that the dock access easement includes the right to bring utilities. In both aspects of the Referee's Decision, findings were entered in reliance on the evidence presented. Neither is in clear error. The Referee's findings against the Plaintiffs on those aspects of the matter must be upheld.

The Appellants also submit this brief in reply to the Appellees' opposition to their appeal. The Appellees' arguments in opposition to the appeal fail to acknowledge the governing law. Because the Referee erred in holding the Plaintiffs liable for timber trespass even though the three obstructing branches blocked a right of access, that aspect of the Referee's Decision must be reversed. Similarly, Appellees' arguments regarding the hypothetical width of a hypothetical roadway burdening the Hart House property owned by Flip Smith are insufficient to ignore the facts on the ground that no road has even burdened the property to an extent

greater than the width wheelbase of a vehicle. The Referee committed an error of law in reading terms into the governing deed and the Coffin Plan. He committed an error when he found as a matter of fact that the evidence supported a conclusion that the imaginary road of that imaginary width burdened the land. That finding should be reversed and the matter remanded with instructions to hold that that right of way is consistent with the grass track shown on Appellees' survey entered in evidence as Ex. # J-03. A. 91.

A. The Referee properly considered the circumstances of the easement allowing access for improvements to the dock and did not err in finding as a matter of fact that the dock easement includes the right to continue to supply utilities to it.

By cross-appeal, the Appellees have challenged the Referee's conclusion that the deeded easement held by all parties upon a portion of the Willows property and the Boathouse property to the dock includes the right to install and use utilities associated with the dock. The easement at issue states that the easement is for all purposes and includes "the right to maintain, repair, replace, *and improve* said dock to the extent necessary *or desirable to permit* its enjoyment in substantially its present form." *See* A. 37 (emphasis added). The Referee correctly noted that the scope of the easement required an evaluation of extrinsic evidence. *See Id. See also Saltonstall v. Cummings*, 538 A.2d 289, 290-91 (Me. 1988) (court is instructed to determine the intent of the parties in light of circumstances of the creation of the easement). In applying this standard, the Referee noted and considered the evidence

of the use of utilities throughout the history of the dock. *See* A. 37-38. The easement language, as the Referee noted, compels the grant to be evaluated based on future uses and improvements. *See* A. 38; *see also Stevens v. Anderson*, 393 A.2d 158, 159 (Me. 1978) (noting that easements may accommodate modern developments). Specifically, the Referee noted that:

One key consideration in determining the presumed intent of the parties in the present case is the circumstances under which the grants were made and the parties who were involved in those grants. In his 1995 decision, Justice Broderick [sic] wrestled with similar issues in reaching his conclusion(which was 30 years closer in time to the original grant than we are today). Justice Broderick [sic] stated, “[i]t is important to remember that the four Smith children were major shareholders in Munasca. They were, in effect, conveying to themselves. P.L. Smith's children were, by all accounts, reasonably intelligent persons who had a keen sense of family as well as community. They must have been able to think a generation ahead.” JE #14 at 10. I reach the same conclusion. A. 36.

He goes on to say, “by use of these expansive terms and phrases [in the dock easement] it seems clear that the grantor ... was attempting to use the broadest possible language so as not to limit future use of the dock for themselves and future generations of their family.” *See* A. 37. In these circumstances, the finding of fact that the easement includes the right to bring utilities to the dock is not clearly erroneous and must be sustained.

The Referee noted the substantial testimony about the nature of the use of water and electricity at the dock. *See* A. 37. The evidence was that the use had evolved over the years. For example, Steve Smith testified that his grandfather used

water and electricity to facilitate the maintenance of the boats from the time of the easement. Tr. T. 841:6-843:23. That early use was via hoses and extension cords. *Id.* It evolved, with a conduit dug in 1982 to carry electricity to the dock, ramp, and floats. Tr. T. 737:3-9. While there were occasional disruptions to the delivery of electricity, they were not permanent. Tr. T. 744:1-4.

Indeed, even in the midst of the pending litigation, when the dock suffered severe storm damage, the parties worked cooperatively to design and built it anew, with utility chases incorporated into the structure of the dock to replace the earlier traditions of extension cords. Tr. T. 735:6 to 736:25. The evolution of the delivery of utilities was precisely anticipated by the express right granted in the easement to allow improvement as desirable and necessary. The Referee made no error in acknowledging and finding the intent of the parties.

