MAINE SUPREME JUDICIAL COURT
Sitting as the Law Court

Docket No. BCD-22-403
Decision No. 2024 ME 65

John M. Carter et al.

v.

Michael A. Voncannon et al.

AMENDED ORDER DENYING MOTION TO RECONSIDER

On September 3, 2024, John and Christine Carter filed a motion to reconsider the Court's decision dated August 20, 2024. The motion was reviewed by the panel that decided the original appeal, and on September 20, 2024, the Clerk of the Law Court entered an order denying the motion for reconsideration. That order is now VACATED and replaced with this order.

The motion to reconsider is DENIED. The decision is, however, revised to correct the application of the so-called Paper Streets Act, P.L. 1987, c. 385 (codified at 23 M.R.S. §§ 3027(1), 3031-3035 (2024) and 33 M.R.S. § 460, 469-A (2024)), by making the following revisions to footnote 14:

> The Carters make two additional arguments as to why the Voncannons do not own the southern half of the Reserved Way and the Rogerses do not own the northern half of the Reserved Way. The Carters contend that the Reserved Way is a proposed, unaccepted way over which the Voncannons, the Rogerses, and their respective predecessors hold an easement by estoppel as the source deeds in their respective chains of title describe their lots as bounded by the Reserved Way and thus afford them a private right-of-way over the Reserved Way. *See Frederick v. Consol. Waste Servs., Inc.*, 573 A.2d 387, 390 n.4 (Me. 1990) ("We have recognized under a theory of estoppel that easements may be created by implication when a grantor's conveyance describes land as bounded by a street or road."). In addition, they note that the

Reserved Way is shown on the recorded Tripp plan as a proposed, accepted way and likely confers a private right-of-way over the Reserved Way to the owners of lots shown on the plan. 23 M.R.S. § 3031(2) (2024) ("A person acquiring title to land shown on a subdivision plan recorded in the registry of deeds acquires a private right-of-way over the ways laid out on the plan."). The Carters maintain that for these reasons, the use of the Reserved Way by the Voncannons, the Rogerses, and their predecessors-in-title negates the element of hostility and precludes their acquisition of title by adverse possession. *See Mill Pond Condo. Ass'n v. Manalio*, 2006 ME 135, ¶ 9, 910 A.2d 392 (concluding that if a claimant's use and maintenance of land are consistent with the claimant's rights of access over that land, there is no hostility for the purposes of an adverse possession claim).

We find these arguments unpersuasive. Even if the Voncannons and the Rogerses were afforded a right of way over the Reserved Way, as noted *supra* ¶¶ 9, 10, 41, the Voncannons, the Rogerses, and their predecessors used the western portion and nongraveled eastern portion of the Reserved Way for far more than a simple right of way. They did not seek the permission of the Carters or their predecessors-in-title in regard to that use, which was open and obvious, such that it sufficiently demonstrated a hostile intention to the Carters and their predecessors.

Moreover, ~~pursuant to section 3031, while a person acquiring title to land shown on a subdivision plan recorded in the registry of deeds acquires a private right-of-way over the ways laid out in the plan, if (a) the proposed, unaccepted way is not constructed within twenty years from the date the plan was recorded, and (b) the private rights so-created by the recorded plan are not constructed and utilized within that twenty-year period, those private rights terminate. 23 M.R.S. § 3031(2). Once the private rights over the way shown on the plan terminate, unless the title to the way has been preserved pursuant to 33 M.R.S § 469-A (2024), the title of the fee interest to that way passes to the abutting property owners to the centerline of the way. *Id.*~~ pursuant to section 3032, a proposed, unaccepted way or portion of a proposed, unaccepted way laid out on a subdivision plan recorded prior to September 29, 1987, is deemed vacated if, as in this case, "by the later of 15 years after the date of the recording of the subdivision plan laying out the way or portion of the way or September 29, 1997, both of the following conditions have been met: (A) The way or portion of the way has not been constructed or used as a way; and (B) The way or portion of the way has not been accepted as a town, county or state way or highway or as a public, utility or recreational easement. A way or portion of a way considered vacated under this subsection is subject to section 3033." 23 M.R.S. § 3032(1-A) (2024). Pursuant to section 3033, a person claiming ownership of a proposed, unaccepted way deemed vacated under section 3032 may record in the registry of deeds a notice of the claim and must mail any recorded notice to the current record owners and mortgagees of the lots in the subdivision. 23 M.R.S. § 3033(1) (2024). Once they receive such notice, all persons who claim any private right of any kind in the way are forever barred from maintaining any action regarding their rights unless they file a statement, under oath, of any claimed interest in the way in the registry of deeds within one year from the date of recording of the notice. *Id.* at § 3033(2). Based on the record, it seems that none of the parties recorded, sent notice of, or filed an appropriate statement of claimed interest in the registry of deeds. Therefore, we apply the second paragraph of section 3031(2), which we have held applies retroactively to conveyances prior to 1987, *see Carignan v. Dumas*, 2017 ME 15, ¶ 19,

154 A.3d 629, to conclude that the title of the fee interest passes to the Voncannons and the Rogerses, each to the centerline of the way: "when the private rights established by this subsection are terminated as provided in this subsection or by order of vacation by the municipality, the title of the fee interest in the proposed, unaccepted way for which the private rights-of-way have terminated passes to the abutting property owners to the centerline of the way." 23 M.R.S. § 3031(2) (2024).

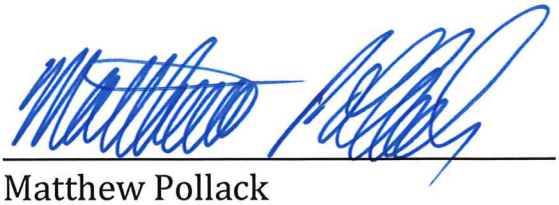
For any conveyance made before September 29, 1987, which conveyed land abutting a proposed, unaccepted way on a recorded subdivision plan, section 469-A requires the grantor to expressly reserve the grantor's title to the way by a specific reference to the reservation of title in the deed of conveyance, otherwise the grantor will be deemed to have conveyed all of the grantor's interest in the portion of the way abutting the conveyed land. 33 M.R.S. § 469-A(1) (2024).

For any conveyance made before September 29, 1987, which conveyed land abutting a proposed, unaccepted way on a recorded subdivision plan, where the grantor intended to reserve the grantor's title to the way but did not expressly reserve title in the deed of conveyance, section 469-A requires the grantor, or any person claiming title to the way, by, through, or under the grantor, to preserve the grantor's claim by recording a notice in the registry of deeds where the plan is recorded by September 29, 1989, otherwise the grantor will be deemed to have conveyed all of the grantor's interest in the portion of the way abutting the conveyed land. 33 M.R.S. § 469-A(2).

The record in this case does not reflect that the Reserved Way was ever accepted by the Town of Owls Head or constructed in accordance with section ~~3031(2)~~3032(1-A), that any of the parties pursued an interest in the Reserved Way in accordance with section 3033, that the deeds in the chains of title to the Voncannons and the Rogerses contained the express reservation of title to the Reserved Way required by section 469-A(1), or that the notice required by section 469-A(2) was ever recorded in the registry of deeds. Thus, under the Carters' contentions, the fee title to the Reserved Way passed to the Voncannons' and the Rogerses' predecessors-in-title pursuant to section 469-A(2).

Dated: October 24, 2024

For the Court,



Matthew Pollack
Clerk of the Law Court
Pursuant to M.R. App. P. 12A(b)(4)