

SUPREME COURT OF NEW HAMPSHIRE

412 South Broadway Realty, LLC & a. v. John M. Wolters, Jr. & a.

169 N.H. 304 (2016) · No. Rockingham No. 2015-0498 · Decided August 23, 2016

SUMMARY

The Supreme Court of New Hampshire reviewed disputes concerning deeded rights-of-way, adverse possession, prescriptive easements, slander of title, and abuse of process. The court affirmed in part, vacated in part, and remanded, holding that the abuse-of-process judgment was improperly based in part on settlement communications inadmissible under New Hampshire Rule of Evidence 408. The court also declined to award additional carrying-cost damages and addressed the preclusive-effect arguments concerning prior proceedings.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Lynn, J.; Dalianis, C.J.; Hicks, J.; Conboy, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	August 23, 2016
DOCKET	Rockingham No. 2015-0498
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	John M. Wolters, Jr. and Steven M. Lospennato appealed multiple orders entered after bench trials concerning deeded right-of-way claims, adverse possession and prescriptive easement claims, and FUN Trust's slander of title and abuse of process claims. FUN Trust cross-appealed the rulings rejecting its slander of title claim, limiting damages, and denying attorney's fees.
STANDARD OF REVIEW	Questions concerning res judicata and collateral estoppel are reviewed de novo. Evidentiary rulings are reviewed for an unsustainable exercise of discretion. Damages findings are reviewed for clear error, and attorney's-fee decisions are reviewed for an unsustainable exercise of discretion.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion
PARTIES	John M. Wolters, Jr., Steven M. Lospennato v. 392 South Broadway, LLC, Emmett Horgan, Trustee of the FUN Trust

TOPICS

prescriptive easements easements abuse of process evidence appellate procedure

PRACTICE AREAS

real estate civil procedure evidence torts appellate procedure

QUESTIONS PRESENTED

1. Whether the defendants preserved and established a claim that subsequent conveyances created, ratified, or corrected defects in the original deeded right-of-way.
2. Whether 392 South Broadway was judicially estopped from denying the claimed right-of-way.
3. Whether res judicata or collateral estoppel barred FUN Trust's abuse of process claim because of prior requests for attorney's fees arising from the planning-board appeal.
4. Whether settlement communications were admissible under New Hampshire Rule of Evidence 408 to prove the defendants' motivation or liability for abuse of process.
5. Whether the trial court clearly erred by excluding carrying costs and property taxes from abuse of process damages.
6. Whether judicial privilege barred FUN Trust's slander of title claim and whether the trial court properly declined to consider an unpreserved theory based on statements before the planning board.
7. Whether FUN Trust was entitled to attorney's fees under the bad-faith litigation theory.

HOLDINGS

1. The court declined to consider the defendants' theory that subsequent conveyances independently created, ratified, or corrected defects in the original easement reservation because the theory was not pleaded or properly preserved.
2. The court held that the defendants failed to establish the unfair advantage or unfair detriment necessary for judicial estoppel, and the trial court did not err by declining to apply the doctrine.
3. Res judicata did not bar the abuse of process claim because the claim did not arise from the same transaction or occurrence as the underlying planning-board appeal.
4. Collateral estoppel did not bar the abuse of process claim because FUN Trust did not have a full and fair opportunity in the prior attorney's-fee proceedings to litigate the defendants' objectives in filing the planning-board appeal.
5. Settlement communications concerning disputed claims were inadmissible under the spirit and purpose of New Hampshire Rule of Evidence 408 when offered as evidence of liability for abuse of process. The trial court therefore erred by relying on the communications.
6. The abuse of process judgment had to be vacated and remanded because the court could not determine whether the trial court would have reached the same result without the improperly admitted settlement evidence.

7. The trial court did not clearly err by declining to award property taxes and other carrying costs as damages.
8. The court declined to consider the argument that statements before the planning board supported slander of title because that theory was not pleaded or raised before the trial court.
9. The trial court did not unsustainably exercise its discretion by denying FUN Trust attorney's fees because the defendants did not act wantonly, maliciously, oppressively, or in bad faith.