Appellees suggest that because the dock is not a residence, utilities are outside the scope of the easement. *See* Appellees' Brief, pp. 31-32. There is no case law to suggest that utilities can only serve residences. In fact, as this Court knows, electricity and water are resources that serve many structures. Here the test is: was there sufficient evidence to find that in creating an easement to serve the family dock it was reasonably foreseeable that the boat owners who owned the dock and easement would want access to water and electricity? *See Wardwell v. Duggins*, 2016 ME 55, ¶ 12, 136 A.3d 703. Here, the evidence was that the dock has always

supported family boats; the maintenance and repair of the boats; and social activities. In those circumstances, the Referee's finding that the scope of the easement includes the right to bring in utilities – the very utilities that have been used since the Smiths' grandfather's time – was not in clear error.

The Referee's holding confirming the right to bring in utilities via the utilities trench is not in error.

B. The Referee did not err in confirming that the circular driveway was part of the right of way to the shore appurtenant to the parties' properties.

Appellees further challenge the Referee's confirmation that the deeded easements held by the parties over the various roadways in the divided family land includes the circular roadway. *See* Appellees' Brief, pp. 29-30. As shown by the historical photographs and the early survey prepared for Plaintiffs, the road now known as Farr Away Lane terminates near the water, with the road encompassing a circular drive to afford ease of exit, returning to Hart's Neck Road. The road is a dirt road, as shown on Plaintiff's survey. *See* A. 109; A. 91; *see also* Ex. ##J-99; J-100, J-107, J-111. No evidence was presented to suggest that the road to the shore had been altered or modified at any time since the circular portion of it was developed and continuously used. Plaintiffs' survey dated August 16, 2019, several years prior to the commencement of this action, depicts the extent and scope of the road. *See* A. 91.

Notwithstanding the substantial evidence that the circular drive is a part of the easement benefitting the parties over the road to the waters and the dock, Appellees challenge the holding based upon those facts. This challenge is subject to the mandate the findings of fact may be disturbed only when revealed to be in clear error. *See Anchors v. Manter*, 1998 ME 152, ¶ 16, 714 A.2d 134 (questions of fact are reviewed for clear error). As the Referee noted in his decision, the Boathouse Deed makes specific reference to the existing roadway and describes it. A. 33; *see* A. 101. The Boathouse Deed and The Hart House deed do not reference the Coffin Plan at all. *See* A. 98, 101. The Referee noted that:

Since the Coffin Plan did not show property beyond the areas relevant to the Goose Cottage Lot, I do not find the inclusion of the circular portion of the way within the access easements to be contradictory to the Coffin Plan. In fact, it is noteworthy that at the northwest corner of the Coffin Plan, where it shows the intersection of the two segments of the private roads, the outer lines of those Private Roads do not close, suggesting that the roads can extend beyond the confines of that plan.” A. 34.

This holding is not contrary to the photographic evidence nor the words of the deeds creating the easements over the entirety of the circular road. *See* Tr. T. 24:16-25 (testimony of Plaintiffs’ surveyor: “That land was carved out of the larger piece in 1958 and included rights associated with that land including rights to these roadways. Separately from that, in that deed, dock rights were conveyed, and along with the dock rights were rights of access to the dock, I believe, it said by all means from the dock over existing ways to the town road. So that loop there could be

considered one of the ways between the dock and the town road.”) *See* Tr. T. 48:21-24 (1953 and 1966 aerial photographs show the circular road way in existence); *see also* A. 91.

Although it would be useful to the Appellees to pretend that the Coffin Plan, A. 90, expresses the full scope and extent of all the easements conveyed in each of the deeds divided among the family members in 1958, that idea is simply inconsistent with the facts as found by the Referee, which facts are supported by competent evidence and cannot be rejected unless there is clear error. There is no reason to find a clear error here given that the circular roadway has long been long in existence and never before challenged. There is no clear error in the conclusion that the circular drive in its entirety is within the scope of the easements granted to the other lot owners and burdening the properties as shown on Exhibit # J-03. A. 91.

