

NOVA SCOTIA COURT OF APPEAL
Citation: *Hatfield v. Mader*, 2012 NSCA 66

Date: 20120613
Docket: CA 333604
Registry: Halifax

Between:

Linda Hatfield

Appellant

v.

Darren Mader and Susan Mader

Respondents

Judge: The Honourable Justice Linda Lee Oland

Appeal Heard: December 5, 2011, in Halifax, Nova Scotia

Subject: Real Property - Adverse Possession

Summary: The parties are members of a large family. The respondents claimed adverse possession of lands beyond the boundaries of property deeded to his father. The appellant, his aunt, holds legal title to the disputed lands. The judge granted a declaration that, as against the appellant, the respondents were entitled to possess certain property. She also granted them an injunction and general damages for trespass.

Issue: Whether the judge erred in determining that the respondents had established all requirements to prove adverse possession.

Result: Appeal allowed. By not deciding that certain events and documents clearly established that the respondents' predecessor in title did not make continuous use of the disputed lands for at least 20 years, the judge did not err. However, she failed to take into account the evidence of the relationships within this family and its use of the

lands. In the particular circumstances here, the evidence respecting the establishment, mowing and maintenance of lawns, a clothesline and a shed on a right of way were equivocal. Moreover, the judge reversed the burden of proof and there was no evidence of exclusivity.

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 41 pages.