

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NOS. RE-08-81
RE-09-10

NM-KEN-11/3/09

MARC J. DUPUIS, JR.,

Plaintiff

v.

RONALD SOUCY and
DANUTA SOUCY,

Defendants

JUDGMENT

RONALD SOUCY and
DANUTA SOUCY,

Plaintiffs

v.

MARC J. DUPUIS, JR.,

Defendant

Hearing on these consolidated cases was held on 10/14/09 and 11/3/09. Marc J. Dupuis owns real property described in a warranty deed dated 6/28/05 and recorded in the Kennebec County Registry of Deeds in Book 8480, Page 128 and designated as Lot 42C on the Town of Winslow Tax Map 9. Ronald Soucy and Danuta Soucy own real property described in a warranty deed dated 6/4/79 and recorded in the Kennebec County Registry of Deeds in Book 2212, Page 199 and designated as Lot 42 on the Town of Winslow Tax Map 9. A controversy has arisen with regard to the location of the northern boundary of the Dupuis property and the southern boundary of the Soucy property, where the properties abut.

Raymond Pomeroy and Christina Pomeroy sold property to Ronald Soucy and Danuta Soucy in June 1979. The Pomeroy's reserved to themselves the property now owned by Mr. Dupuis. (Dupuis Ex. 3A.)

Larry Pelotte previously owned what is now the Dupuis property and sold it to Mr. Dupuis. (Dupuis Ex. 2B.) Mr. Pelotte walked the boundary lines with Bill Davidson, from whom the property was purchased, prior to the closing on the property. During the walk, Mr. Pelotte saw four pins: one at the northeast corner of the land, approximately two feet north of the pin depicted on the David Wendell survey; one at the northwest corner; one approximately fifty feet south of the northwest corner pin; and one at the southeast corner of the land at the Abbott Road. (Dupuis Ex. 1.)

Mr. Pelotte cleared the land in 1984, including the land to the north of the house and pool depicted on the Wendell survey, and mowed the area. (Dupuis Ex. 1.) In 1985, Mr. Pelotte decided to plant trees on the northern line of his property. He strung a rope from the northeast corner pin to the northwest corner pin and began to plant the trees two or three feet south of the rope on his property. Mr. Soucy appeared and adjusted the line because the rope was bowed; the pins were not changed. When Mr. Soucy indicated he was satisfied with the line, Mr. Pelotte planted the trees. (Dupuis Ex. 7.)

Mr. Dupuis walked the boundaries of the land with Mr. Pelotte prior to the closing in June 2005. (Dupuis Ex. 2A.) Mr. Dupuis saw the same pins Mr. Pelotte saw: the pins at the northeast corner, the northwest corner, south of the northwest corner, and the southeast corner. (Dupuis Ex. 1.)

After he purchased the property, Mr. Dupuis trimmed the tree branches and mowed the area under the trees. He placed a camper and a volleyball net in the now-

disputed area. Until 2007, Mr. Soucy never stated to Mr. Pelotte or Mr. Dupuis that they were using the Soucy property or that the trees were on the Soucy property.

In the late summer of 2007, Mr. Soucy strung a cable across the boundary between the Dupuis and Soucy properties from the northeast corner pin to the northwest corner pin. In April 2008, Mr. Soucy strung a cable from the northeast corner pin to the pin approximately 50 feet south of the northwest corner pin. Mr. Soucy stated that the cable represented the boundary. Mr. Soucy cut seven or eight of the trees on the Dupuis property. Mr. Dupuis left a note for Mr. Soucy and requested that he cut no more trees until the matter was resolved. Mr. Soucy apologized for cutting the trees before the boundary was determined.

At Mr. Soucy's request, the Ellis survey of the Dupuis property was completed in April 2008. (Dupuis Ex. 11; Soucy Ex. 3B.) Without speaking further to Mr. Dupuis, Mr. Soucy cut 52 beautiful 22-year-old pine trees on the Dupuis property. (Dupuis Ex. 8.) He also cut the tree stumps depicted on the Wendell survey. (Dupuis Ex. 1.) Mr. Soucy also removed the pin in the northeast corner. The value of the trees cut was \$4,300.00. (Dupuis Ex. 9.)

