

SUPREME COURT OF NEW HAMPSHIRE

Mahoney v. Town of Canterbury

150 N.H. 148 (2003) · Decided October 14, 2003

SUMMARY

The New Hampshire Supreme Court held that Old Still Road was a class VI public highway established by prescription under RSA 229:1. It affirmed the determination that the public had used the road adversely and continuously for the requisite period. The court upheld Fortin & Redmond Associates’ entitlement to damages arising from a wrongful injunction but vacated the amount awarded and remanded for recalculation; it also affirmed the denial of attorney’s fees.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, J.; Nadeau, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	October 14, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs appealed superior court orders determining that Old Still Road was a class VI public highway established by prescription and awarding damages to Fortin & Redmond Associates. Fortin & Redmond cross-appealed the amount of damages.
STANDARD OF REVIEW	Factual findings are binding unless unsupported by the evidence or erroneous as a matter of law. Whether a highway was created by prescription and whether use was adverse are factual issues reviewed under that standard. Statutory interpretation is reviewed as a matter of law.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Catherine Mahoney, Everett S. Mahoney v. Town of Canterbury, Fortin & Redmond Associates

TOPICS

- prescriptive easements
- real estate
- statutory interpretation
- damages
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Old Still Road was established as a class VI public highway by prescription under RSA 229:1.
2. Whether RSA 229:1 required proof of public use specifically during the period from January 1, 1948, through January 1, 1968.
3. Whether Fortin & Redmond was entitled to damages caused by the injunction and whether the trial court properly calculated those damages.
4. Whether Fortin & Redmond was entitled to an award of attorney's fees.

HOLDINGS

1. Old Still Road was established as a public highway by prescription because the public used it continuously and adversely, without interruption and under a claim of right, for at least twenty years before January 1, 1968.
2. RSA 229:1 does not require proof of use during the specific twenty-year period from January 1, 1948, through January 1, 1968; continuous adverse use could have begun earlier, so long as a twenty-year period was completed before January 1, 1968.
3. A party subject to a wrongfully issued injunction may recover damages caused by the injunction, and Fortin & Redmond was entitled to pursue such damages.
4. The trial court improperly calculated damages by arbitrarily awarding one-half of one month's total company expenses. Recoverable damages must be specifically attributable to the interruption, necessary, incurred during a reasonable adjustment period, and not avoidable through reasonable efforts.
5. Fortin & Redmond was not entitled to attorney's fees because the Mahoneys' position was not patently unreasonable.

KEY QUOTATIONS

"We conclude that the legislature added the language "prior to January 1, 1968" to allow any roads already acquired by prescription to stand, but restricted any further establishment of public highways by prescription." (153)

"A party subject to a wrongfully issued injunction is entitled to recover damages that were incurred or suffered as a result of the injunction." (154)

"F & R may recover expenses that would not have been incurred in the absence of (i.e., but for) the injunction itself." (154)

FACTUAL BACKGROUND

Old Still Road runs through the Mahoneys' approximately sixty-four-acre property in Canterbury and continues onto property owned by Fortin & Redmond Associates. Fortin & Redmond arranged with the Town of Canterbury to use the road for logging, while the Mahoneys claimed the road was private and sought to prevent

that use. Historical maps, deeds, and testimony showed public use of the road beginning no later than 1814 and continuing through the relevant period before January 1, 1968. An injunction delayed Fortin & Redmond's logging operations for approximately five months, leading to its damages claim.

PROCEDURAL HISTORY

The Mahoneys filed a petition for equitable relief in November 2000 to prevent Fortin & Redmond from using Old Still Road for logging operations. The superior court denied a temporary restraining order, later enjoined further activity after an altercation, and on March 14, 2001, ruled that the road was a public highway established by prescription under RSA 229:1 and awarded Fortin & Redmond damages for the delay. The Supreme Court of New Hampshire affirmed the highway determination and Fortin & Redmond's entitlement to damages, vacated the amount of damages, affirmed denial of attorney's fees, and remanded.

DISPOSITION

other

REMAND INSTRUCTIONS

Vacate the damages award and remand for the trial court to determine necessary costs and expenses incurred during a reasonable period while Fortin & Redmond adjusted its operations, including reassigning employees, beginning new projects, and moving equipment. The court must exclude expenses that would have been incurred regardless of the injunction, avoidable expenses, and general company overhead, while considering qualifying lost profits resulting from a lower sale price of the timber.

CASES CITED

- Blagbrough v. Town of Wilton, 145 N.H. 118, 124 (2000)
- Catalano v. Town of Windham, 133 N.H. 504, 509-10
- Wason v. Nashua, 85 N.H. 192, 198 (1931)
- Town of Warren v. Shortt, 139 N.H. 240, 242-43
- Sandford v. Town of Wolfeboro, 143 N.H. 481, 485-86
- Williams v. Babcock, 116 N.H. 819, 822-24 (1976)
- Leo Foundation v. State, 117 N.H. 209, 212 (1977)
- Cross v. Brown, 148 N.H. 485, 486 (2002)
- Blake v. Hickey, 93 N.H. 318 (1945)
- Windham v. Jubinville, 92 N.H. 102 (1942)
- Real Estate Advisors v. Whittier Lifts, 132 N.H. 638, 644-45 (1990)
- Robert E. Tardiff, Inc. v. Twin Oaks Realty Trust, 130 N.H. 673, 679
- Flanagan v. Prudhomme, 138 N.H. 561, 575
- Hydraform Prods. Corp. v. American Steel & Alum. Corp., 127 N.H. 187, 198
- White v. Francoeur, 138 N.H. 307, 309-10

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