

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** Cnaland Development Corp. v. King, 2006 NSCA 10

**Date:** 20060125

**Docket:** CA 244065

**Registry:** Halifax

**Between:**

Cnaland Development Corporation and James Taylor

Appellants

v.

Jeffrey L King and Jason W. King

Respondents

**Judges:** Roscoe, Bateman and Oland, JJ.A.

**Appeal Heard:** January 23, 2006, in Halifax, Nova Scotia

**Held:** Appeal dismissed per reasons for judgment of Roscoe, J.A.;  
Bateman and Oland, JJ.A. concurring.

**Counsel:** James Taylor, on his own behalf  
Jason King, on behalf of the respondents

Reasons for judgment:

[1] This is an appeal from a decision of Justice Glen G. McDougall dismissing the appellants' claim after a trial of a boundary dispute. The decision under appeal, 2005 NSSC 7, is reported as [2005] N.S.J. No. 12 (Q.L.). The trial judge determined, based on the evidence presented, that an old blazed line between the properties was the proper boundary line. The facts as found by the trial judge are fully set out in the decision and need not be repeated here.

[2] The appellants claim that the trial judge erred in the application of the law, failed to apprehend the evidence, failed to consider the appellants' evidence of damages suffered by them as a result of the respondents' trespass and that they were inadequately represented by their trial counsel.

[3] The appellants are basically asking this court to retry the matter. In essence it is argued that the trial judge should have accepted, and we should now accept, the appellants' view of the evidence. It is not for this court to retry this case or substitute its decision for that of the trial judge.

[4] We have studied the record, and carefully considered the oral and written arguments of the parties. In our opinion the burden on the appellants to show reversible error on the part of the trial judge has not been discharged. The evidence supports the findings of fact made by the trial judge. We are unable to discern any error in the application of the law to the facts. Furthermore, there is nothing on the record or presented in argument on appeal that leads to the conclusion that the assistance of counsel was ineffective or that a miscarriage of justice resulted.

[5] The appeal is therefore dismissed with costs which are fixed at \$500 including disbursements.

Roscoe, J.A.

Concurred in:

Bateman, J.A.

Oland, J.A.