

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER
Location: West Bath
DOCKET NO. BCD-WB-RE-09-02

JOSEPH J. MILLER, *et al.*,

Plaintiffs

v.

HENRY M. TIDGWELL, Jr., *et al.*

Defendant.

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CONSENT FINAL JUDGMENT

Upon consent of all parties and the entire record herein, it is this 15th day of September 2009, hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Consent Motion for a Consent Final Judgment is HEREBY GRANTED.

2. Plaintiffs Joseph J. Miller, Sherry L. Miller, David G. Wilson, Cynthia L. Wilson, Gerry P. Rosiensi, and Jo-Ann Rosiensi, their heirs and assigns, have a perpetual easement, over the property of Defendants Henry M. Tidgwel, Jr. and Lynn B. Tidgwel, their heirs and assigns, as set forth in the parties' respective deeds. This easement is further clarified as shown on the Plan attached hereto as Exhibit A (the "Easement"). The intended purpose of the Easement is as a pedestrian pathway for ingress and egress from Anderson Road to the waters of Sebago Lake for swimming, sitting, sunbathing, eating, fishing, and launching small, non-motorized watercraft (eighteen feet in length or less) (the "Intended Purpose"). The installation or construction of any structures, stairs, platforms, or docks – not provided for in this Judgment – is not an intended purpose or a permitted use under the Easement.

3. Defendants Henry M. Tidgwell, Jr. and Lynn B. Tidgwell shall immediately locate a reasonable and readily accessible eight foot wide pedestrian pathway, within the Easement, for Plaintiffs Joseph J. Miller, Sherry L. Miller, David G. Wilson, Cynthia L. Wilson, Gerry P. Rosiensi, and Jo-Ann Rosiensi, their heirs and assigns, to use for the Intended Purpose (the "Pedestrian Pathway"). The Pedestrian Pathway shall be nine feet in width at the location of the well.

4. Defendants Henry M. Tidgwell, Jr. and Lynn B. Tidgwell shall immediately remove all structures, vehicles, trailers, boats, and concrete blocks from the Pedestrian Pathway.

5. Plaintiffs Joseph J. Miller, Sherry L. Miller, David G. Wilson, Cynthia L. Wilson, Gerry P. Rosiensi, and Jo-Ann Rosiensi, their heirs and assigns, have the right to enter the Easement in order to maintain the same for its Intended Purpose; and to such end, may, at their sole cost and expense, regularly and from time to time as needed, mow, trim, weed-wack, or otherwise cut, clear, and/or remove vegetation, brush, or other obstructions from within the Pedestrian Pathway and undertake any other maintenance or other actions necessary to maintain a clear, passable Pedestrian Pathway from Anderson Road to the waters of Sebago Lake and to otherwise be able to use the Easement for its Intended Purpose.

6. Defendants Henry M. Tidgwell, Jr. and Lynn B. Tidgwell, their heirs and assigns, shall not obstruct or place any items on the Pedestrian Pathway.

7. Plaintiffs Joseph J. Miller, Sherry L. Miller, David G. Wilson, Cynthia L. Wilson, Gerry P. Rosiensi, and Jo-Ann Rosiensi, their heirs and assigns, may place a six-foot long picnic table and four chairs at the top of the bank and within the Easement.

8. Plaintiffs Joseph J. Miller, Sherry L. Miller, David G. Wilson, Cynthia L. Wilson, Gerry P. Rosienski, and Jo-Ann Rosienski, their heirs and assigns, may construct and maintain five-foot wide stairs and/or steps from the top of the bank to the median high water mark of Sebago Lake for the week of August 15 for the years 2005 through 2009 (the "Mark"). Plaintiffs, their heirs and assigns, may construct and maintain a dock from the Mark which may not exceed six feet in width and may not extend more than ten feet into Sebago Lake from the Mark. No electricity or electric powered music devices shall be permitted on this dock. Plaintiffs, their heirs and assigns, may store kayaks, canoes, dinghies, and other personal, non-motorized watercraft of eighteen feet in length or less, on the dock and the Easement. Plaintiffs are limited to no more than one boat per household. The bottom of the stairs and the dock may also be stored on the Easement.

9. Plaintiffs Joseph J. Miller, Sherry L. Miller, David G. Wilson, Cynthia L. Wilson, Gerry P. Rosienski, and Jo-Ann Rosienski, their heirs and assigns, shall have no other rights with respect to the scope of the Easement, except as expressly set forth herein.

10. Defendants Henry M. Tidgwell, Jr. and Lynn B. Tidgwell, their heirs and assigns, shall reasonably cooperate with any and all efforts to obtain federal, state, or local permits for the aforesaid work, and shall sign any statements required by any government body in furtherance of this Judgment. Plaintiffs may retain surveyor Delmore Maxfield or other licensed surveyor, at their expense, to monument the Pedestrian Pathway and Mark, to show the Pedestrian Pathway and Mark on a recordable plan, and to record said plan. All governmental approvals shall be the responsibility of the Plaintiffs.

11. Plaintiffs shall not install or use any moorings or moored floats within two hundred feet of the dock.

12. Plaintiffs shall not land, keep, or use any motorized craft at the dock.

13. In all other respects, all claims in the above-captioned matter are hereby dismissed with prejudice and without costs.

14. The Clerk is instructed to reference this Order on the docket pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Date: September 15, 2009



Justice, Business and Consumer Court

