Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-353

APRIL TERM, 2007

Jules Chatot, Jr. and Kathleen Chatot	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
Ronald D. Forant, Sr. and Carmel Allaire	}	
	}	
v.	}	DOCKET NO. 147-3-04 Wncv
	}	
Andrew S. Leinoff and Gwenyth A. Jones	}	
		Trial Judge: Helen M. Toor

In the above-entitled cause, the Clerk will enter:

Plaintiffs Jules and Kathleen Chatot appeal from a superior court judgment declaring the width of an easement benefitting land owned by defendants Ronald D. Forant, Sr. and Carmel Allaire. Plaintiffs contend the court's ruling: (1) improperly increased the scope of the easement beyond its historical use, and (2) was barred by the doctrine of collateral estoppel. We reverse and remand.

This is the second appeal in this dispute to reach the Court. In Forant v. Chatot, No. 2002-191 (Vt. Dec. 20, 2002) (unreported mem.), we affirmed a superior court judgment granting a prescriptive easement in favor of Forant and Allaire, allowing them to use a right-of-way known as the Bayley Hazen Road to cross the Chatots' property in order to access a lot owned by Forant and Allaire known as the Roy Lot. Among other claims, the Chatots argued in their first appeal that the superior court judgment was excessively vague concerning the width of the easement. The trial court found that the road in question had been continuously used during the prescriptive period, and longer, for personal, residential, farming and logging uses, and ordered that "its width will be established in accordance with this order as sufficient for safe use by lumber trucks, cars and tractors." We held that, in setting forth the general outlines of the easement in terms of its historical use, the trial court satisfied the standard set forth in Cmty. Feed Store, Inc. v. Ne. Culvert Corp., 151 Vt. 152, 158 (1989), and there was "nothing overly vague" in the court's description." Forant, slip op. at 3.

Forant and Allaire subsequently applied to the Town of Cabot for a building permit to construct a house on their lot. The planning commission denied the application because it was unclear whether the easement met the twenty-foot width requirement in the Town's zoning

regulations, and the environmental court stayed their appeal of the decision pending a determination of that issue by the superior court. The Chatots then filed this action, seeking a declaration of the width of the easement.

The trial court initially denied the parties' cross-motions for summary judgment, rejecting the parties' claims that the width of the easement had been decided in the earlier proceeding. Later, following an evidentiary hearing, the court issued a written decision, concluding that the easement was comprised of a sixteen-foot travel lane, plus any necessary ditching for drainage purposes up to four feet on either side. In so ruling, the court rejected the Chatots' claim that the easement required a width of no more than twelve feet, as well as Forant and Allaire's assertion that a twenty-foot roadway was required. As the court explained: "Twelve feet is insufficient to allow two vehicles to pass each other, and twenty feet is more than many towns require for their Class Three roads. The court finds that the easement here is a sixteen foot travel surface, plus any necessary ditching up to a width of four feet on each side of the traveled way." Although a third-party claim remained open, the court granted a motion for entry of judgment under V.R.C.P. 54(b). This appeal followed.

The Chatots contend that the court's ruling improperly expanded the historical scope of the easement, which they argue was no wider than a one-lane, twelve-foot right-of-way (including necessary safety features). They assert that the court improperly ignored or excluded factual evidence of the easement's historical use and width and applied an erroneous legal standard, looking to optimum highway safety standards rather than historical use to determine its width.

It is well established that prescriptive easements such as roads may be modified to accommodate historical uses in light of contemporary safety needs. See Cmty Feed, 151 Vt. at 157 ("If any practically useful easement is ever to arise by prescription, the use permitted under it must vary in some degree from the use by which it was created." (internal quotation omitted)); Koras v. Kope, 533 A.2d 1202, 1207 (Conn. 1987) (ruling that holder of easement over dirt road could grade and pave the road to accommodate contemporary transportation needs under the principle that easement holder must be able to make "improvements in that easement to render it of genuine benefit to the owner of the dominant estate"). Such modifications, however, must be consistent with the general principle that the owner of the easement may not "materially increase" the burden on the servient estate. Dennis v. French, 135 Vt. 77, 79 (1977); see also Klose v. Mende, 771 N.E.2d 960, 965 (Ill. App. Ct. 2001) (holding that although the owner of a prescriptive easement may "do such thing in the way of repairs as to the make the easement reasonably useful," increasing the width of a roadway easement by five to six feet represented an "unallowable material alteration of the original limits"). Thus, the task of the court in this case was to determine the width of the easement that would safely accommodate historical traffic uses with as little alteration as possible to the easement's historical scope and burden on the Chatots' property.

We are not persuaded that the trial court properly achieved that balance. Although there was some evidence indicating that the historic width of the easement was no greater than twelve feet, the court made no findings as to its historical width or whether the road had ever historically accommodated two-way traffic. Without such findings, we are not persuaded that the court could properly determine a safe width that was most consistent with the easement's historic use and scope.

Accordingly, we conclude that the case must be remanded for further findings and analysis of this issue. Furthermore, although the court enjoys broad discretion in weighing the evidence and the credibility of witnesses, it is not entirely clear that the court viewed the testimony of the competing experts with this standard in mind. The Chatots' expert testified, for example, that twelve feet was sufficient for safe passage, and that water bars rather than additional four-foot ditching on either side of the road were sufficient for drainage. On remand, the court must consider whether these measures will safely accommodate traffic passage with the least impact on the servient estate consistent with the easement's historical scope, not whether they represent the state-of-the art in traffic safety.

Finally, the Chatots claim that the parties were bound by an earlier ruling of the District 5 Environmental Commission that the alleged twelve foot historic width of the easement was adequate for safe passage of logging trucks and other vehicles. Collateral estoppel may apply to administrative decisions if the traditional criteria have been met, including identity of the parties and the issue, a final judgment, and a full and fair opportunity to litigate the issue. Trickett v. Ochs, 2003 VT 91, ¶¶ 10-11, 176 Vt. 89. Forant and Allaire had applied for an Act 250 permit to use the road for access and logging while the superior court action was pending. In its decision, the Commission noted several times that the width of the road was still in dispute in the then-pending superior court action and ultimately denied the permit on the basis of inadequate road surface and drainage, observing that the applicants' proposal to increase the width of the road and install drainage ditches remained dependent on the superior court decision.

In support of their collateral estoppel claim, the Chatots rely on one passage in the Commission's decision, in which it states that it will "assume that the road will retain its current width and alignment, as the existing conditions have heretofore allowed for safe passage of vehicles including automobiles, construction vehicles and log trucks." It is quite apparent, however, that the Commission here was merely noting the absence of evidence of prior accidents or safety issues involving the access road, and was not purporting to decide the question presented in this proceeding as to the width necessary to continue to serve the easement's historic uses consistent with contemporary safety standards. Accordingly, we find no identity of issue between the two proceedings, and thus no basis to disturb the court's ruling on this issue.

Reversed and remanded for further proceedings consistent with the views expressed herein.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice