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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-092

AUGUST TERM, 2005

Marie DeNoia and Nicholas DeNoia	}	APPEALED FROM:
	}	
	}	
v.	}	Lamoille Superior Court
	}	
Gabriele Jost and Rolland Jost	}	
	}	DOCKET NO. 64-3-04 Lecv
		Trial Judge: Edward J. Cashman

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

Defendants Gabriele and Rolland Jost appeal the Lamoille Superior Court=s judgment in favor of plaintiffs Marie and Nicholas DeNoia on their claim that the Josts interfered with their use of an easement and parking lot serving the DeNoias= dry cleaning business. We affirm.

The parties own adjoining properties bordering Portland Street in Morrisville. A common driveway separates the properties and connects to a large parking lot in the rear, which the Josts own. The rear parking lot is bordered by the Lamoille Grain Company (LGC). LGC has an easement over the Portland Street driveway so large tractor-trailers may come and go from the company=s property, which is located along Railroad Street.

The parties= properties once shared common owners: Philip and Barbara Surgen. The Surgens operated a dry cleaning business on the property until 1983. In 1983, the Surgens sold dry cleaning equipment and what is now the DeNoias= parcel to J.C. Cook, Inc., a business owned by John and Raylene Cook. The purchase and sales agreement required the Surgens to cooperate with the Cooks in securing any approvals, licenses, or permits that would allow the Cooks to continue using the property in the same manner as the Surgens had used it. The Surgens also promised the Cooks that they could install a drive-through window along the side of the building facing the common driveway and that they could use the rear parking lot for customer parking and access to the building=s back doors.

The relationship between the Surgens and the Cooks deteriorated after the Cooks complained of defects in the equipment they purchased from the Surgens. Litigation ensued. The Surgens sued the Cooks, claiming that they owed rent for use of the common driveway and rear parking lot. The Cooks sued the Surgens, alleging breach of warranty and interference with their use of the parking lot and driveway. The Cooks prevailed, and, in 1986, they sold the property to the DeNoias.

Since buying the property in 1986, the DeNoias have operated a dry cleaning business. Patrons of the DeNoias= business have used the common driveway and rear parking lot just as customers of the Cooks and Surgens had done before. In 1989, a dispute arose over the use of the common driveway after the Surgens placed steel posts to prevent access to the rear parking area. The DeNoias sued because the posts prevented convenient access to their business. In 1990, the Surgens and the DeNoias settled the case. The settlement acknowledged the common right of way and established its dimensions as eighty-four feet long by thirteen feet wide. The thirteen-foot width is comprised of a five-foot strip of land on the Surgens= property (now owned by the Josts) and an eight-foot wide strip on the DeNoias=

parcel. The parties also agreed that neither party would interfere with the other=s use of the common driveway, but that the DeNoias could designate a handicap parking space Aadjacent to the present primary customer entrance to the DeNoia Dry Cleaners business.@ The settlement provided that the easement would run with the land.

In 1995, the Surgens sold the neighboring property to the Josts. Some time after the Josts opened their business on the property, they placed a no-parking sign near the designated handicap spot serving the DeNoias= business. The sign=s location created some confusion about where the DeNoias= customers could park and interfered with use of the DeNoias= handicap parking space. The DeNoias sued. They claimed that, in addition to the no-parking sign=s interference with their easement rights, the Josts blocked access to the back doors of the dry cleaning business by piling snow against the DeNoias= building in the winter. The Josts contended that the DeNoias had no right to use their property to access the back doors of the DeNoias= building because doing so would impermissibly extend the easement created by the Surgen/DeNoia settlement. After a bench trial, the court found in favor of the DeNoias, issued a permanent injunction, and ordered the Josts to pay the DeNoias= attorney=s fees. This appeal followed.

On appeal, the Josts argue that: (1) the trial court erroneously relied on prior litigation to find that the DeNoias have an easement to access the back doors of their building, so that there was no basis for an injunction; (2) contrary to the trial court=s findings, the no-parking sign the Josts erected did not interfere with the DeNoias= use of the common driveway; and (3) it was error for the court to award the DeNoias= attorney=s fees. We will affirm the court=s findings if credible evidence in the record supports them, even though there may be inconsistencies or contrary evidence in the record. Gilbert v. Davis, 144 Vt. 459, 461 (1984). The legal conclusions will stand on appeal if supported by the findings. Bull v. Pinkham Eng=g Assocs., 170 Vt. 450, 454 (2000).

The Josts first contend that prior litigation did not settle the DeNoias= right to use the Jost property to access the rear doors of the DeNoias= building. Therefore, according to the Josts, there were no grounds to enjoin them from blocking access to the back doors of the DeNoia building. We disagree. Consistent with the trial court=s findings and conclusions, the evidence at trial established that the Surgens granted the Cooks, the DeNoias= predecessors, an easement to use the common driveway and rear parking lot in the same manner as the Surgens had used them in the past. The court found that in the past Aall owners of the property had free and unrestricted use of the rear parking lot for moving persons and equipment in and out of the building through [the] rear door.@ The Josts= argument fails to address these findings or the evidence in support of them. Rather, the Josts assert that the settlement between the Surgens and the DeNoias somehow trumped the easement rights created when the Surgens sold the property to the Cooks. The argument has no merit, and the court did not err by issuing the permanent injunction.

The Josts next argue that the trial court erroneously found that the Josts= no-parking sign interfered with the ability of the DeNoias= customers to use the common driveway. Again we find no basis to overturn the court=s ruling. The parking sign, although located entirely on the Josts= property, impeded traffic traveling into the rear parking lot and out of the Railroad Street exit. Moreover, the court found that the sign confused the DeNoias= customers and deterred them from parking on the DeNoias= property as they were entitled to do. We discern no error because the evidence supports the trial court=s findings.

Finally, the Josts argue that the court should not have awarded the DeNoias attorney=s fees. In general, parties involved in litigation in Vermont=s courts must pay their own attorney=s fees. Concord Gen. Mut. Ins. Co. v. Woods, 2003 VT 33, & 18, 175 Vt. 212. The superior court possesses inherent power, however, to award fees in exceptional cases Abased on the bad-faith conduct of litigants.@ Agency of Natural Res. v. Lyndonville Sav. Bank & Trust Co., 174 Vt. 498, 501 (2002) (mem.); see also Woods, 2003 VT 33, & 18 (explaining that exception to American Rule requires finding of bad faith or outrageous conduct). Exceptional cases include those where the party seeking fees was Aforced to seek judicial assistance to secure a clearly defined and established right that should have been freely enjoyed without judicial intervention.@ Lyndonville Sav. Bank & Trust Co., 174 Vt. at 501. Despite the Josts= contention otherwise, the court here explained why the DeNoias were entitled to attorney=s fees. In particular, the court found that the Josts were aware of the prior litigation over use of the common driveway and rear parking lot. The court explained that the Josts= actions forced the DeNoias to bring this case to court even though the parties= rights regarding the use of the common driveway and rear parking lot were clear. Moreover, the court found that the Josts acted spitefully by permitting snow to be piled up against the DeNoias= rear exit, something that had not been a problem in the past. Under those facts, the court=s award of attorney=s fees to the DeNoias was within its discretion, and no error appears.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denis R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice