

STATE OF MAINE
Knox. S.S., Clerks Office
SUPERIOR COURT

STATE OF MAINE

KNOX, ss.

JUL 21 2005

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-03-002

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DAVID B. HASKELL and LINDA S.
HASKELL and RYAN HASKELL,

RECEIVED AND FILED

Plaintiffs,

v.

DECISION

TOWN OF NORTH HAVEN,

Defendant.

FINDINGS OF FACT

1. Plaintiffs own separate parcels of land on both the northerly and southerly sides of the so-called Town Road in Bartlett's Harbor on North Haven in Knox County. (Def.'s Ex. 6, 8, and 10.)
2. Plaintiffs do not own the fee to the Town Road. Instead the Town Road serves as a bound for plaintiffs' separate properties. (Def.'s Ex. 6, 8, and 10; *see also* Def.'s Ex. 4, which is an action to quiet title brought by Pl. David Haskell's father and predecessor-in-title, Lewis J. Haskell.)
3. According to Defendant's Exhibit 4 and plaintiffs' deeds, the Town Road extends to the high water mark on the shore at Bartlett's Harbor. Plaintiffs believe that North Haven's interest in the Town Road ends shortly before the high water mark near a cottage known as Auntie Annie's Cottage. (Pl.'s Ex. 7, blue mark drawn across depiction of Town Road; *see also* test. of David Haskell.)
4. The townspeople of North Haven have always considered the Town Road to be a municipally owned town road. They believe the public ownership of the Town Road extends to the town landing on the shore of Bartlett's Harbor. They have also always

believed that they could use the Town Road and the town landing at the end of the Town Road without asking permission. (Test. of Lewis Haskell, Mary Waterman, Robert Magill, Rosanna Grant and Willie "Billie" M. Morrow.)

5. The only access to Bartlett's Harbor beach is the Town Road. (Test. of Richard Bloom and Lewis Haskell; *see also* Def.'s Ex. 20, right hand segment, 1973 aerial map of Bartlett's Harbor.)

6. From the 1920's through the 1990's, the public regularly used the Town Road and the landing and beach at the end of the Town Road for launching boats (Test. of Richard Bloom and "Billie" Morrow), swimming (Test. of Lewis Haskell, Robert Magill and Rosanna Grant), looking at the beautiful view (Test. of "Billie" Morrow and Mary Waterman), birding (the area contains a marsh) (Test. of Rosanna Grant), picnicking (Test. of Lewis Haskell, Robert Magill, Rosanna Grant, and Elliott Brown), painting (Test. of Lewis Haskell and "Billie" Morrow).

7. In the late 1960's or early 70's or perhaps both, the Red Cross held swimming classes at Bartlett's Harbor. (Test. of Lewis Haskell, Robert Magill, Rosanna Grant and "Billie" Morrow.) ~~The flow from the pond into the harbor created warmer waters for swimming (Test. of Rosanna Grant.)~~

8. Bartlett's Harbor was a source of activities for all kids (Test. of Robert Magill) in the 1950's and 1960's. The parking area at the end of the Town Road served also as a spot for romance to the point where Lewis Haskell in the late 1960's put in logs at the top of the beach to prevent young persons from driving too far in the evening and getting stuck. (Test. of Lewis Haskell; *see also* Def.'s Ex. 18, a 1960 picture showing the log at the top of the beach; Def.'s Ex. 19, a 1962 picture showing Mary Waterman sitting at the beach with her family and her car parked at the log.)

9. In the 1940's Bartlett's Harbor contained fish weirs for catching herring. Lobstermen would drive down the Town Road to the beach on a regular basis to purchase bait. (Def.'s Ex. 17; test. of Lewis Haskell and Rosanna Grant.)

10. The Town Road to Bartlett's Harbor beach has been improved over the years. An old undated photo of the road in Plaintiffs' Exhibit 4 and a circa 1932 photo in Plaintiffs' Exhibit 5 show the original road consisting of two dirt ruts with mounded grass in the center.

11. There was a brook spanned by a wooden bridge located between what is known as Auntie Annie's Cottage (AAC) (Def.'s Ex. 13 showing the railing on the wooden bridge) and the beach. The bridge had to be replaced and the replacement bridge was lifted by the tide into the marsh. It had to be reset. The town road crew did this work sometime in the early 40's. (Test. of Lewis Haskell.)

12. In the 1940's the town road crew graded the Town Road, removing the grassy, high center between the two ruts. (Test. of Lewis Haskell.)

