

NOVA SCOTIA COURT OF APPEAL

Citation: *Dauphinee v. Fralick Estate*, 2003 NSCA 128

Date: 20031202

Docket: CA 189114

Registry: Halifax

Between:

Harvey Dauphinee and Joseph C. McDonald

Appellants

v.

Gary Meade and Beverly DeWolfe, Executors and
Trustees of the Estate of the late Beatrice Fralick

Respondent

Judges: Glube, C.J.N.S.; Cromwell and Oland, JJ.A.

Appeal Heard: September 19, 2003

Subject: **Adverse possession; *Quieting of Titles Act***

Summary: The respondent claimed title by way of adverse possession to lands deeded to her brother, the appellant, which were adjacent to the north and east boundaries of property deeded to her. The evidence presented in support of her claim pertained to playing, parking, picnicking, gardening and the use of a trailer on the lands in dispute. The trial judge found that the acts of the respondent and others over the lands were acts of possession sufficient to extinguish the title of the appellant.

Issue: 1. Whether the trial judge acted on a wrong principle or

misapprehension of material evidence in finding that the respondent was in actual and complete occupation of the land claimed for a continuous period of 20 years; and

2. Whether the trial judge erred in admitting into evidence certain photographs at trial.

Result:

The appeal was allowed with costs. The order and certificate of title issued by the trial judge were set aside. The record shows that counsel for the appellant concurred at trial to the admission of the photographs. Moreover, it is apparent that the trial judge did not consider it in isolation or as determinative.

The trial judge misapprehended the evidence relevant to the acts of possession relied upon by the respondent at trial. He also erred in his application of the legal principles to the facts.

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 19 pages.