STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO: AP-10-020
RAC - Cum - 5/15/2012

GARY SLEEPER,
RAMONA SLEEPER,
RICHARD ROY, and
HOLLY ROY

Plaintiffs

v.

ORDER

DONALD R. LORING,
MARILYN P. LORING,
HARRY GREENLAW, and
ANN GREELAW

Defendants.

There are three motions before the court: the plaintiffs' motion for summary judgment as to Count III; the defendants' cross-motion for summary judgment as to Counts IV and V; and the defendants' motion to strike the plaintiffs' demand for a jury trial.

BACKGROUND

The lot at issue in this litigation is referred to as "40A – RT W. 20" (lot 40A) in the Plan of North Sebago Shores. (S.M.F. ¶ 1.) The North Sebago Shores subdivision was originally developed for D. Wilson Hawkes in June 1955. (S.M.F. ¶ 7.) At that time Hawkes held the title to the relevant property in trust. (S.M.F. ¶ 8.) In 1957 and 1961 Hawkes conveyed lots 74 and 75 from the subdivision to individual landowners. (S.M.F. ¶¶ 9, 12.) These landowners became the predecessors-in-title of plaintiffs Richard and Holly Roy. (*Id.*)

In 1958, Hawkes conveyed lot 71 to Everett Littlefield, who is the predecessor-in-title of plaintiffs Gary and Ramona Sleeper. (S.M.F. ¶ 10.) The Littlefield deed includes

"a right of way from the road to the shore of the lake over Lot 40-A as shown on said plan." (S.M.F. ¶ 11.) Additionally, in 1970, Hawkes conveyed Hawkes Road[1] and the right-of-way from Hawkes Road to Route 114 (as shown on Plan Book 115, Page 47) to the Town of Sebago. (S.M.F. ¶ 13.)

In 1976, following a series of legal proceedings, attorneys Sumner Bernstein and Charlton Smith, in their fiduciary capacities, obtained certain properties including Hawkes ownership of the North Sebago Shores subdivision. (S.M.F. ¶¶ 16–19.) In 1977 Bernstein and Smith conveyed the property to Bradley Benson with a deed containing the following language, which is at the center of this case:

> Also excepting that parcel of land shown as a right of way on a plan entitled "Map of Right of Way (1) Hawkes Road of North Sebago Shores Development and (2) Right of Way from said Development to Route #114, Me. Highway", prepared by Alan Hawkes and Leslie P. Marston, dated May 14, 1970, and recorded in Cumberland County Registry of Deeds in Plan Book 115, Page 47.

(S.M.F. ¶ 4.)

The defendants obtained title to property in the subdivision pursuant to a quitclaim deed that was conveyed by Benson on November 19, 2007. (S.M.F. ¶ 2.) Based on this conveyance, the defendants claim that have fee simple title to lot 40A.

On January 11, 1994, the Sleepers obtained title to lot 71 pursuant to a municipal quitclaim deed. (S.M.F. ¶ 40.) The Town of Sebago had acquired the property from Littlefield. (S.M.F. ¶ 41.) In 1998, the Sleepers built a boat dock at the end of lot 40A and both the Sleepers and Roys have used this dock. (S.M.F. ¶¶ 42, 46.) It is unclear if anyone else uses the dock. All of the back-lot owners in the subdivision have an easement to use lot 40A to pass from "the road to the shore of the lake." (S.M.F. ¶ 47.)

Plaintiffs filed a four-count complaint on July 6, 2010. Counts I and II asserted 80B claims against the Town of Sebago, but they were dismissed on May 16, 2011.

[1] Hawkes Road is now known as Anderson Road. (S.M.F. ¶ 14.)

Count III challenges defendants' ownership of the fee simple title of lot 40A. Count IV requests an injunction to prohibit the defendants from parking their vehicles on the right-of-way. Count V was added on August 30, 2011, and in it the plaintiffs request a declaratory judgment that they are entitled to build and maintain a dock on the right-of-way.

SUMMARY JUDGMENT

1. Standard of Review

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *see also Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 4, 770 A.2d 653. A motion for summary judgment must be supported by citations to record evidence of a quality that would be admissible at trial. *Levine*, 2001 ME 77, ¶ 6, 770 A.2d 653 (citing M.R. Civ. P. 56(e)). An issue of "fact exists when there is sufficient evidence to require a fact-finder to choose between competing versions of the truth at trial." *Inkell v. Livingston*, 2005 ME 42, ¶ 4, 869 A.2d 745 (quoting *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845 A.2d 1178). The evidence is viewed "in the light most favorable to the nonmoving party." *Driscoll v. Mains*, 2005 ME 52, ¶ 6, 870 A.2d 124 (quoting *Tucci v. City of Biddeford*, 2005 ME 7, ¶ 9, 864 A.2d 185).

