

## SUPREME JUDICIAL COURT OF MAINE

# Robert F. Almeder et al. v. Town of Kennebunkport et al.

2019 ME 151 · No. Yor-18-251 · Decided October 3, 2019

### SUMMARY

The Maine Supreme Judicial Court reviews a judgment concerning title to portions of Goose Rocks Beach in Kennebunkport. The court considers the reliability of expert surveyor testimony, the interpretation of ancient deeds and historical records, and the meaning and location of a deed reference to a "seawall."

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Judicial Court of Maine                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Humphrey, J.; Saufley, C.J.; Alexander, J.; Mead, J.; Jabar, J.                                                                                                                                                                                                                                                   |
| JURISDICTION          | Maine                                                                                                                                                                                                                                                                                                             |
| DECIDED               | October 3, 2019                                                                                                                                                                                                                                                                                                   |
| DOCKET                | Yor-18-251                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | The Beachfront Owners appealed from a Superior Court judgment entered after a bench trial determining that, except for one property not at issue on appeal, their properties did not extend seaward beyond the seawall and that the Town of Kennebunkport held title to the disputed beach and adjacent dry sand. |
| STANDARD OF REVIEW    | The court reviewed the reliability foundation for expert testimony for clear error; deed interpretation and the parties' intent de novo; and factual determinations locating property boundaries on the face of the earth for clear error.                                                                        |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                    |
| PARTIES               | Robert F. Almeder et al., Terrence O'Connor, Joan Leahey v. Town of Kennebunkport et al., State of Maine, neighboring landowners, Surfrider Foundation                                                                                                                                                            |

### TOPICS

title disputes deeds real estate expert testimony appellate procedure

## PRACTICE AREAS

real estate

property law

municipal law

evidence

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Superior Court clearly erred in admitting and relying on the Town's surveyor's expert testimony.
2. Whether the Beachfront Owners' ancient deeds and historical title chains conveyed title beyond the seawall to the beach or intertidal zone.
3. Whether the term "seawall" identifies a boundary landward of the beach and whether its location must be determined case by case from the deeds and physical features.
4. Whether the Colonial Ordinance presumption that upland oceanfront owners hold title to the low water mark applied to the Beachfront Owners' properties.
5. Whether the Town of Kennebunkport held title to the disputed land seaward of the seawall despite the absence of an express conveyance directly to the Town.

## HOLDINGS

1. The Superior Court did not clearly err in relying on the Town's surveyor as an expert because his qualifications, experience, methodology, and application of professional techniques supported the relevance and reliability of his testimony.
2. The Superior Court properly applied Maine principles of deed construction when it reviewed the historical title chains and concluded that the Beachfront Owners' deeds conveyed property only to the seawall rather than to the beach or low water mark.
3. A seawall is an elevated area of land or embankment landward of the beach that acts as a barrier to the sea, whether naturally occurring or manmade; it does not extend seaward beyond the high water mark.
4. The Beachfront Owners did not benefit from the Colonial Ordinance presumption that an upland oceanfront grant extends to the low water mark because their foundational deeds did not contain a call to the water or shore and instead bounded the property by the seawall or bank.
5. Under the unique historical circumstances of Cape Porpus, title to the disputed land seaward of the seawall passed to the Town of Kennebunkport when the proprietary holding the land in trust for the inhabitants dissolved, even though the Danforth Deed was not a direct conveyance to the Town in its corporate capacity.

## KEY QUOTATIONS

*“The term “seawall,” therefore, refers to an elevated area of land or an embankment situated landward of the beach that, as aptly described by the trial court, is a “physical feature on the face of the earth that acts as a barrier or wall—either man-made or naturally occurring—that acts to impede the flow of the sea.”” (¶ 32)*

*“Therefore, on the record before us, and in the absence of any evidence suggesting that the disputed land was conveyed into private ownership, we affirm the holding of the trial court that in the unique circumstances of*

*this case, legal title to the disputed land seaward of the seawall, including the beach, is held by the Town of Kennebunkport for the benefit of the public.” (¶ 60)*

## FACTUAL BACKGROUND

The dispute concerned portions of Goose Rocks Beach in Kennebunkport, including the intertidal zone and dry sand seaward of natural or manmade seawalls. The Beachfront Owners claimed that their properties extended to the mean low water mark, while the Town claimed title to the beach and adjacent dry sand. The historical title chains for the properties generally traced to colonial-era grants and deeds describing boundaries by reference to a seawall, bank, or similar feature rather than by a call to the water.

## PROCEDURAL HISTORY

The Beachfront Owners filed a 2009 action seeking a declaration that their parcels extended to mean low water and seeking to quiet title. After extensive motion practice, the Superior Court bifurcated the claims. Following an earlier trial on public-use claims, the Law Court vacated and remanded for consideration of the title claims. After an eleven-day title trial in 2016, the Superior Court ruled that one owner established title to a portion of the beach, but that the Town held title to the disputed areas in front of the other twenty-two properties. The Beachfront Owners appealed, and the Law Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- *Almeder v. Town of Kennebunkport*, 2014 ME 139, 106 A.3d 1099
- *State v. Maine*, 2017 ME 25, ¶ 16, 155 A.3d 871
- *Searles v. Fleetwood Homes of Pa., Inc.*, 2005 ME 94, ¶¶ 23, 28-29, 878 A.2d 509
- *Eaton v. Town of Wells*, 2000 ME 176, ¶¶ 17, 19, 26, 760 A.2d 232
- *Sleeper v. Loring*, 2013 ME 112, ¶ 10, 83 A.3d 769
- *Matteson v. Batchelder*, 2011 ME 134, ¶ 16, 32 A.3d 1059
- *McLellan v. McFadden*, 95 A. 1025, 1028 (Me. 1915)
- *Hodge v. Boothby*, 48 Me. 68, 71 (1861)
- *Hodgdon v. Campbell*, 411 A.2d 667, 672 (Me. 1980)
- *Littlefield v. Maxwell*, 31 Me. 134, 139 (1850)
- *Littlefield v. Littlefield*, 28 Me. 180, 186-87 (1848)
- *Cutts v. Hussey*, 15 Me. 237, 241 (1839)
- *Commonwealth v. Roxbury*, 75 Mass. (9 Gray) 451, 498 (1857)
- *Storer v. Freeman*, 6 Mass. 435, 438-40 (1810)
- *Bell v. Wells*, 557 A.2d 168, 172 (Me. 1989)
- *Ogunquit Beach Dist. v. Perkins*, 21 A.2d 660, 663 (Me. 1941)

- Whitmore v. Brown, 100 Me. 410, 414, 61 A. 485, 487 (1905)
- Lapish v. President of Bangor Bank, 8 Me. 85, 89-90 (1831)
- Dunton v. Parker, 97 Me. 461, 54 A. 1115 (1903)
- Green v. Putnam, 62 Mass. (8 Cush.) 21, 25 (1851)
- Commonwealth v. Wilder, 127 Mass. 1, 3 (1879)
- Rogers v. Goodwin, 2 Mass. 475, 477 (Mass. 1807)
- Lynn v. Nahant, 113 Mass. 433, 448 (1873)
- Bates v. Cohasset, 182 N.E. 284, 286-88 (Mass. 1932)
- Lowell v. Boston, 322 Mass. 709, 720-21 (1948)
- Talbot v. Little Compton, 160 A. 466, 469 (R.I. 1932)

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