13. The town road crews maintained the entire Town Road through the 1990's. (Test. of Lewis Haskell; test. of Elliott Brown, who has served as North Haven Road Commissioner from 1955 until the present except for three years.)

14. The town maintenance was not extensive but it was regular. It consisted of grading the road every year, filling pot holes with gravel and putting in a culvert at the brook on two occasions. The grading of the entire road continued until 1963 or 1964 when the road was tarred, down to the point near Aunt Annie's Cottage. After that the town did not grade from Aunt Annie's Cottage down to the beach. (Test. Of Elliott Brown.)

15. Even after the road was tarred in the 60's and then paved in the 80's, the town back dragged down to the beach every two years. In addition the town mowed the

sides of the entire road up to the present day and the town plowed the entire road after every major storm through the present day. For the past seven years David Haskell has taken over the back dragging down to the beach. (Test. of Elliott Brown.)

16. The improvements in the Town Road down to the beach caused by the Town's grading and other maintenance are illustrated in Defendant's Exhibit 18, a 1960 photograph, and in two 1988 photographs. (Def.'s Ex. 24 and 25.)

17. The public has continued to use the Town Road down to the beach and has continued to use the beach to the present time. (Test. of Robert Magill and "Billie" Morrow.)

18. However, the public use has lessened in recent years because the public has been made to feel "unwelcome" by plaintiffs and because plaintiffs occupy the public parking with their trucks. (Test. of "Billie" Morrow and Lewis Haskell.)

19. North Haven's public records do not reveal how much tax money is expended on any given road. It is reasonable to infer from the testimony of Lewis Haskell and Elliott Brown that the town has expended and is expending money on the upkeep of the entire Town Road on a regular basis. (Mr. Brown, the town Road Commissioner, testified that he is paid more than \$15.00 per hour to maintain the town roads.)

20. I find all of the defendant's witnesses to be credible. I find plaintiff Linda Haskell to be credible. I find plaintiff David Haskell to be credible in some respects, but less credible in other respects, particularly in respect to the issue of road maintenance.

DISCUSSION

For reasons that are not clear to me, an earlier court ruled that the town would not be given the opportunity to prove by counterclaim that the Bartlett's Harbor "Town Road" (BHTR) had been officially accepted as a town road or otherwise become a town road. Instead both parties are in the position of assuming for the sake of argument that

the BHTR is a municipal road.¹ Therefore, the issue to be decided, the parties agree, is whether the Town of North Haven has abandoned its interest in the disputed portion of the Town Road pursuant to common law abandonment.²

As my findings of fact make clear³, plaintiffs did not meet their burden.

The Town's maintenance on the entire Town Harbor road has not been extensive but it has been regular. The town has not allowed the road to deteriorate. Instead, it has improved the road. No witness suggested the portion of the road in question (from Aunt Annie's cottage to the beach) was impassible. As Defendant's Exhibits 24 and 25 make clear, the portion of the Town Harbor Road was in excellent condition in 1988. It is still in passable condition today. It is true that the town and crew no longer back drag the disputed portion of the road but that is because David Haskell and his family clearly do not want the town or the public back dragging the disputed portion of the road. Mr. Haskell chooses to do it himself.

As to usage, the evidence is overwhelming that the public has used the road, the landing and the beach on a regular seasonal basis and continues to do so, despite the efforts of David Haskell and his son to discourage public usage. Usage does not have to be year round to establish an intent to maintain a public interest in a road. Plaintiffs failed to meet their burden of proving nonuse for any 20-year period up to the present.

Because plaintiffs have not succeeded in producing enough credible evidence to create a presumption of a public intent to abandon, it is not really necessary to examine

¹ Plaintiffs did allege in Count I of their complaint that the town and the public have no rights in the disputed portion of the Town Road. However, they presented no evidence on this issue. Neither did the town. Plaintiffs had the burden in this case. By choosing to concentrate exclusively on abandonment, plaintiffs failed to meet its burden on the ownership issue.

² Plaintiffs have not alleged a statutory abandonment pursuant to 23 M.R.S.A. § 3028 because that would have created a public recreational easement in the disputed portion of the Town Road. Plaintiffs wish to avoid this result.

³ Counsel said at the beginning of the case that the period in question would end in 1976. However, both parties presented evidence on use and maintenance from 1926 to the present day. My findings reflect the evidence presented at trial and my conclusions apply to the present day.