Mr. Soucy's demeanor at trial was precisely that of a person who would engage in such unreasonable conduct. For no apparent reason, in the fall of 2007, he simply "started to think" about a garden he had and, therefore, "knew" that the trees were on his land. His testimony was not credible.¹

After the trees were cut, Mr. Dupuis hired Mr. Wendell to prepare a survey. (Dupuis Exs. 1; 10.) The court accepts the boundaries² determined by Mr. Wendell for

¹ The court also assigns no weight to the testimony of Norman Warren.

² The northern boundary is the more northern, thinner line of the two lines, which would have been marked by the pin near the spruce tree.

the following reasons.³ First, the Dupuis deed calls for a straight boundary of 425 feet along the Abbot Road, which is reflected in the Wendell survey. (Dupuis Exs. 1; 2A.) Second, the Wendell survey is consistent with the two pins found by Mr. Wendell and the four pins seen by Mr. Pelotte and Mr. Dupuis. Third, the Wendell survey is almost identical to the Armstrong survey, which reflects the agreement between Earl McCaslin and the Pomeroy's and the survey by Lloyd Rowe. (Dupuis Exs. 4; 5.) The Armstrong survey was incorporated into the purchase and sale agreement and the deed between the Pomeroy's and the Soucys. (Dupuis Exs. 3A; 5.) Fourth, the Wendell survey provides a 671.1-foot line between two found pins. (Dupuis Ex. 4.) Fifth, the deed description with regard to the fence is more consistent with the Wendell survey. (Dupuis Ex. 3A; 1.) Sixth, there is evidence of a stone wall and fence across the Abbott Road from the pin that marks the southeast boundary of the Dupuis property on the Wendell survey. There is no evidence of a fence or wall across the Abbott Road from the southeast corner of the Dupuis property as marked on the Ellis survey.

The entry is

In RE-08-81, on Counts II, III, and IV, Judgment is entered in favor of the Plaintiff Marc J. Dupuis and against the Defendants Ronald Soucy and Danuta Soucy in the amount of \$12,900.00 (14 M.R.S. § 7552(3)(B) & (4)(B); 17 M.R.S. § 2510(2) & (3)) and \$2,217.70 (14 M.R.S. § 7552(3)(C)), a total of \$15,117.70, prejudgment interest at the rate of 6.42%, post-judgment interest at the rate of 6.40%, plus attorney's fees and costs.

³ Even if the Wendell survey was rejected, the court concludes that Mr. Dupuis has proved by clear and convincing evidence that he acquired by acquiescence his northern boundary reflected by the more northern, thin line on the Wendell survey. See Hamlin v. Niedner, 2008 ME 130, ¶ 7, 955 A.2d 251, 253-54; Dowley v. Morency, 1999 ME 137, ¶ 16, 737 A.2d 1061, 1067; Marja Corp. v. Allain, 622 A.2d 1182, 1184 (Me. 1993); Calthorpe v. Abrahamson, 441 A.2d 84, 288-90 (Me. 1982). There were two pins at the northeast and northwest corners of the Dupuis property. Mr. Soucy knew in 1985 that Mr. Pelotte possessed the land and Mr. Soucy agreed. There is no evidence of fraud by Mr. Pelotte of Mr. Dupuis or mistake on the part of Mr. Soucy. Mr. Soucy has acquiesced since 1985 until he cut the trees in 2007 and 2008. This boundary that the landowners "consented to and accepted . . . for a long period of years should become permanent." See Hamlin, 2008 ME 130, ¶ 7, 955 A.2d at 254.

In RE-08-81, on Count I of the Plaintiff Marc J. Dupuis's Complaint and Count V of the Defendants Ronald Soucy and Danuta Soucy's Counterclaim and in RE-09-10 on Count V the Plaintiffs Ronald Soucy and Danuta Soucy's Complaint, the court declares that the northern boundary of the land owned by Marc J. Dupuis and described in a warranty deed dated 6/28/05 and recorded in the Kennebec County Registry of Deeds in Book 8480, Page 128 and designated as Lot 42C on the Town of Winslow Tax Map 9 and the southerly boundary of the land owned by Ronald Soucy and Danuta Soucy and described in a warranty deed dated 6/4/79 and recorded in the Kennebec County Registry of Deeds in Book 2212, Page 199 and designated as Lot 42 on the Town of Winslow Tax Map 9 is the more northern, thin line as depicted on the David Wendell Survey dated October 20, 2008.

