

SUPREME COURT OF NEW HAMPSHIRE

Robert Jesurum v. WBTSCC Limited Partnership & a.

169 N.H. 469 (2016) · No. Rockingham No. 2015-0583 · Decided December 9, 2016

SUMMARY

The New Hampshire Supreme Court reviewed a dispute over whether the public acquired a prescriptive easement across the defendants’ property in Rye to park and access Little Harbor Beach. The court upheld the findings that the public’s use was adverse, continuous, and sufficiently definite to establish the easement, and affirmed the scope of the easement. The court also addressed the trial court’s award of attorney’s fees under the substantial benefit theory and concluded that such an award against private litigants was unwarranted.

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	December 9, 2016
DOCKET	Rockingham No. 2015-0583
DISPOSITION	reversed
PROCEDURAL POSTURE	The defendants appealed orders of the Superior Court determining that the public, including the plaintiff, had acquired a prescriptive easement over the defendants' property, defining the scope of the easement, and awarding attorney's fees to the plaintiff.
STANDARD OF REVIEW	Because the trial court effectively permitted the defendants to relitigate the existence of the easement at a full evidentiary hearing, the Supreme Court applied the deferential standard applicable to a decision after trial on the merits: factual findings and rulings were upheld unless unsupported by the evidence or legally erroneous, with de novo review of the trial court's application of law to the facts. The award of attorney's fees was reviewed for an unsustainable exercise of discretion.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	WBTSCC Limited Partnership, William H. Binnie, trustee of the Harrison Irrevocable Trust v. Robert Jesurum

TOPICS

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easements

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the plaintiff and the public established a prescriptive easement over Sanders Point by twenty years of adverse, continuous, and uninterrupted use.
2. Whether the public's use was sufficiently adverse to place the defendants on notice of an adverse claim and whether the evidence established permissive use.
3. Whether the trial court properly defined the scope of the prescriptive easement.
4. Whether the defendants' intermittent construction-related use interrupted the continuity of the public's adverse use.
5. Whether the trial court had jurisdiction to award attorney's fees after the defendants filed their appeal.
6. Whether attorney's fees could be awarded against private parties under the substantial-benefit or public-benefit theory when the parties acted in good faith.

HOLDINGS

1. The public established a prescriptive easement over Sanders Point because its use was extensive, open, adverse, continuous, and uninterrupted for at least twenty years.
2. The scope of the easement properly included parking at Sanders Point and use of the sandy footpath to access Little Harbor Beach, subject to the trial court's restrictions.
3. The defendants' intermittent use of Sanders Point for construction staging did not interrupt the public's continuous adverse use.
4. The trial court retained jurisdiction to act on the outstanding fee request because the defendants' initial appeal was premature and effectively interlocutory.
5. The trial court erred in awarding attorney's fees to the plaintiff under the substantial-benefit or public-benefit theory because the defendants were private parties who acted in good faith.

KEY QUOTATIONS

“To establish a prima facie case of adverse use, [a claimant] must first produce evidence of acts of such a character that they create an inference of non-permissive use.” (section III)

“The scope of a prescriptive easement is defined by the character and nature of the use that created it.” (section IV.A)

“To countenance such an award would be a substantial departure from our case law, as we generally do not grant fees against a private litigant absent a showing of bad faith.” (section V)

FACTUAL BACKGROUND

The defendants owned property in Rye, New Hampshire, used primarily as a golf course, including a gravel area called Sanders Point adjacent to Wentworth Road and connected by a sandy path to Little Harbor Beach. Members of the public had parked at Sanders Point and used the path to access the beach since at least the 1950s, with use becoming extensive and year-round during the 1970s through the 1990s. The defendants occasionally used the area for construction staging but did not clearly exclude the public until October 2012, when they blocked access with boulders, bushes, and a fence.

PROCEDURAL HISTORY

The plaintiff sought a declaratory judgment establishing prescriptive easement rights over Sanders Point for parking and access to Little Harbor Beach. The Superior Court granted the plaintiff summary judgment on the existence of the easement, later held an evidentiary hearing concerning its scope, defined the easement to include limited parking and beach access, and ultimately awarded attorney's fees. The defendants appealed, and the Supreme Court of New Hampshire affirmed the easement and its scope but reversed the fee award.

DISPOSITION

reversed

CASES CITED

- Del Norte, Inc. v. Provencher, 142 N.H. 535, 537 (1997)
- Prolerized New England Co. v. City of Manchester, 166 N.H. 617, 622 (2014)
- N.H. Fish & Game Department v. Bacon, 167 N.H. 591, 596 (2015)
- Sirrell v. State, 146 N.H. 364, 370 (2001)
- Greenan v. Lobban, 143 N.H. 18, 22 (1998)
- Sandford v. Town of Wolfeboro, 143 N.H. 481, 484, 486, 490 (1999)
- Ellison v. Fellows, 121 N.H. 978, 981 (1981)
- Bonardi v. Kazmirchuk, 146 N.H. 640, 642-43 (2001)
- Opinion of the Justices (Public Use of Coastal Beaches), 139 N.H. 82, 92 (1994)
- Town of Warren v. Shortt, 139 N.H. 240, 242, 245 (1994)
- Cote v. Eldeen, 119 N.H. 491, 493 (1979)
- Purdie v. Attorney General, 143 N.H. 661, 665-66 (1999)
- Vigeant v. Donel Realty Trust, 130 N.H. 406, 409 (1988)
- Salminen v. Jacobson, 83 N.H. 219, 220 (1928)
- Hoban v. Bucklin, 88 N.H. 73, 82 (1936)
- Yager v. Clauson, 169 N.H. 1, 9 (2016)
- Van Der Stok v. Van Voorhees, 151 N.H. 679, 681 (2005)
- Shelton v. Tamposi, 164 N.H. 490, 501 (2013)
- Frost v. Commissioner, N.H. Banking Department, 163 N.H. 365, 377 (2012)

- Claremont School District v. Governor (Costs and Attorney's Fees), 144 N.H. 590, 594-95 (1999)
- Bedard v. Town of Alexandria, 159 N.H. 740, 741, 746 (2010)
- Mills v. Electric Auto-Lite, 396 U.S. 375, 396-97 (1970)
- Harkeem v. Adams, 117 N.H. 687, 690-91 (1977)
- Petition of Kilton, 156 N.H. 632, 645 (2007)
- Silva v. Botsch, 121 N.H. 1041, 1042-43 (1981)

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