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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-355

MAY TERM, 2008

William Cashin and Elaine Cashin	}	APPEALED FROM:
	}	
	}	
v.	}	Orleans Superior Court
	}	
	}	
Charles Nichols and Candace Moot	}	DOCKET NO. 187-8-06 Oscv
		Trial Judge: Edward J. Cashman

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

This is a dispute between adjoining landowners over the nature and scope of a right-of-way. Plaintiffs William and Elaine Cashin contend the superior court erred in concluding that defendants Charles Nichols and Candace Moot hold an exclusive right to use of the right-of-way as a driveway for access to their residence and parking. We affirm.

The material facts may be summarized as follows. Plaintiffs own an undeveloped lot in the Town of Westmore on the eastern shore of Lake Willoughby. U.S Route 5A runs along the northeastern boundary of the lot, and across the road is a campground also owned by plaintiffs. Defendants own the lot and residence to the south of plaintiffs's undeveloped lot on the lake. The dispute between the parties centers on an easement that plaintiffs' predecessor-in-interest, Mabel Pickel, deeded to defendants' predecessor-in-interest, Barbara Pelkey, who was Pickel's daughter. As described in the deed, the right-of-way starts at Route 5A and runs about 120 feet in a westerly direction along a twelve-foot strip of plaintiffs' property adjacent to defendants' lot, ending at the side of defendants' residence.

The court found, and plaintiffs do not dispute, that Mrs. Pelkey regularly used the right-of-way as a driveway to her home and that she and visitors routinely parked their vehicles within the right-of-way. There was no evidence, however, that Mrs. Pickel or guests at the campground across Route 5A made any regular use of the driveway; the court noted that the Pickel lot offered adequate access by foot or motor vehicle to the lake without using the driveway. After Mrs. Pelkey's death in 1989, the lot was sold several times before it was eventually conveyed to both defendants. Each of the deeds referenced the right-of-way. Mrs. Pickel sold her lot in 1973 to one Dupuy, who then sold to the Muellers. Neither deed contains any reference to the right-of-

way, although the 1998 deed from the Muellers to plaintiffs indicates that it is subject to the right-of-way conveyed in the 1968 Pickel-to-Pelky deed.

In August 2006, plaintiffs filed this lawsuit against defendants to settle a dispute over parking within the right-of-way. Defendants answered and asserted a number of affirmative defenses and counterclaims, including a right to park by prescription. Following a two-day bench trial in May 2007, the court issued a written decision in favor of defendants, concluding that the Pickel-to-Pelkey deed had conveyed an appurtenant easement for use of the right-of-way as a driveway consistent with its historic use, which included parking, and that the easement ran with the land and continued to benefit defendants. The court further found that although Mrs. Pickel had reserved a right to use the right-of-way in common with Pelkey, that reservation was personal to her and expired when she died and the property was conveyed with no mention of the reservation. Accordingly, the court found that defendants enjoyed exclusive use of the driveway. The court also addressed defendants' prescriptive-rights claim, concluding that while the element of hostile or adverse use was "problematical," defendants had nevertheless met the elements to establish a prescriptive right to park in the right-of-way. This appeal followed.

Our paramount goal in interpreting a deed is to ascertain and implement the intent of the parties. Rowe v. Lavanway, 2006 VT 47, ¶ 11, 180 Vt. 505 (mem.). As we have further explained, "[t]he character of an easement depends on the intent of the parties, as drawn from the language of the deed, the circumstances existing at the time of execution, and the object and purpose to be accomplished by the easement." Barrett v. Kunz, 158 Vt. 15, 18 (1992). Plaintiffs' principal argument here appears to be premised upon a claim that, absent a specific provision in the deed, parking is generally inconsistent with a deeded right-of-way that is used for travel. The several decisions on which plaintiffs rely, however, do not support this assertion, but demonstrate rather that each case must be evaluated based on the specific language of the easement in question and its purpose as revealed by the circumstances of its execution. See, e.g., Penn Bowling Recreation Ctr. v. Hot Shoppes, Inc., 179 F.2d 64, 67 (D.C. Cir. 1949) (while observing that creation of an easement specifically for "for purposes of ingress and egress does not include its use for parking purposes," court acknowledged that easement holder is entitled to reasonable use which must be determined "in the light of the situation of the property and the surrounding circumstances," which in turn "may indicate an intention of the parties" to allow parking); Leposky v. Fenton, 919 A.2d 533, 535 (Conn. Ct. App. 2007) (denying right to park within right-of-way where original deed provided solely "for ingress and egress" and subsequent deed attempted to expand the scope of the easement by adding "automobile parking privilege[s]").

The trial court here correctly observed that the original Pickel-to-Pelkey deed granted a general "right-of-way" and that its scope was therefore to be determined by what was reasonably necessary to effectuate the intentions of the parties as gleaned from the evidence surrounding its execution, location, and historic use.[1] As noted, the undisputed evidence in this regard showed

[1] Although a subsequent deed after Mrs. Pelkey died stated that the property included the "12-foot wide right-of-way as conveyed . . . from Mable E. Pickel" and described the right-of-way as "provid[ing] a means of ingress to and egress from the premises," this descriptive language does not alter or narrow the scope of the original right-of-way, which was plainly

that Pelkey and subsequent owners routinely used the right-of-way to park their own vehicles as well as those of any visitors, and it was undisputed that the easement was appurtenant, or ran with the land to the benefit of each subsequent purchaser of the Pelkey lot, culminating with defendants. This use was consistent with the right-of-way's function as a driveway running from Route 5A to the side of the Pelkey residence. Accordingly, the record amply supports the court's conclusion that defendants are entitled to use the right-of-way for parking.

Defendants also challenge the court's finding that the deed from Mrs. Pickel reserved only a personal right to use the right-of-way in common with Mrs. Pelkey, which expired upon Mrs. Pickel's death and the subsequent conveyance of the property. The original grant conveyed the right-of-way to "Pelkey and her heirs and assigns" and described its location on her lot, concluding with the words "and to be in common ~~use~~ with me." The court interpreted this provision as evidencing an intent to reserve only a personal right to use of the right-of-way in Mrs. Pickel, noting that it lacked any language of inheritance; that the right-of-way stopped well short of the lake at the residence on the Pelkey lot and its historic use was as a driveway and not a means of access to the lake by the individuals who stayed in the campground which Mrs. Pickel owned across Route 5A, nor was there any physical necessity to use the driveway to access the lake; and that the two deeds subsequent to Mrs. Pickel's death contained no mention of the reservation. See Barrett, 158 Vt. at 18 (personal easement is intended to benefit only the holder, is created for a limited duration, and expires when the property is conveyed unless specifically reserved). Although plaintiffs assert that the court's conclusion is inconsistent with its finding (undisputed by plaintiffs) that the right-of-way itself was appurtenant and ran with the land to subsequent purchasers, there is nothing necessarily inconsistent with finding an intent on the part of the grantor to reserve only a personal right to use. We therefore find no basis to disturb the court's ruling. Our conclusion renders it unnecessary to address the trial court's alternative holding based on an alleged prescriptive right.

Affirmed.

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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Marilyn S. Skoglund, Associate Justice

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incorporated by reference through the "as conveyed" language. **Exhibit W attached to Apellee's Brief**