The Appellees challenged the Referee’s conclusions about the circular roadway by their Motion for Additional Findings of Fact and Conclusions of Law. *See* A. 85. In response, the Referee made additional findings of fact about the roadway including the circular drive. A. 85-87. He concluded that the word “‘roadways’ mentioned in the three deeds were intended to reference a continuous right of way from Hart’s Neck Road across both legs of the easement ‘to the shore.’ That means all of the lots which benefit from the roadway easement benefit from all of the roadway easement.” A. 85. These factual findings have not been demonstrated

to be in clear error. The finding that the easement covers the entirety of the circular roadway must be sustained.

C. The hoops jumped through to expand the purpose and intent of the Coffin Plan to support the imposition of a 15-foot-wide easement burdening the Hart House property is not supported by the law or the evidence.

In determining the location and scope of the circular access roadway as included in the deeded easement for the road to the dock, the Referee noted the limitations of the Coffin Plan. He noted that the Coffin Plan had a specific, limiting purpose. *See* A. 34. As the Appellants noted in their brief, that is appropriate. The Coffin Plan by its express terms and title shows simply the layout of the Goose Cottage Lot. It is a depiction of “the Philip W. Smith Property.” By its very definition of itself, it does not purport to lay out roads or show their width on the face of the earth.

Notwithstanding this self-limiting title, the Appellees insist that the Coffin Plan must be read for more than its expressed scope. As Appellants noted in their principal brief, neither the words of the survey nor its limitations warrant creating an imaginary burden on the Hart House property of an imaginary 15-foot-wide road. The conclusion by the Referee that these parcels were created to maintain and preserve the family compound setting of the parcels (A. 17-19; A. 36) mandates an acknowledgement that the traveled ways as they existed on the earth rather than expanded larger, wider roads are in keeping with the words of the deeds. The Coffin

Plan nowhere expresses an intention to further burden the private homes enjoyed by the parties. As the layout of the Hart House parcel shows, the concrete wellhouse, in existence before the 1958 deeds, sits within 15 feet of the boundary with the Goose Cottage Lot. A. 91. Similarly, a mature 18” diameter maple tree sits within what the Referee would conclude is the existing road. *Id.* These long existent impediments to any claimed 15-foot-wide road reinforce that as a matter of fact and law, the deeds create a burden of the road as it existed, not a wider roadway.

One must take note of the fact that at no time prior to the issuance of the building permit for Flip Smith’s addition to his house did Prescott Smith ever assert a claim to a right to use a fifteen- foot wide right of way. The evidence was consistent that the roadway was used and understood to be as wide as the wheelbase of the car. The 2019 survey by Appellees’ expert acknowledges this. Note 5 of that survey defines the easement benefiting the Goose Cottage Lot as “a right-of-way over ...the grass path and gravel driveway running along the north easterly side of the surveyed parcel.” *See* A. 91.

It only became of interest to Prescott Smith to assert a claim beyond this grass strip when he objected to the town of St. George’s issuance of the building permit to Flip Smith. His change of view was motivated by his effort to control that building process; not assert a right of access. *See* Appellants’ Brief p. 23 n.11.

As Appellees note, the parcels created by the 1958 family parcels include an easement for each over the roadways. Appellants do not disagree with that. There is nothing in the record, however, to suggest that any of those roads were or were to be 15 feet wide. The contrary is true. But for the stray dashed line on the Coffin Plan which plan is relevant to only one parcel created in 1958, the easements granted are over the roads as they exist.

Appellees place some weight on the fact that each deed for each family parcel creates a duty to contribute to the costs of maintenance of those roads. Appellees' Brief, p.19. This duty to contribute to maintenance does not reference the width of any road. A. 96, A. 99, A-102. It also expresses and reserves no right to widen, improve, or modify "the above mentioned roadways." *Id.* This language reinforces that the roadway easements are intended to reflect the status quo, not the expansion of the road deeper into the Hart House lawn as desired by Appellees.

