

SUPREME COURT OF NEW HAMPSHIRE

Ralph P. Gallo & a. v. Susan Traina & a.

166 N.H. 737 (2014) · No. Rockingham No. 2013-652 · Decided September 12, 2014

SUMMARY

The New Hampshire Supreme Court affirmed a superior court judgment concerning a quiet-title dispute involving adverse possession and prescriptive easement rights. The court held that the Gallos acquired by adverse possession the land beneath their retaining wall, stone wall, and plantings, and that their adverse use extinguished the Trainas' claimed easement over part of an adjoining strip.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, C.J.; Hicks, J.; Conboy, J.; Lynn, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	September 12, 2014
DOCKET	Rockingham No. 2013-652
DISPOSITION	affirmed
PROCEDURAL POSTURE	The respondents appealed the Superior Court's order granting the petitioners' quiet-title petition and determining that the petitioners acquired certain property by adverse possession and held a prescriptive easement over a paved access area.
STANDARD OF REVIEW	In a quiet-title action, the court upheld the trial court's determination unless it was erroneous as a matter of law or unsupported by the evidence.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire
PARTIES	Susan Traina, Joseph Traina v. Ralph P. Gallo, Ruth L. Gallo

TOPICS

- adverse possession
- prescriptive easements
- quiet title
- easements
- real estate

PRACTICE AREAS

- Real property
- Property remedies

QUESTIONS PRESENTED

1. Whether the Gallos acquired by adverse possession the land beneath their retaining wall, decorative stone wall, and burning bush despite the Trainas' entries, landscaping, surveying, and fence installation.
2. Whether the Gallos' adverse possession of the area west of the paved driveway extinguished any easement right the Trainas acquired over that area.
3. Whether the trial court's quiet-title determinations were erroneous as a matter of law or unsupported by the evidence.

HOLDINGS

1. The Trainas' fence, occasional yard work, and other entries did not interrupt the Gallos' exclusive adverse possession because the conduct did not oust the Gallos or constitute a co-occurring use of the land.
2. The Gallos' open, notorious, and adverse use of the area west of the paved driveway for more than twenty years extinguished any right the Trainas may have obtained to pass over that area.
3. The Superior Court's determinations were not erroneous as a matter of law or unsupported by the evidence, and the judgment was affirmed.

KEY QUOTATIONS

“To interrupt the adverse possession, the record owner must perform some act which constitutes an ouster of the adverse claimant.”

“Such conduct must be such as would put a reasonably prudent person on notice that he or she actually has been ousted.”

“A mere casual entry for a limited purpose by the record owner is not necessarily sufficient to destroy adverse possession.”

FACTUAL BACKGROUND

The Gallos purchased property in Salem in 1986, built their home and garage, and beginning in 1989 used and maintained a paved driveway, retaining wall, decorative stone wall, plantings, and a burning bush. The Trainas later acquired adjoining land containing portions of those improvements and claimed rights in an easement area that included part of the Gallos' access route. After Susan Traina threatened to build a fence cutting off garage access and demanded removal of the walls and plantings, the Gallos sought to quiet title and establish a prescriptive easement, while the Trainas asserted superior use rights.

PROCEDURAL HISTORY

After a two-day evidentiary hearing and a view of the property, the Superior Court ruled that the Gallos owned by adverse possession the land beneath their retaining wall, decorative stone wall, and burning bush. It also recognized a prescriptive easement allowing the Gallos to use and maintain a paved access area, and determined that their adverse possession extinguished the Trainas' claimed right to use part of the Iannalfo strip. The Trainas moved unsuccessfully for reconsideration and appealed.

DISPOSITION

affirmed

CASES CITED

- Hersh v. Plonski, 156 N.H. 511, 514 (2007)
- Coyle v. Battles, 147 N.H. 98, 100 (2001)

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