In RE-08-81, on Counts I, II, III, and IV of the Defendants Ronald Soucy and Danuta Soucy's Counterclaim, Judgment is entered in favor of the Plaintiff Marc J. Dupuis and against the Defendants Ronald Soucy and Danuta Soucy.

In RE-09-10, on Counts I, II, III, and IV of the Plaintiffs Ronald Soucy and Danuta Soucy's Complaint, Judgment is entered in favor of the Defendant Marc J. Dupuis and against the Plaintiffs Ronald Soucy and Danuta Soucy.

Counsel for Marc J. Dupuis will file an affidavit of attorney's fees within 30 days of the date of this Judgment. 14 M.R.S. § 7552(1)(E) & (5).

Date: November 17, 2009



Nancy Mills
Justice, Superior Court

MARC J J DUPUIS JR - PLAINTIFF
476 ABBOTT ROAD
WINSLOW ME 04901
Attorney for: MARC J J DUPUIS JR
ALTON STEVENS - RETAINED 11/18/2008
MARDEN DUBORD ET AL
44 ELM STREET
PO BOX 708
WATERVILLE ME 04901-0708

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-RE-2008-00081

DOCKET RECORD

vs

RONALD SOUCY - DEFENDANT
488 ABBOTT ROAD
WINSLOW ME 04901
Attorney for: RONALD SOUCY
JAMIE I NICHOLS - RETAINED
SHERMAN & SANDY
74 SILVER ST
PO BOX 499
WATERVILLE ME 04903-0499

DANUTA SOUCY - DEFENDANT
488 ABBOTT ROAD
WINSLOW ME 04901
Attorney for: DANUTA SOUCY
JAMIE I NICHOLS - RETAINED
SHERMAN & SANDY
74 SILVER ST
PO BOX 499
WATERVILLE ME 04903-0499

Filing Document: COMPLAINT
Filing Date: 11/18/2008

Minor Case Type: TRESPASS

Docket Events:

11/18/2008 FILING DOCUMENT - COMPLAINT FILED ON 11/18/2008

11/18/2008 Party(s): MARC J J DUPUIS JR
ATTORNEY - RETAINED ENTERED ON 11/18/2008
Plaintiff's Attorney: ALTON STEVENS

11/18/2008 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 11/18/2008
Plaintiff's Attorney: ALTON STEVENS
MAILED TO ATTY. OF RECORD.

11/18/2008 Party(s): RONALD SOUCY, DANUTA SOUCY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 11/13/2008

11/18/2008 Party(s): RONALD SOUCY
ATTORNEY - RETAINED ENTERED ON 11/13/2008
Defendant's Attorney: JAMIE I NICHOLS

11/18/2008 Party(s): DANUTA SOUCY
ATTORNEY - RETAINED ENTERED ON 11/13/2008

Defendant's Attorney: JAMIE I NICHOLS

11/20/2008 Party(s): MARC J J DUPUIS JR
OTHER FILING - OTHER DOCUMENT FILED ON 11/20/2008
Plaintiff's Attorney: ALTON STEVENS
EXHIBIT A FOR ATTACHMENT TO THE COMPLAINT

11/25/2008 Party(s): MARC J J DUPUIS JR
MOTION - MOTION FOR CONSOLIDATION FILED ON 11/25/2008
Plaintiff's Attorney: ALTON STEVENS
WITH WATERVILLE DOCKET WAT-RE-08-177 ONCE TRANSFERRED

12/18/2008 Party(s): MARC J J DUPUIS JR
RESPONSIVE PLEADING - ANSWER TO CROSSCLAIM FILED ON 12/15/2008
Plaintiff's Attorney: ALTON STEVENS
PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM

12/18/2008 Party(s): RONALD SOUCY, DANUTA SOUCY
RESPONSIVE PLEADING - ANSWER & COUNTERCLAIM FILED ON 12/15/2008
ANSWER AND COUNTERCLAIM