The Appellees' further strained argument that the width of the road is supported by the scale in the upper right-hand corner of the Coffin Plan ignores evidence that a dashed line is indicative of an intention to show that no width has been measured or determined. The Appellees did not contradict that testimony from Mr. Ingraham. Instead, they ask that the Court ignore their own expert's clear depiction of the limits of the grass path which serves as the right of way in his 2019 survey, A. 91, and instead trust his argument set forth in his 2021 sketch presented

to the town in opposition to the building permit. *See* A. 92. Yet, as that sketch makes clear, it is not a survey. It specifically states that “for more information regarding ... rights of ways see plan reference 1 [the plan at A. 91]. Thus, while that sketch pretends that the road is 15 feet wide, it directs one back to the very plan which shows that road to be a “grass track,” the grass track acknowledged by all to be about a wheelbase wide.

The shoehorning of the dashed line and the “scale” cannot ignore the reality that at no time has a burden been used, adopted or argued for until Flip Smith sought to enlarge his home. By holding that the roadway is 15 feet wide, the Referee committed an error of law because he not only incorporated the Coffin Plan into the deed but also read words and content into the Plan which are unwarranted.

D. The Referee and the Appellees fail to acknowledge that the pruning of three branches is permissible because they invaded the plane of the right of way.

The Appellees complain that three branches were cut from a tree and suggest that that pruning constitutes “damage.” The Appellees fail to address in any manner the law which makes clear that obstructions to a right of way may be removed even if those obstructions are trees or parts of trees. *See* Appellees’ Brief, pp. 25-28; *see also Kinderhaus N, LLC v. Nicolas*, 2024 ME 34, ¶¶ 32-34, 314 A.3d 300 (confirming right of easement holder to remove obstructive vegetation from right of way). As noted in the Appellants’ Brief, these three branches blocked the ability to

traverse upon and over right of way. Appellees make no argument distinguishing this clear expression of the rights of easement holders to preserve access over an easement by clearing obstructions. There was no dispute that the branches that were cut extended 15 feet into the right of way. *See* Tr. T. 269:20-270:6. In those circumstances, the removal of the branches as a matter of law is permitted and cannot be a basis for liability under 14 M.R.S. § 7552. The Referee erred in awarding damages to Prescott Smith under the statute.

In any event, awarding damages premised on the replacement value of a tree when the tree was neither carried away nor dead (or even dying) is impermissible under Maine's timber trespass statute. The Appellees cite no case law which would support their claim for damage to an indisputably living tree. Their arborist testified that trees heal from the removal of branches. *See* Tr. T. 268:4. There was insufficient evidence to suggest that by removing the obstructing branches this tree did not and would not heal. After all, the pruning occurred in 2021, the arborist first observed the tree in 2024, and he did not testify that it had died nor was dying. Tr. T. 263:18-264:5. In those circumstances, the evidence does not support the finding of damage and must be reversed for clear error.

Conclusion

The Referee's decision is in error in two respects. It wrongfully concluded that the deeds call for and create a 15-foot-wide easement burdening the Hart House

property, Philip L. Smith's home. No width is called for, and no interpretation of the Coffin Plan warrants that conclusion. The deeds describe the easement as being related to the "roadways." Certainly, none of the witnesses or photographic evidence supported a finding that the roadway on the Hart House property was 15 feet wide at any time. This matter should be remanded and judgment entered that the easement which burdens the Hart House property is no wider than the wheelbase of a vehicle extending from the Goose Cottage boundary. Further, the entry of judgment against each of the Appellants under the timber trespass statute is not consistent with the statute or the law of easements. It must be reversed.

In all other respects the evidence and the law supported the findings of fact and conclusions of law which should be affirmed. The conclusion that the easement to the shore enjoyed by all encompasses the circular drive must be sustained. Similarly, the confirmation that the dock easement and the right of access thereto confirmed the long-term use of utilities, including water and electricity, is consistent with the words of the easements and the rights of the parties as shown by evidence. There is no clear error on those findings and they should be upheld.

Dated this 4th day of May, 2026.

Appellants,

By their attorney,

/s/ Judy A. S. Metcalf

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CERTIFICATE OF SERVICE

I, Judy A. S. Metcalf, hereby certify that the Reply Brief of Appellants, Philip L. Smith, II, Stephen G. Smith, Heritage Builders, Inc, and Donald E. Meklin and Sons Excavating, LLC, was electronically served upon counsel of record at the addresses set forth below by email on May 4, 2026:

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