

SUPREME COURT OF VERMONT

Sweezey v. Neel, 2006 VT 38

904 A.2d 1050 (Vt. 2006) · No. 2004-225 · Decided May 5, 2006

SUMMARY

The Vermont Supreme Court reviewed a dispute concerning encroachment on a deeded easement and the relocation of the easement around a house addition. The court upheld the trial court's authority to allow the easement to bend around the addition under the circumstances, but declined to adopt a rule permitting unilateral relocation of easements by servient landowners. The court also struck an advisory ruling restricting hypothetical future development of the dominant estate and otherwise affirmed the trial court's decision.

CASE DETAILS

|                       |                                                                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Vermont                                                                                                                                                           |
| WRITING FOR THE COURT | Reiber, C.J.; Johnson, J.; Skoglund, J.; Burgess, J.; Gibson, J. (Ret.), specially assigned                                                                                        |
| JURISDICTION          | Vermont                                                                                                                                                                            |
| DECIDED               | May 5, 2006                                                                                                                                                                        |
| DOCKET                | 2004-225                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Defendants appealed and plaintiff cross-appealed from the superior court's final decision following a four-day bench trial concerning the location and scope of a deeded easement. |
| STANDARD OF REVIEW    | The court reviewed the superior court's legal conclusions for error, factual findings for support in the evidence, and discretionary remedial rulings for abuse of discretion.     |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                                                                     |
| PARTIES               | Morristown Landowner's Association, Hartley Neel, Virginia Neel v. J. Kent Sweezey                                                                                                 |

TOPICS

- easements
- real estate
- equitable relief
- declaratory judgment
- appellate procedure

## PRACTICE AREAS

real estate

property law

equitable remedies

appellate procedure

## QUESTIONS PRESENTED

1. Whether the superior court erred by allowing plaintiff to bend the deeded easement around his encroaching house addition rather than requiring removal of the addition.
2. Whether Vermont should adopt the Restatement (Third) of Property: Servitudes rule permitting a servient landowner, with court approval, to unilaterally relocate an easement when the relocation would not materially impair the dominant estate.
3. Whether the superior court improperly issued an advisory ruling restricting use of the easement for hypothetical future development of the dominant estate.
4. Whether the superior court abused its discretion or otherwise erred in permitting a locked gate, determining that utility poles were outside the easement, and declining relief concerning a boulder and alleged damage to flowers.

## HOLDINGS

1. Under the particular circumstances, the superior court did not err in allowing plaintiff to bend the easement around his permanent house addition rather than require its removal.
2. Vermont retains the general rule that an easement may not be relocated without the consent of both the dominant and servient landowners; the court declined to adopt the Restatement's unilateral-relocation approach.
3. The superior court improperly issued an advisory ruling limiting defendants' use of the easement for hypothetical future development, because no actual controversy existed on that issue.
4. The superior court did not abuse its discretion or otherwise commit reversible error in allowing a locked gate subject to access conditions, finding the utility poles outside the easement, or denying relief concerning the boulder and alleged flower damage.

## KEY QUOTATIONS

*“We decline plaintiff’s request on cross-appeal for this Court to hold that a servient landowner, with court approval, may unilaterally relocate an easement without obtaining the consent of the dominant owner.”* (904 A.2d at 1057)

*“Under these circumstances, the superior court’s ruling that the scope of the easement does not include its use as an avenue for future development is an impermissible advisory opinion.”* (904 A.2d at 1059)

*“The superior court’s April 15, 2004 decision is affirmed in all respects, except that its restriction on using the easement as an avenue for future development and its accompanying findings on that issue are stricken from the decision.”* (904 A.2d at 1060)

## FACTUAL BACKGROUND

A 1965 deed created a fifty-foot-wide access easement over the retained parcel to provide access to property later owned by Morristown Landowner's Association. The easement was not described by metes and bounds, and plaintiff later purchased the servient estate and constructed a house addition that came within ten feet of the easement's centerline. The parties discussed an alternative road and a possible relocation, but never completed an agreed permanent substitution; the superior court nevertheless permitted the easement to bend around the addition and restricted its use for hypothetical future development.

## PROCEDURAL HISTORY

Plaintiff sued after the parties disputed plaintiff's construction of a house addition that encroached on the deeded easement and the availability of an alternative road. The superior court issued interlocutory rulings concerning the easement's location and permissible use, then after trial allowed plaintiff to bend the easement around the addition and restricted use of the easement for hypothetical future development of defendants' property. Defendants appealed several rulings, and plaintiff cross-appealed seeking adoption of a rule permitting unilateral judicial relocation of easements.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

No remand was ordered. The superior court's April 15, 2004 decision was affirmed except that the restriction on using the easement as an avenue for future development, and the accompanying findings on that issue, were stricken.

## CASES CITED

- In re Shantee Point, Inc., 174 Vt. 248, 261, 811 A.2d 1243, 1254 (2002)
- Sargent v. Gagne, 121 Vt. 1, 12, 147 A.2d 892, 900 (1958)
- Wagoner v. Jack's Creek Coal Corp., 199 Va. 741, 101 S.E.2d 627, 630 (1958)
- Mann v. Levin, 2004 VT 100, 177 Vt. 261, 861 A.2d 1138
- Welch v. Barrows, 125 Vt. 500, 508, 218 A.2d 698, 705 (1966)
- McDonough v. W.W. Snow Constr. Co., 131 Vt. 436, 441, 306 A.2d 119, 122 (1973)
- Knudson v. Leach, 142 Vt. 648, 651, 458 A.2d 1140, 1142 (1983)
- Renaissance Dev. Corp. v. Universal Props. Group, Inc., 821 A.2d 233, 238 (R.I. 2003)
- Vossen v. Forrester, 155 Or. App. 323, 963 P.2d 157, 162 (1998)
- Roaring Fork Club, L.P. v. St. Jude's Co., 36 P.3d 1229, 1237 (Colo. 2001)
- M.P.M. Builders, LLC v. Dwyer, 442 Mass. 87, 809 N.E.2d 1053, 1057 (2004)
- Lewis v. Young, 92 N.Y.2d 443, 682 N.Y.S.2d 657, 705 N.E.2d 649, 653-54 (1998)
- Goodwin v. Johnson, 357 S.C. 49, 591 S.E.2d 34, 38 (Ct. App. 2003)
- MacMeekin v. Low Income Hous. Inst., 111 Wash. App. 188, 45 P.3d 570, 579 (2002)

- Herren v. Pettengill, 273 Ga. 122, 538 S.E.2d 735, 736 (2000)
- Davis v. Bruk, 411 A.2d 660, 665 (Me. 1980)
- Mass. Mun. Wholesale Elec. Co. v. State, 161 Vt. 346, 363, 639 A.2d 995, 1006 (1994)
- Lovitt v. Robideaux, 139 Idaho 322, 78 P.3d 389, 395 (2003)
- Rupert v. Gunter, 31 Wash. App. 27, 640 P.2d 36, 39 (1982)

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