

NOVA SCOTIA COURT OF APPEAL
Citation: *Gallagher v. Gallagher*, 2016 NSCA 2

Date: 20160126
Docket: CA 438701
Registry: Halifax

Between:

James Curtis Gallagher

Appellant

v.

David Raymond Gallagher and
Evelyn Shirley Gallagher

Respondents

Judge: MacDonald, C.J.N.S.

Appeal Heard: December 8, 2015, in Halifax, Nova Scotia

Subject: Property law; principles for boundary line determination; conventional boundary lines; estoppel; adverse possession

Summary: Two brothers disputed the boundary line for their adjoining properties. They presented conflicting expert surveyor evidence. The Nova Scotia Supreme Court resolved the dispute by favouring the respondent's proposition for the boundary line. The appellant asks this Court to overturn that result.

Issues: Did the Learned Trial Judge err in law by failing to apply the relevant principles to determine a boundary line to the evidence and facts as she found them?

Did the Learned Trial Judge err in law by failing to apply the relevant principles of a common boundary to the evidence and facts as she found them?

Did the Learned Trial Judge err in law by misapprehending the evidence as presented at trial and reaching incorrect conclusions or incorrect inferences when she found that the failure to refer to the firebreak in the 1974 Deed was determinative that the parties did not recognize the firebreak as a boundary?

Did the Learned Trial Judge err in law by erroneously rejecting the evidence of one of the surveyors?

Did the Learned Trial Judge err in law by failing to apply the relevant principles of the conventional line to the evidence and facts as she found them?

Did the Learned Trial Judge err in law by failing to consider the relevant principles of estoppel?

Did the Learned Trial Judge err in law by failing to apply the relevant principles of the effect of the use and occupation of land to the evidence and facts as she found them?

Did the Learned Trial Judge err in law by failing to consider the use and occupation of the Blueberry Lands by James Gallagher and his predecessors in title to the evidence and facts as she found them?

Result:

Appeal dismissed. The trial judge's conclusion rested on unassailable factual findings and a correct application of the legal principles at play.

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 13 pages.