

SUPREME COURT OF NEW HAMPSHIRE

Paul Lynn & a. v. Wentworth By The Sea Master Association

169 N.H. 77 (2016) · No. Rockingham No. 2015-0333 · Decided May 27, 2016

SUMMARY

The Supreme Court of New Hampshire affirmed summary judgment for Wentworth By The Sea Master Association in a dispute over the validity of a beach-access easement across the plaintiffs' property. The court held that the deed, covenants, conditions, and restrictions, and recorded site plan, together with evidence of the parties' intent, created an express easement rather than a merely implied easement or revocable license. The court also upheld the trial court's admission of supplemental evidence and concluded that no material factual dispute precluded summary judgment.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Lynn, J.; Dalianis, C.J.; Conboy, J.
JURISDICTION	New Hampshire
DECIDED	May 27, 2016
DOCKET	Rockingham No. 2015-0333
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed from an order granting the defendant's motion for summary judgment and denying the plaintiffs' motion for partial summary judgment in an action challenging the validity and enforceability of a beach-access easement.
STANDARD OF REVIEW	Evidentiary admissibility rulings are reviewed for an unsustainable exercise of discretion, requiring a showing that the ruling was clearly untenable or unreasonable and prejudicial. Cross-motions for summary judgment are reviewed by considering the evidence in the light most favorable to each party as the nonmoving party and determining de novo whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. Deed interpretation is reviewed de novo as a question of law.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Paul Lynn, Sara Lynn v. Wentworth By The Sea Master Association

TOPICS

easements real estate evidence standard of review appellate procedure

PRACTICE AREAS

Real estate Easements Civil procedure Evidence

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting the Horgans' affidavits and planning-board documents produced after the initial close of discovery.
2. Whether the deed, covenants, conditions, and restrictions, and site plan validly created an express beach-access easement over Lot 17.
3. Whether the claimed interest was merely a revocable license rather than an easement.
4. Whether the creation of the easement violated the Statute of Frauds.
5. Whether the trial court improperly resolved genuine issues of material fact in granting summary judgment to the association.

HOLDINGS

1. The trial court did not unsustainably exercise its discretion by admitting the Horgans' affidavits and planning-board documents because the plaintiffs were given an opportunity to depose the relevant witnesses and file supplemental briefs and demonstrated no prejudice.
2. An express easement was validly created over Lot 17 by the Horgan deed, the association's covenants, conditions, and restrictions, and the recorded site plan, considered together.
3. The Statute of Frauds was satisfied because the court's holding rested on the signed and recorded written deed, not solely on an oral agreement.
4. The interest created was an easement, not a revocable license.
5. Summary judgment for the association was proper because the asserted factual discrepancies were immaterial and the written documents, testimony, and conduct established entitlement to judgment as a matter of law.

KEY QUOTATIONS

"We conclude instead that an express easement was created." (169 N.H. at 81)

"The question is whether another document conveyed or reserved the right to create the easement." (169 N.H. at 84)

"Along with the evidence of the parties' intent, these documents taken together are sufficient to create the easement over Lot 17." (169 N.H. at 85)

"Because our holding ultimately relies upon the interpretation of the Horgan deed, which was signed and recorded, and is not based solely upon an oral agreement between the parties, the Statute of Frauds is

| *satisfied.*” (169 N.H. at 85)

FACTUAL BACKGROUND

The defendant association governed a residential development in New Castle, and the plaintiffs purchased Lot 17 by warranty deed in 2011. A walkway providing association members and guests access to the beach crossed Lot 17; the plaintiffs' predecessors knew of the easement before purchasing the property, and the walkway was used without objection for nearly twenty years. The predecessors' deed subjected the property to existing and future easements or restrictions relating to the development, incorporated the association's covenants, conditions, and restrictions, and referenced an easement plan and recorded site plans.

PROCEDURAL HISTORY

The plaintiffs filed suit seeking injunctive and declaratory relief concerning an easement over their property. The Superior Court denied the plaintiffs' motion to exclude evidence produced after the initial close of discovery, reopened discovery for limited depositions, denied the plaintiffs' motion for partial summary judgment, and granted summary judgment to the association. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Kelleher v. Marvin Lumber & Cedar Co., 152 N.H. 813, 832 (2005)
- Blaisdell v. Raab, 132 N.H. 711, 716 (1990)
- Soukup v. Brooks, 159 N.H. 9, 13-19 (2009)
- Close v. Fisette, 146 N.H. 480, 483-84 (2001)
- Appletree Mall Associates, LLC v. Ravenna Investment Associates, 162 N.H. 344, 347-49 (2011)
- Ettinger v. Pomeroy Ltd. P'ship, 166 N.H. 447, 450 (2014)
- Duxbury-Fox v. Shakhnovich, 159 N.H. 275, 282 (2009)
- Morton v. State, 104 N.H. 134, 142 (1962)
- Sandford v. Boss, 76 N.H. 476, 480 (1912)
- Chase v. Nelson, 507 N.E.2d 640, 643 (Ind. Ct. App. 1987)
- Locke Lake Colony Assoc. v. Town of Barnstead, 126 N.H. 136, 139 (1985)
- Guare v. State of N.H., 167 N.H. 658, 661 (2015)
- Bond v. Martineau, 164 N.H. 210, 213 (2012)