

STATE OF VERMONT
WINDSOR COUNTY, SS

Julia Dobson Purdy
Plaintiff

v.

Robert Walker, Jr.
Shannon Walker
Defendant

SUPERIOR COURT
Docket No. 539-7-08 Wrcv

DECISION ON APPEAL

The above matter comes to this court on appeal from a small claims decision entered July 1, 2008 by Assistant Judge William Boardman. This dispute involves water rights between neighbors. Judge Boardman ruled in favor of Defendants and Plaintiff appeals, alleging several errors in the decision. Oral argument was heard on September 16, 2008. All parties were present, pro se.

An appeal of small claims decisions is limited to questions of law. V.R.S.C.P. 10(d). On appeal, the Court will not set aside findings of fact unless, taken in the light most favorable to the prevailing party and excluding the effect of modifying evidence, they are clearly erroneous. *Blanchard v. Villeneuve*, 142 Vt. 267 (1982).

The hearing before the Small Claims Court was lengthy and many documents were introduced. This Court has reviewed all of the exhibits, including deeds and photographs, and listened to the recording of the hearing.

Plaintiff is the owner of lands which abut lands of the Defendants. Until recently, both parties had gotten water for their properties from a spring located on the lands of a third party. Both Plaintiff and Defendants have now drilled separate wells to service their lands. Plaintiff seeks recovery of \$5000 from Defendants representing most of the cost of establishing a well on her property.

Plaintiff obtained her land in 2004 from Mark and Robert Sleath, successors in title to L. Ruth Gendron. Her deed contains the recitation of a previously granted right to take water from a spring on lands previously owned by a common grantor. The right is described as non-exclusive and included the right to enter onto other properties of L. Ruth Gendron in order to establish, replace, maintain and repair water lines across the property of L. Ruth Gendron, doing no unnecessary damage.

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Defendants obtained their land in 1995 from L. Ruth Gendron. Included in their deed was the non-exclusive right to use the spring and is stated to be shared with the right granted by Gendron to a predecessor in Plaintiff's chain of title. Included in the shared right was the right of the owner of Plaintiff's property to enter onto the lands of Walker to establish, replace, maintain and repair water lines, doing no unnecessary damage.

At some point, a holding tank was installed on Defendants' lands. This holding tank is actually a septic tank employed to hold potable water. When and how this tank was installed was not established. The tank is not referenced in any deeds. Defendants have claimed Plaintiff has no right to use the tank, but they acknowledges her right to use and repair the water lines. There are water lines from the spring to the tank and then to the lands of Plaintiff.

Plaintiff has alleged that Defendants improperly interfered with her right to use the water lines and to get water from the spring. She has made several allegations which she claims supports her contentions. The Small Claims Court concluded that Defendants did not prevent Plaintiff from exercising her rights to establish, replace, maintain or repair water lines. This was disputed issue of fact between the parties and there was evidence to support the Small Claims Court's conclusion on this point. This court will not reweigh the evidence before the trial court and substitute its judgment for how contested issues should be decided. *Kasser v. Kasser*, 179 Vt. 259 (2006). The Court's conclusion on this issue is sufficiently broad to encompass the deep well pump which Plaintiff claims was not addressed by the Small Claims Court.

Plaintiff further contests that the Small Claims Court decision effectively eliminates her deeded water rights. She points to a portion of the Court's conclusions where it is stated "Unaddressed in the deeds is the right of Plaintiff to enter onto Defendants' property for any of the same reasons." Plaintiff is correct that the Small Claims Court was in error in making that statement. In fact, the right to enter onto the lands of Walker is specifically granted in the deed in to Purdy and recognized in the deed in to Walker. However, the Small Claims Court went on to infer such a right from its interpretation of the deeds and Walker's concession of that right. While the reasoning of the Small Claims Court was incorrect on this point, its conclusion was correct. This is not grounds for reversal. *Wyatt v. Palmer*, 165 Vt. 600 (1996).

Plaintiff seeks damage from Defendants for her costs in putting in a drilled well on her property. The Small Claims Court found that the decision to install the well was Plaintiffs and was not forced upon her by Defendants, instead finding that it was an economic decision she made. This conclusion by the Small Claims Court is likewise supported in the record. The Court rejected Plaintiff contention that Defendants had refused her the right to repair or maintain the water system. There was sufficient evidence in the record for the trial court to reach that conclusion.

Plaintiff also contends the Small Claims Court erred in distinguishing *Page v. Suraci*, 145 Vt. 89 (1984) from the instant case. *Page* involved, *inter alia*, the alleged interference with a water system. In *Page* the Court found the cost of a replacement well

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was the proper measure of damages under the circumstances of that case. The Plaintiff is correct that the finding of unreasonable interference in *Page* was not based upon the erection of a fence as the Small Claims Court here stated. In fact, the basis for the unreasonable interference is not expressly set forth in the opinion. The Small Claims Court was correct, however, in not relying upon *Page* in this instance.

This Court does not dispute that *Page* may well provide the appropriate measure of damages for Plaintiff's claim had the Court here found an unreasonable interference with Plaintiff's water rights. However, the Court here found that no such interference had taken place, a position maintained by Defendants and supported by other evidence including the entry of agents of the Plaintiff to perform inspections. The trial court considered the evidence Plaintiff put forth on this point, including the erection of no trespassing signs, a verbal confrontation between the parties, alleged clamping of lines, disconnecting of pumps and other allegations and concluded that no unreasonable interference had been shown.

Page is therefore distinguishable not for the facts giving rise to a finding of unreasonable interference, nor for its measure of damages, but rather because in *Page* unreasonable interference was found where here it was not. The *Page* decision recites insufficient facts to allow for a factual comparison of the two on that basis for whatever benefit that might yield. Here, however, the Court found Defendants repeatedly conceded Plaintiff's right to enter their land to access her water lines and to use the spring water. The Court also recited a study undertaken in the summer of 2007 at Plaintiff's direction by Harper Environmental conducted without interference from Defendants. There was adequate basis for the Court to conclude no unreasonable interference with Plaintiff's rights had taken place.

It is not necessary for this Court to decide the rights of the parties with respect to the storage tank. That issue is not before the Court at this time. The Plaintiff has deeded water rights to establish, replace, maintain or repair water lines running across the lands of Defendants to the spring. Those rights have not been released by Plaintiff and are not affected by the existence of a well on Plaintiff's land. Similarly, it is not necessary for this Court to determine the extent of those rights. Whatever those rights may be, they continue to exist, as specifically found by the Small Claims Court.

That Plaintiff elected to drill a well rather than establish, replace, maintain or repair water lines across the lands of Defendants and continue to use the spring does not entitle her to claim damages for the costs of drilling the well. It was determined by the trial court that Defendants had not unreasonably interfered with Plaintiff's water rights. Such being the case, Plaintiff's decision to drill the well on her land was one which she may have felt wise to make from her past dealing with Defendants or for other reasons, but it was not one giving rise to a legally cognizable claim for damages.


To the extent not specifically addressed herein, Plaintiff's other claims of error have been considered by this Court. No error has been found.

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For the reasons stated herein, the decision of the Small Claims Court awarding judgment for the Defendants is **AFFIRMED**.

Dated at Woodstock this 16th day of September, 2008.



Harold E. Eaton, Jr.
Superior Court Judge

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