KEY QUOTATIONS

“Generally, in determining whether two actions are the same cause of action for the purpose of applying res judicata, we consider whether the alleged causes of action arise out of the same transaction or occurrence.” (slip op. at 7)

“Part of an effective settlement process is a frank discussion of the relative merits of each party’s case.” (slip op. at 9)

“If parties were permitted to take the content of these negotiations and use them in subsequent litigation for . . . abuse of process, then counsel would put themselves and their clients at risk of suit in every settlement conference in which they participate, resulting in either less effective or even non-existent negotiations.” (slip op. at 9)

FACTUAL BACKGROUND

The defendants owned property at 16 Garabedian Drive and claimed rights to travel across neighboring properties to Route 28, including a deeded right-of-way over property owned by 392 South Broadway and rights in a disputed cross-hatched area later owned by the FUN Trust. The trial court found that the defendants failed to establish continuous, sufficiently definite use supporting adverse possession or a prescriptive easement and found no enforceable deeded right-of-way over 392 South Broadway's property. The FUN Trust later alleged that the defendants' appeal of the Trust's site-plan approval constituted slander of title and abuse of process. The trial court rejected slander of title but found abuse of process based in part on settlement communications and awarded attorney's fees.

PROCEDURAL HISTORY

The action began as a declaratory judgment and property-rights dispute concerning access across several Salem properties. After a bench trial, the Superior Court ruled that the defendants had no rights in the disputed cross-hatched area and no deeded right-of-way over 392 South Broadway's property. In a later bench trial, the court rejected slander of title but found abuse of process and awarded attorney's fees for defending a planning-board appeal. The Supreme Court affirmed in part, vacated the abuse of process judgment because settlement evidence was improperly admitted, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the judgment on FUN Trust's abuse of process claim and remand for the trial court to reconsider whether the defendants committed abuse of process without relying on the improperly admitted settlement communications. The judgment is affirmed in all other respects.

CASES CITED

- Perron v. Aranosian, 128 N.H. 92, 95 (1986)
- Thompson v. C&C Research & Dev., 153 N.H. 446, 451-52 (2006)
- Cohoon v. IDM Software, 153 N.H. 1, 4 (2005)
- State v. Farnsworth, 126 N.H. 656, 660 (1985)
- Merriam Farm, Inc. v. Town of Surry, 168 N.H. 197, 199-200 (2015)
- Yaklevich v. Kemp, Schaeffer, 626 N.E.2d 115, 119 (Ohio 1994)
- Hewes v. Wolfe, 330 S.E.2d 16, 22 (N.C. Ct. App. 1985)
- Reitz v. Dieter, 840 F. Supp. 353, 355-56 (E.D. Pa. 1993)
- Pochiro v. Prudential Ins. Co. of America, 827 F.2d 1246, 1252-53 (9th Cir. 1987)
- Mahindra & Mahindra v. Holloway Motor Cars of Manchester, 166 N.H. 740, 750 (2014)
- Petition of Kalar, 162 N.H. 314, 321 (2011)
- In the Matter of Hampers & Hampers, 166 N.H. 422, 430 (2014)
- Ciolli v. Iravani, 625 F. Supp. 2d 276, 287-88 (E.D. Pa. 2009)
- Axenics, Inc. v. Turner Constr. Co., 164 N.H. 659, 674-75 (2013)
- BTG Int'l Inc. v. Bioactive Labs., No. 15-04885, 2016 WL 3519712, at *10 (E.D. Pa. June 28, 2016)
- Kelleher v. Marvin Lumber & Cedar Co., 152 N.H. 813, 847 (2005)
- T&M Assocs. v. Goodrich, 150 N.H. 161, 164 (2003)
- Jackson v. Morse, 152 N.H. 48, 51 (2005)
- Thompson v. D'Errico, 163 N.H. 20, 22 (2011)
- Frost v. Comm'r, N.H. Banking Dep't, 163 N.H. 365, 378 (2012)
- Bosonetto v. Town of Richmond, 163 N.H. 736, 746 (2012)
- Porter v. City of Manchester, 155 N.H. 149, 157 (2007)
- State v. Fernandez, 152 N.H. 233, 239-40 (2005)