

SUPREME COURT OF NOVA SCOTIA

Citation: *Bishop v. Purdy*, 2015 NSSC 364

Date: 20151202

Docket: Amh No. 430543

Registry: Amherst

Between:

Evelyn Bishop, Carole Black, Johanne Buchanan, Ruth Craib, Glenn Dodge, Richard Duchesne, Barbara Hines, Scott MacDonald, Careen McNeil, Ken Murray, Jennifer Quesnel, Elizabeth Retallack, Lynn Ryan, Fernand Tardif, Lloyd Trerice

Plaintiffs

v.

Bruce Purdy and Frances Purdy

Defendants

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Judge: The Honourable Justice A. David MacAdam

Heard: August 20, 22, 24 25, 26, 27, 28; December 1, 2015, in Amherst, Nova Scotia

Written Decision: December 22 , 2015

Subject: Real property; easements; rights-of-way; dedication and acceptance

Summary: The parties were a number of neighbouring cottage owners. The applicants claimed a right-of-way across the respondents' property in order to access the shore. This path, known as the "tractor cut," had been used for several decades before the respondents bought their property. They claimed the right-of-way arose by prescription or by implication, or that the path in

question had been dedicated as a public highway. The respondents' deed also contained a reservation of a right-of-way, but the respondents denied that this was for general usage.

Issues: Did the applicants' have a right-of-way, or any other right, to cross the respondents' property and to access the shore?

Result: There was no right arising by prescription. The applicants had traditionally used the path in question by consent, so that there was no basis for an adverse or prescriptive claim. There was also no conveyance that would give rise to an implied easement. The evidence did not support the suggestion that the path had become a public road through dedication and acceptance. However, considered in context, the reservation in the respondents' deed did provide a right-of-way to the applicants.

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