2. Count III

The plaintiffs argue that "there is no issue of material fact with respect to the issue of whether the deed from Sumner Bernstein and Chadbourne [sic] Smith to Bradley Benson conveyed any fee interest in the parcel at issue in this action, to wit, '40A- RT W.20.'" (Mot. Summ. J. 1.) As a result, they move for partial summary judgment on Count III. The process for interpreting a deed is well established by the Law Court.

> The construction of a deed is a question of law that we review de novo. A court construing the language of a deed . . . must first attempt to construe the language . . . by looking only within the 'four corners' of the instrument. In evaluating the language of a deed, courts should give effect to the common or everyday meanings of the words in the instrument. If the deed is unambiguous, the court must construe the deed without considering extrinsic evidence; if the deed is ambiguous, however, the court may admit extrinsic evidence of the parties' intent.

N. Sebago Shores, LLC v. Mazzaglia, 2007 ME 81, ¶ 13, 926 A.2d 728 (internal citations and quotation marks omitted); *see also Badger v. Hill*, 404 A.2d 222, 225 (Me. 1979) (allowing use of extrinsic circumstances only when consideration of plain meaning does not suffice). "The objective intent of the parties is a question of fact." *Flaherty v. Muther*, 2011 ME 32, ¶ 55, 17 A.3d 640 (discussing express easements).

The plaintiffs argue that the deed is not ambiguous because "[t]he Hawkes plan describes nothing other than a parcel of land that consists of contiguous rights-of-way, all of which are *contiguous* and thus constitute *a single parcel of land*; and all of which are *labeled as rights-of-way*." (Pls' Reply 3 (emphasis in original).) Since the plaintiffs believe the deed is not ambiguous they based their deed interpretation on the content within the 'four corners' of the instrument. For example, the plaintiffs argue that the deed "expressly grants to Benson a right-of-way for access 'between the numbered lots shown on the Plan and the Lake . . .'"[2] (Pls' Reply 3.) They assert that these numbered lots include lot 40A and "the effect of such a conveyance would be to merge the *dominant* and *servient* estates, and the right-of-way would be a nullity." (Pls' Reply 3 (emphasis in original).)

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[2] The Bernstein deed reads:

> Also hereby conveying to the Grantee, his heirs and assigns, any rights which the Grantors may have, in common with others entitled to the use of them, for the purpose of access, ingress and egress between the numbered lots shown on said Plan and the Lake, the Public Highway, Hawkes Road and any other streets, ways or rights of way shown on said plan of North Sebago Shores, recorded in said Registry of Deeds in Plan Book 44, Page 10, or appurtenant to the premises hereby conveyed.

Upon review of the deed and the referenced pages from the plan book, the deed is ambiguous. Lot 40A boarders another right-of-way, but the plaintiffs' description of the right-of-ways is misleading. There are several connected parcels of land that are labeled as rights-of-way on Plan Book 115, Page 47. The Hawkes road, which is a right-of-way, has four rights-of-way shooting off of it connecting it to the Lake. Lot 40A is one of those parcels. Although the parcels are all connected in some way they do not create a single flowing parcel. One could drive along them without entering a non-right-of-way, but not without backtracking. As a result, the deed is ambiguous.

The defendants bring in several arguments, based on extrinsic evidence, that the Bernstein deed conveyed lot 40A to Benson. For example, the defendants argue that Benson believed he had title since he separately conveyed the individual right-of-ways, including lot 40A, as right-of-ways. Additionally, Bernstein and Smith did not separately convey lot 40A, but they did separately convey the larger roads to the city. The intent of the deed is not clear from the disputed facts provided by the parties. As a result, whether the defendants have a fee interest in lot 40A is a question of fact for a factfinder.

3. Count IV

In Count IV the plaintiffs allege that the defendants are parking on lot 40A "and generally occupying said lot as though the lot was a personal driveway for their cottages." (Compl. ¶ 37.) As a result, the plaintiffs ask the court for injunction relief stopping this interference. In their briefs and at the hearing the parties agreed that this issue has been resolved, but the plaintiffs continue to ask for a declaration in their favor. (*See* S.M.F. ¶¶ 36-39.) Since the court does not have a legal or factual reason to issue an injunction regarding the parties parking on the right-of-way it grants summary judgment in favor of the defendant.

4. Count V

The plaintiffs' amended complaint included Count V, which asks the court to "enter its declaratory judgment that the Plaintiffs are entitled to build and maintain their existing dock at the waterfront at the end of said right-of-way between the properties of Defendants." (Amend. Compl. Count V.) The parties disagree regarding whether the deed conveying the plaintiffs' their right-of-way access to lot 40A is ambiguous. The plaintiffs argue that the deed is ambiguous and the court should consider extrinsic evidence, but the defendants argue that the language is not ambiguous.

