

SUPREME JUDICIAL COURT OF MAINE

Mark Tomasino et al. v. Town of Casco et al.

Mark Tomasino v. Town of Casco, 2020 ME 96 (2020) · No. Cum-19-348 · Decided July 7, 2020

SUMMARY

The Maine Supreme Judicial Court affirmed a judgment upholding the Town of Casco Zoning Board of Appeals' denial of the Tomasinos' shoreland zoning permit to remove three trees from abutting property. The Court held that the Tomasinos failed to establish sufficient right, title, or interest to remove the trees because the scope of their deeded easement was disputed and had not been determined by a court with jurisdiction over private property rights. The Court concluded that a municipal zoning proceeding was not the proper forum for resolving the easement dispute.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Gorman, J.; Mead, J.; Jabar, J.; Humphrey, J.; Connors, J.
JURISDICTION	Maine
DECIDED	July 7, 2020
DOCKET	Cum-19-348
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Tomasinos appealed under Maine Rule of Civil Procedure 80B from a Superior Court judgment affirming the Casco Zoning Board of Appeals' denial of their shoreland zoning permit application.
STANDARD OF REVIEW	Because the Superior Court acted in an intermediate appellate capacity, the Supreme Judicial Court directly reviewed the operative decision of the municipal board. The Board's decision was reviewed for errors of law, findings unsupported by substantial evidence, or abuse of discretion; the Board's interpretation of municipal ordinances was reviewed de novo. The Tomasinos bore the burden of showing that the evidence compelled a contrary conclusion.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; precedential.
PARTIES	Mark Tomasino, Valerie Tomasino v. Town of Casco, Colleen E. Demirs, trustee, Lake Shore Realty Trust

TOPICS

zoning

easements

judicial review of agency action

administrative law

appellate procedure

PRACTICE AREAS

municipal law

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appellate procedure

QUESTIONS PRESENTED

1. Whether the Tomasinos demonstrated sufficient right, title, or interest under the Casco ordinance to apply for a shoreland zoning permit to remove trees from property subject to their claimed easement.
2. Whether the Zoning Board of Appeals properly declined to resolve the underlying private dispute over the scope of the easement.
3. Whether the Superior Court's errors in making its own factual findings and reviewing an exhibit not presented to the Board required reversal.

HOLDINGS

1. An applicant must demonstrate not merely some interest in the property, but a right, title, or interest that permits the particular use for which the permit is sought. In the face of a private dispute, an easement whose parameters have not been factually determined by a court with jurisdiction to construe it does not satisfy the ordinance's right, title, or interest requirement for a permit to remove trees.
2. A municipal zoning board is not the proper forum to determine private property rights, including the scope of an easement, and its authority is limited to the powers conferred by statute, charter, and ordinance.
3. The Superior Court's apparent error in making its own factual findings from an exhibit not submitted to the Board was harmless because the Supreme Judicial Court directly reviewed the Board's decision.

KEY QUOTATIONS

“We therefore review the Board’s decisions for errors of law, findings not supported by substantial evidence in the record, or an abuse of discretion, and we review the Board’s interpretation of municipal ordinances de novo as a matter of law.” (¶ 5)

“Unlike title owners, easement owners are subject to a second layer of necessary authority—what the easement itself allows—in addition to what the applicable ordinances and statutes allow.” (¶ 15)

“Whatever minimum “right, title or interest” is required by ordinance, Casco, Me., Code, § 215-9.36(C)(2), we conclude that, in the face of a dispute between private property owners, that requirement is not met by an easement whose parameters have not been factually determined by a court with jurisdiction to do so.” (¶ 15)

FACTUAL BACKGROUND

Mark and Valerie Tomasino owned property on Sebago Lake in Casco, abutting property owned by the Lake Shore Realty Trust. Reciprocal deeds granted each owner a six-foot right of way over a portion of the other's land, but the record did not establish whether the Tomasinos' easement included the right to remove trees. After obtaining a building permit for a new home, the Tomasinos sought a shoreland permit to remove three trees from

Trust property to establish a gravel road required for their new home's certificate of occupancy. Two trees were located partly outside the easement, and the parties disputed whether the easement authorized removal of the third.

PROCEDURAL HISTORY

The Town's Code Enforcement Officer initially granted the Tomasinos a permit to remove three trees from property owned by the Lake Shore Realty Trust. On the Trust's appeal, the Zoning Board of Appeals vacated the permit. After the Superior Court remanded for additional findings, the Board concluded that the Tomasinos had not shown sufficient right, title, or interest to remove the trees because two were wholly or partly outside the easement and the easement's scope regarding tree removal was unclear. The Superior Court affirmed, and the Supreme Judicial Court affirmed the judgment while directly reviewing the Board's operative decision.

DISPOSITION

affirmed

CASES CITED

- Lakeside at Pleasant Mountain Condo. Ass'n v. Town of Bridgton, 2009 ME 64, ¶ 11, 974 A.2d 893
- Gensheimer v. Town of Phippsburg, 2005 ME 22, ¶ 8, 868 A.2d 161
- Fryeburg Tr. v. Town of Fryeburg, 2016 ME 174, ¶ 5, 151 A.3d 933
- Leake v. Town of Kittery, 2005 ME 65, ¶ 7, 874 A.2d 394
- Norris Family Assocs., LLC v. Town of Phippsburg, 2005 ME 102, ¶ 9, 879 A.2d 1007
- Flaherty v. Muther, 2011 ME 32, ¶ 55, 17 A.3d 640
- Stickney v. City of Saco, 2001 ME 69, ¶ 33, 770 A.2d 592
- Cope v. Town of Brunswick, 464 A.2d 223, 225 (Me. 1983)
- Inhabitants of the Town of Boothbay Harbor v. Russell, 410 A.2d 554, 560 (Me. 1980)
- Rockland Plaza Realty Corp. v. La Verdier's Enters., Inc., 531 A.2d 1272, 1273-74 (Me. 1987)
- Cunningham v. Kittery Planning Bd., 400 A.2d 1070, 1078-79 (Me. 1979)
- Whiting v. Seavey, 159 Me. 61, 67, 188 A.2d 276 (1963)
- Walsh v. City of Brewer, 315 A.2d 200, 205-08 (Me. 1974)
- Murray v. Inhabitants of the Town of Lincolnville, 462 A.2d 40, 41, 43-44 (Me. 1983)
- Rancourt v. Town of Glenburn, 635 A.2d 964, 965-66 (Me. 1993)
- Southridge Corp. v. Board of Environmental Protection, 655 A.2d 345, 346-48 (Me. 1995)
- Fissmer v. Smith, 2019 ME 130, ¶¶ 1, 28, 214 A.3d 1054
- Dubois v. Town of Arundel, 2019 ME 21, ¶ 4, 202 A.3d 524
- Homeward Residential, Inc. v. Gregor, 2015 ME 108, ¶ 17, 122 A.3d 947
- Sleeper v. Loring, 2013 ME 112, ¶ 9, 83 A.3d 769
- Stanton v. Strong, 2012 ME 48, ¶ 7, 40 A.3d 1013
- Love v. Klosky, 417 P.3d 862, 863 (Colo. App. 2016)

- DeHaven v. Hall, 753 N.W.2d 429, 434 (S.D. 2008)
- Nergaard v. Town of Westport Island, 2009 ME 56, ¶ 9 n.3, 973 A.2d 735

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