01/02/2009 ORDER - SCHEDULING ORDER ENTERED ON 12/31/2008
NANCY MILLS , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPY TO ATTYS
STEVENS AND NICHOLS

01/02/2009 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 09/01/2009

01/02/2009 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 12/31/2008
NANCY MILLS , JUSTICE

02/09/2009 Party(s): MARC J J DUPUIS JR
MOTION - MOTION FOR CONSOLIDATION MOOT ON 02/09/2009
NANCY MILLS , JUSTICE
MOTION SIGNED IN D.C. CASE

03/06/2009 Party(s): MARC J J DUPUIS JR
ADR - NOTICE OF ADR PROCESS/NEUTRAL FILED ON 03/06/2009
Plaintiff's Attorney: ALTON STEVENS
MEDIATION WITH VERN AREY ON 3/30/09

04/03/2009 ORDER - REPORT OF ADR CONF/ORDER FILED ON 04/02/2009
Plaintiff's Attorney: ALTON STEVENS

04/03/2009 ORDER - REPORT OF ADR CONF/ORDER UNRESOLVED ON 04/02/2009

04/10/2009 ORDER - REPORT OF ADR CONF/ORDER ENTERED ON 04/10/2009
NANCY MILLS , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPY TO ATTYS
STEVENS AND NICHOLS

09/04/2009 TRIAL - TRAILING LIST SCHEDULED FOR 10/06/2009
TRIAL LIST 10/6 TO 10/30/09.

09/24/2009 OTHER FILING - STATEMENT OF TIME FOR TRIAL FILED ON 09/11/2009

09/24/2009 ORDER - FINAL PRETRIAL ORDER ENTERED ON 09/24/2009
NANCY MILLS , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL

09/25/2009 Party(s): RONALD SOUCY,DANUTA SOUCY
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 09/24/2009
DEFTS'

09/29/2009 OTHER FILING - STATEMENT OF TIME FOR TRIAL FILED ON 09/28/2009
Plaintiff's Attorney: ALTON STEVENS

10/02/2009 TRIAL - BENCH SCHEDULED FOR 10/14/2009 @ 8:00 in Room No. 1

10/02/2009 TRIAL - BENCH NOTICE SENT ON 10/02/2009

10/02/2009 TRIAL - BENCH SCHEDULED FOR 10/15/2009 @ 10:00 in Room No. 1

10/07/2009 Party(s): RONALD SOUCY,DANUTA SOUCY
OTHER FILING - DESIGNATION OF EXPERT WITNESS FILED ON 10/05/2009
DEFTS'

10/08/2009 Party(s): RONALD SOUCY,DANUTA SOUCY
MOTION - MOTION TO CONTINUE FILED ON 10/08/2009
DEFTS' MOTION TO CONTINUE TRIAL

10/08/2009 Party(s): RONALD SOUCY,DANUTA SOUCY
MOTION - MOTION TO CONTINUE DENIED ON 10/08/2009
NANCY MILLS , JUSTICE
COPY TO ATTYS STEVENS AND NICHOLS

10/14/2009 TRIAL - BENCH HELD ON 10/14/2009
NANCY MILLS , JUSTICE
Plaintiff's Attorney: ALTON STEVENS
SEE WITNESS/EXHIBIT LISTS.
1240, INDEX 3285 TO 7334, TAPE 1241, INDEX 0-5949.

10/14/2009 TRIAL - BENCH NOT HELD ON 10/14/2009
CONTINUED TO 11/3/09.

10/14/2009 TRIAL - BENCH SCHEDULED FOR 11/03/2009 @ 8:15 in Room No. 1

10/14/2009 TRIAL - BENCH NOTICE SENT ON 10/14/2009

11/03/2009 TRIAL - TRAILING LIST HELD ON 10/14/2009

11/03/2009 TRIAL - BENCH HELD ON 11/03/2009
NANCY MILLS , JUSTICE
Plaintiff's Attorney: ALTON STEVENS

