

DAVID EDWARD BELLEFONTAINE - and - VALERIE E. BROWN and ERIK JENSEN

(Appellant)

(Respondents)

CA160170

Halifax, N.S.

ROSCOE, J.A.
(Orally)

Cite as: Brown v. Bellefontaine, 2000 NSCA 103

APPEAL HEARD: September 13, 2000

JUDGMENT DELIVERED: September 13, 2000

WRITTEN RELEASE OF ORAL: September 18, 2000

SUBJECT: REAL PROPERTY, RECTIFICATION OF DEED, ADVERSE POSSESSION, TRESPASS, DAMAGES FOR TRESPASS.

SUMMARY: After a seven day trial, the trial judge found that the intentions of the parties to a deed made in 1963 had not been reflected in the legal description of the property. Rectification of the deed was ordered. Alternatively he found that the respondents had established title by adverse possession. He awarded \$15,000.00 damages for trespass. (See trial decision reported at (1999), 178 N.S.R. (2d) 72).

ISSUE: Did the trial judge err in the application of the law of rectification of deeds, in the application of the burden of proof, in continuing with the trial after counsel advised him of details of attempts at settlement made after three days of trial, in the admission of and weighing of evidence, in accepting the evidence of a surveyor who was not qualified as an expert, in finding possessory title and in the assessment of damages.

RESULT: Appeal dismissed. The trial judge did not err in his conclusions. The Court of Appeal confirmed the title and legal description as determined at trial. There was no merit to the appellant's contention that the trial judge should have disqualified himself after hearing about attempts to settle the matter midway through the trial. The award of damages was not so inappropriate as to justify appellate interference.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 2 pages.