

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *McCormick v. MacDonald*, 2009 NSCA 12

**Date:** 20090130

**Docket:** CA 294010

**Registry:** Halifax

**Between:**

Roger Mark McCormick and Angela Louise McCormick

Appellants

v.

John William MacDonald and Lorraine Marie MacDonald

Respondents

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**Judge:** The Honourable Justice Jamie W. S. Saunders

**Appeal Heard:** November 25, 2008

**Subject:** Real property. Ownership to land. Interpreting a deed. Constructive and adverse possession. Right-of-way by prescription. Standard of review.

**Summary:** A dispute arose between neighbouring cottage owners over a 10 foot wide strip of land leading to the shore of Pugwash Harbour. Locating the boundary line running between the two properties to the beach, and whether a right-of-way to the shore had ever been established were the principal issues in contention. After a trial the plaintiffs (MacDonalds/Respondents) were found to have established title to the portion of land in dispute, together with an acquired right-of-way crossing the defendants' (McCormicks/Appellants) land to the shore. The defendants counterclaim seeking damages for alleged trespass was dismissed.

The appellants alleged that the trial judge erred in law and in fact in

interpreting certain key deeds, and in applying the doctrines of constructive and adverse possession which, they said, caused the judge to: mistakenly fix the boundary line; wrongly decide that the respondents had acquired legal title to the parcel in dispute; and find that the respondents had established a prescriptive title to a right-of-way over the appellants' lands.

**Held:** Appeal allowed in part. On a standard of correctness, the trial judge erred in interpreting the unambiguous language found in a critical 1949 deed. This initial error, coupled with the judge's mistaken reliance upon portions of a rival surveyor's report, led the judge to legally incorrect conclusions as to the placement of the boundary line and ownership of the parcel in dispute. These errors also prompted the judge to invoke the doctrines of constructive and adverse possession which were not available in the circumstances of this case. Accordingly, his order was set aside. The court directed that the boundaries of the appellants' and respondents' properties were to be as depicted on the plan of survey prepared by the appellants' surveyor with the result that the appellants would be recognized as being the true and rightful owners of the parcel in dispute.

However, the appellants' appeal concerning the right-of-way over their lands was dismissed. On that point the trial judge's finding that the respondents had established, by prescription, a right-of-way to a pedestrian path over the appellants' property to the shore, was upheld. Here the judge's inquiry largely involved matters of mixed fact and law. Absent any easily isolated error of law, the judge's analysis did not disclose any palpable and overriding error, which would warrant the court's intervention.

As success was divided, each side was ordered to bear their own costs on appeal.

**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 30 pages.**