The Sleepers obtained lot 71 through a municipal deed from the Town of Sebago. The property description of this deed noted, "such lot or parcel of land more fully described in the conveyance of D. Wilson Hawkes to Everett H. Littlefield." (Sleep Dep. Ex. 24.) The deed in the Hawkes-Littlefield conveyance[3] contained the language, "Also a right of way from the road to the shore of the lake over Lot 40-A as shown on said plan." (Cole Dep. ex. E.) The Roys obtained lots 74 and 75 through a warranty deed from the Morneaus. This deed contained the language, "Also a right of way from the road to the shore of the Lake, over Lot 40A as shown on said Plan." (Sleeper Dep. Ex. 57.) Considering the plain language, the lot 40A right-of-way provides landowners access to the shore of the Lake, not to the body of the Lake.

Plaintiffs argue that this case is similar to *Badger v. Hill*, 404 A.2d 222 (Me. 1979), where, in a dispute over the construction of a dock, the Law Court found the deed conveying a right-of-way "to the York River" ambiguous. *Id.* at 225. Similarly, another dock was at issue in *Rancourt v. Town of Glenburn*, 635 A.2d 964 (Me. 1993), where the

[3] Even when the deed is unambiguous the court may reference documents that are referred to in the deed. *See Medeika v. Watts*, 2008 ME 163, ¶ 7 n.3, 957 A.2d 980 (permitting reference to a survey for interpreting an unambiguous deed).

"deed granted a right of 'ingress and egress' to Pushaw Lake." *Id.* at 965. There the court also found that the deed was ambiguous because it did not "indicate whether 'ingress and egress' includes the right to place a dock at the end of the right of way." *Id.*

This case is distinguishable from those two examples. Here, the deed clearly states that the right-of-way goes to the "shore"[4] of the Lake, instead of simply going to the Lake. This additional distinction removes any ambiguity and indicates that the easement does not extend as far as a dock, since the dock would reach past the shore. Therefore, summary judgment is granted for the defendant regarding Count V.

JURY TRIAL

For civil cases, juries are allowed in trials for legal claims, but not equitable ones. *Me. Const. art. I.* § 20 ("In all civil suits . . . the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced."); *DesMarais v. Desjardins*, 664 A.2d 840, 844 (Me. 1995). "The determination whether a claim is legal or equitable depends on the 'basic nature of the issue presented, including the relief sought.'" *DesMarais*, 664 A.2d at 844 (quoting *Cyr v. Cote*, 396 A.2d 1013, 1016 (Me. 1979)). Equitable claims require "creative, injunctive, or unique action by the court." *Thermos Co. v. Spence*, 1999 ME 129, ¶ 18, 735 A.2d 484. As the surviving claim in this action, Count III, which asks for a declaratory judgment regarding property rights, must assert a legal claim in order to permit a jury trial.

Declaratory judgment is an equitable remedy, but it is not always based in equity. *See Hodgdon v. Campbell*, 411 A.2d 667, 669 (Me. 1980). In support for a jury trial,

[4] "Shore" is defined as "the land bordering a usu. large body of water." *Webster's 3rd New International Dictionary* 2102 (2002). Black's Law Dictionary defines "shore" as "land lying between the lines of high- and low-water mark; lands bordering on the shores of navigable waters below the line of ordinary high water; (2) land adjacent to a body of water regardless of whether it is below or above the ordinary high- or low-water mark." *Black's Law Dictionary* 1505 (9th ed. 2009).

the plaintiffs argue that their claims are essentially legal actions to quiet title, as outlined in 14 M.R.S.A. §§ 6651–6654. (Opp. Strike Jury 4.) The plaintiffs, however, are not requesting quiet title; instead they are asserting that the defendants do not have fee simple ownership of the property. (*See generally* Compl.)

Here, in Count III, the plaintiffs are not requesting damages for themselves; instead they are asking the court to declare that another party does not have a certain right to property. This remedy is more akin to an equitable claim than a legal one.[5] As a result, the plaintiffs do not have a right to a jury trial.

The entry is:

The Plaintiffs' Motion for Summary Judgment regarding Count III is **DENIED;**

the Defendants' Motion for Summary Judgment regarding Counts IV and V is **GRANTED;**

the Defendants' Motion to Strike the Plaintiffs' Demand for a Jury Trial is **GRANTED.**

DATE: May 15, 2012

Roland A. Cole
Justice, Superior Court

[5] As the defendants assert, this case is comparable to *Thompson v. Pendleton*, 1997 ME 127, 697 A.2d 56, where the Law Court pointed out that a jury trial was not proper at the trial level to determine that the width of a easement was "unknown." *Id.* at ¶¶ 1, 10. This case is not directly on point, however, because the Law Court specifically references the reformation and equitable servitude claims, which are not before the court in this action.

Date Filed 07-06-10 Cumberland County Docket No. AP-10-20

Action 80B Appeal

GARY SLEEPER
RAMONA SLEEPER
RICHARD ROY
HOLLY ROY

~~TOWN OF SEBAGO~~
DONALD R LORING
MARILYN P LORING
HARRY GREENLAQ
ANN GREENLAW

vs.

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Date of Entry