E.R., TAPE

11/03/2009 CASE STATUS - DECISION UNDER ADVISEMENT ON 11/03/2009

11/18/2009 FINDING - JUDGMENT DETERMINATION ENTERED ON 11/17/2009

NANCY MILLS , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPY TO ATTYS
STEVENS AND NICHOLS SEE JUDGMENT NOTES

ORDER - COURT JUDGMENT ENTERED ON 11/17/2009

NANCY MILLS , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPY TO ATTYS
STEVENS AND NICHOLS SEE JUDGMENT NOTES

Judgment entered for MARC J J DUPUIS JR and against RONALD SOUCY, DANUTA SOUCY in the amount of \$15117.70. IN RE-08-81, ON COUNTS II, III, AND IV, JUDGMENT IS ENTERED IN FAVOR OF THE PLTF MARC J. DUPUIS AND AGAINST THE DEFTS RONALD SOUCY AND DANUTA SOUCY IN THE AMOUNT OF \$12,900.00 (14 M.R.S. SECTION 7552(3)(B) & (4)(B); 17 M.R.S. SECTION 2510(2) & (3)) AND \$2,217.70 (14 M.R.S. SECTION 7552(3)(C)), A TOTAL OF \$15,177.70, PREJUDGMENT INTEREST AT THE RATE OF 6.42%, POST-JUDGMENT INTEREST AT THE RATE OF 6.40%, PLUS ATTORNEY'S FEES AND COSTS.

IN RE-08-81, ON COUNT I OF THE PLTF MARC J DUPUIS'S COMPLAINT AND COUNT V OF THE DEFTS RONALD SOUCY AND DANUTA SOUCY'S COUNTERCLAIM AND IN RE-09-10 ON COUNT V THE PLTF RONALD SOUCY AND DANUTA SOUCY'S COMPLAINT, THE COURT DECLARES THAT THE NORTHERN BOUNDARY OF THE LAND OWNED BY MARC J. DUPUIS AND DESCRIBED IN A WARRANTY DEED DATED 6/28/05 AND RECORDED IN THE KENNEBEC COUNTY REGISTRY OF DEEDS IN BOOK 8480, PAGE 128 AND DESIGNATED AS LOT 42C ON THE TOWN OF WINSLOW TAX MAP 9 AND THE SOUTHERLY BOUNDARY OF THE LAND OWNED BY RONALD SOUCY AND (CONT'D) (CONT'D) DANUTA SOUCY AND DESCRIBED IN A WARRANTY DEED DATED 6/4/79 AND RECORDED IN THE KENNEBEC COUNTY REGISTRY OF DEEDS IN BOOK 2212, PAGE 199 AND DESIGNATED AS LOT 42, ON THE TOWN OF WINSLOW TAX MAP 9 IS THE MORE NORTHERN, THIN LINE AS DEPICTED ON THE DAVID WENDELL SURVEY DATED OCTOBER 20, 2008.

Judgment entered for MARC J J DUPUIS JR and against RONALD SOUCY, DANUTA SOUCY. IN RE-08-81, ON COUNTS I, II, III, AND IV OF THE DEFTS RONALD SOUCY AND DANUTA SOUCY'S COUNTERCLAIM, JUDGMENT IS ENTERED IN FAVOR OF THE PLTF MARC J. DUPUIS AND AGAINST THE DEFTS RONALD SOUCY AND DANUTA SOUCY.

IN RE-09-10, ON COUNTS I, II, III, AND IV OF THE PLTF RONALD SOUCY AND DANUTA SOUCY'S COMPLAINT, JUDGMENT IS ENTERED IN FAVOR OF THE DEFT MARC J. DUPUIS AND AGAINST THE PLTF RONALD SOUCY AND DANUTA SOUCY.

COUNSEL FOR MARC J. DUPUIS WILL FILE AN
AFFIDAVIT OF ATTORNEY'S FEES WITHIN 30 DAYS OF THE DATE OF THIS JUDGMENT. 14 M.R.S SECTION
7552(1)(E) & (5).

11/18/2009 FINDING - FINAL JUDGMENT CASE CLOSED ON 11/18/2009

11/18/2009 NOTE - OTHER CASE NOTE ENTERED ON 11/18/2009

NOTICE OF REMOVAL OF EXHIBITS MAILED TO ATTYS STEVENS AND NICHOLS

11/24/2009 ORDER - COURT JUDGMENT COPY TO REPOSITORIES ON 11/24/2009

A TRUE COPY

ATTEST: _____

Clerk