

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-385

JUNE TERM, 2002

	}	APPEALED FROM:
	}	
American Legion Post No. 7	}	Caledonia Superior Court
	}	
v.	}	DOCKET NO. 307-11-99 Cacv
	}	
Clifford Jackman	}	Trial Judge: Alan W. Cheever
	}	
	}	

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

Defendant appeals a Caledonia Superior Court order prohibiting him from using a right of way over plaintiff's land for parking, interfering with plaintiff's use of the property, and declaring that defendant has no right to deny plaintiff access to an alleyway over which plaintiff has a right of way. We find no error, and affirm.

The court's factual findings, which are uncontested, establish that plaintiff and defendant own adjoining properties in Hardwick. Plaintiff's property sits east of defendant's. There is no alleyway between the parties' buildings. An alleyway exists to the west of defendant's property between defendant's building, known as the "Knitwear" building, and the so-called "O'Connor" building. To the rear of all three buildings is a parking lot which plaintiff owns. The present dispute centers on defendant's use of plaintiff's parking lot, and actions defendant took to block access to the alleyway between his building and the O'Connor building.

In 1917, plaintiff's predecessor in title granted defendant's predecessor in title a right of way "for teams and persons on foot around the rear of" defendant's building. Historically, the Knitwear building had two large doors for loading and unloading on the west end of the building's rear, which is roughly one foot from defendant's back boundary in that location. The right of way allowed defendant's predecessors to access the loading area for deliveries or furniture and other goods. The doors were the only rear access to the building, until a subsequent owner added another doorway, and defendant added a second set of double doors. The right of way over plaintiff's parking lot thus allowed access to the rear of defendant's building. When trucks replaced teams of horses, use of the alleyway for deliveries became difficult. Suppliers began entering the parking lot from Brush Street, located behind the parking lot and the parties' properties. General access to the parking lot continues to be from Brush Street, and the new double doors defendant installed are used as the loading area for the Knitwear building.

After defendant purchased the Knitwear building, he and his tenants began parking their vehicles in plaintiff's parking lot over plaintiff's objection. Defendant also placed signs on the back of his building claiming exclusive parking rights. Notwithstanding those signs, some of plaintiff's patrons have parked their cars so close to the Knitwear building that it has interfered with entry into the building.

Like the parking lot, use of the alleyway between the Knitwear building and the O'Connor building has been the source of controversy between the parties. Plaintiff has a right of way through the alley, but defendant has gated it and restricts access to it.

After hearing evidence on plaintiff's complaint for declaratory and injunctive relief regarding the parties' respective rights to the parking lot and alleyway, the court entered judgment for plaintiff. It concluded that defendant has no right to park in plaintiff's lot absent plaintiff's consent, and has no authority to block plaintiff's access to the alleyway. The court determined that defendant has a twenty-five-foot wide right of way for making deliveries to the double doors on the westerly end of the building, and that plaintiff's patrons may not park vehicles in front of the double doors. Defendant then filed this appeal.

On appeal, defendant accepts the trial court's factual findings and limits his challenge to the court's legal conclusions. Legal conclusions will withstand appellate review where the trial court has applied the proper legal standard and the conclusions are reasonably supported by the court's findings. Rubin v. Sterling Enterprises, Inc., 164 Vt. 582, 588 (1996).

Defendant first claims the court erred by concluding that defendant's right of way allows him access to the western end of his building only. He asserts that the right of way extends beyond the area the trial court designated such that plaintiff's patrons should not be allowed to park near the easterly end of his building. The trial court found, however, that the parties to the original grant intended defendant's right of way to allow goods and people access to the Knitwear building through the original rear doors, which are located on the westerly end of the building. The court correctly explained that defendant, as owner of the right of way, cannot materially increase or impose a new burden on the servient estate, Edwards v. Fugere, 130 Vt. 157, 162 (1972), and found that the new doors installed by defendant's predecessor were an additional burden on plaintiff's property. The trial court's conclusion that defendant is entitled to a reasonable, convenient, and accessible right of way with due regard being shown to his interest and convenience, as well as plaintiff's, was correct. Patch v. Baird, 140 Vt. 60, 66 (1981). By construing defendant's deeded right of way as a twenty-five foot wide course for access to his building at the loading area with double doors, the court construed the grant consistent with its language and the intention of the parties. See Kinney v. Hooker, 65 Vt. 333, 336 (1892) ("In construing a grant of a right of way, courts will give effect to the intention of the parties as disclosed by the surrounding circumstances and the situation of the parties, provided the intention thus disclosed is not inconsistent with the language of the grant."). Moreover, the court's conclusion is fully supported by the findings. We therefore find no error. See Rubin, 164 Vt. at 588 (legal conclusions will stand on appeal if trial court correctly applied law, and findings support conclusions).

Defendant also claims the court erroneously concluded that he may not block plaintiff's access to the alleyway between his building and the O'Connor building. He alleges that the "key words of the 1948 deed that governs this case" granted a right of way which defendant could reclaim should defendant wish to use and occupy the alleyway. We find no error in the court's conclusion on this issue. As plaintiff points out, the deed upon which defendant relies is not in plaintiff's chain of title but is in the chain of title to the O'Connor building. The trial court's conclusion regarding plaintiff's right to use the alleyway derives from a conveyance to plaintiff's predecessor in title that contains no language giving defendant any right to reclaim the right of way. Defendant has offered no argument as to why reliance on that deed rather than the deed in the O'Connor property's chain of title was error.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

James L. Morse, Associate Justice

Marilyn S. Skoglund, Associate Justice

