

STATE OF MAINE  
YORK, SS.

SUPERIOR COURT  
CIVIL ACTION

DOCKET NO. RE-12-91

*UDN - YOR - 6/12/2013*

DANIEL C. BOOTHBY, )

Plaintiff, )

v. )

DANIEL L. DUNNELLS, )

Defendant. )

ORDER

I. Background

The action concerns one half acre of land claimed by both Plaintiff and Defendant. Plaintiff has owned a four acre lot in Parsonfield, Maine since 1947.<sup>1</sup> Defendant has owned an adjacent one hundred acre lot since 1980. Both parties claim open, notorious, and continuous use of the contested property (the "Cooper Shop Lot") throughout the ownership of their respective lots. Both parties claim that the deed to their respective lot includes ownership of the Cooper Shop Lot.

In 2009, Defendant cleared the Cooper Shop Lot of all trees. Plaintiff subsequently brought this action for declaratory judgment on his title to include the Cooper Shop Lot, and damages for removal of the trees and rocks from the Cooper Shop Lot. Defendant has raised Adverse Possession as an affirmative defense and now moves the Court for Summary Judgment.

II. Standard

When a Defendant moves for Summary Judgment, "the plaintiff must establish a prima facie case for each element of [the] cause of action that is properly challenged in the defendant's motion." *Flaherty v. Muther*, 2011 ME 32, ¶38, 171 A.3d 640, 652-653.

<sup>1</sup> Plaintiff has used the Parsonfield home as a permanent resident beginning in 1977.

The burden then shifts to the Defendant to show that there is no genuine issue of material fact. Summary Judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Beal v. Allstate Ins. Co.*, 989 A. 2d 733, 738 (Me. 2010); *Dyer v. Department of Transportation*, 951 A.2d 821, 825 (Me. 2008). When reviewing a Motion for Summary Judgment, the Court reviews the parties' statements of material facts and the cited record evidence in the light most favorable to the non-moving party. *Id.*

A genuine issue of material fact exists where the fact finder must make a determination between differing versions of the truth. *Reliance National Indemnity v. Knowles Industrial Services Corp.*, 2005 ME 29, ¶7, 868 A.2d 220, 224, citing *Univ. of Me. Found. V. Fleet Bank of Me.*, 2003 ME 20, ¶20, 817 A.2d 871, 877. Furthermore, "a fact is material if it could potentially affect the outcome of the case." *Id.*

### III. Discussion

In order to show ownership of property, a party must show that they hold good title or prove the elements of adverse possession. "Acquisition of title by adverse possession requires possession for a 20-year period that is actual, open, visible, notorious, hostile, under a claim of right, continuous, and exclusive." *Dowley v. Morency*, 1999 ME 137, ¶ 19, 737 A.2d 1061 (citations omitted). Both parties have presented expert testimony concerning the chain of title for their own parcels as including the Cooper Shop Lot. Both parties have presented the Court with affidavits concerning their own usage of the property in question as open, visible, and exclusive throughout the prescriptive period. Both parties believe that they have been paying taxes on the property.

Questions of material fact remain concerning the ownership of the property. The Court does <sup>not</sup> grant Summary Judgment at this time.

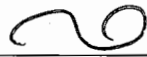
The claims of removal of trees under 14 M.R.S. § 7552 and removal of rocks pursuant to 14 M.R.S. § 7551-B can only be brought by the owner of the property. Therefore, these claims depend upon the determination of the ownership of the Cooper Shop Lot. Summary Judgment on these claims should not be granted without first determining the material fact of ownership of the Cooper Shop Lot.

IV. Conclusion

The Court DENIES Defendant's Motion for Summary Judgment.

DATE:

6/12/13

  
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John O'Neil, Jr.  
Justice, Superior Court

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