

NOVA SCOTIA COURT OF APPEAL
Citation: *Lohnes-Davis v. Pink*, 2015 NSCA 110

Date: 20151203
Docket: CA 435603
Registry: Halifax

Between:

June M. Lohnes-Davis and Allan N. Davis

Appellants

v.

Joan E. Pink

Respondent

Judges: Farrar, Bryson and Van den Eynden, JJ.A.

Appeal Heard: December 3, 2015, in Halifax, Nova Scotia

Written Release December 4, 2015

Held: Appeal dismissed per oral reasons for judgment of the Court.

Counsel: John Di Costanzo and Andrew Christofi (Articled Clerk), for
the appellants
Douglas Tupper, Q.C. and Victoria Crosbie, for the
respondent

By the Court: (Orally)

[1] After having read the materials and having carefully considered the arguments made on behalf of the appellants we are unanimously of the view the appeal ought to be dismissed.

[2] The arguments made before us today are essentially the same that were made before the trial judge. An appeal is not a retrial. It is not our role to reconsider and reweigh the evidence and come to different conclusions than the trial judge. That is what the appellant asks us to do.

[3] After 11 days of trial involving expert and lay evidence, the trial judge came to a decision. His analysis, reasoning and conclusions involved questions of fact or mixed questions of law and fact, and determinations of credibility. His conclusions are immune from appellate review absent any palpable and overriding error. We find no such error in this case.

[4] With respect to the issue of whether the trial judge erred in failing to determine that there had been a trespass by Ms. Pink in accessing the DNR lands over which she has a license, we make no other comment then to say that the trial judge made no finding of trespass and even if it could be argued that there was a trespass, it was so minor that it would have been immaterial to the trial judge's decision.

[5] The appeal is dismissed with costs to the respondent in the amount of \$12,500.00.

Farrar, J.A.

Bryson, J.A.

Van den Eynden, J.A.