

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

**SUPREME COURT DOCKET NO. 2002-277**

**JANUARY TERM, 2003**

|                         |   |                              |
|-------------------------|---|------------------------------|
|                         | } | APPEALED FROM:               |
|                         | } |                              |
| Jeffrey and Joan Forbes | } | Addison Superior Court       |
|                         | } |                              |
| v.                      | } |                              |
|                         | } | DOCKET NO. 219-11-01 Ancv    |
| Champlain Construction  | } |                              |
| Company                 | } | Trial Judge: Matthew I. Katz |
|                         | } |                              |
|                         | } |                              |

In the above-entitled cause, the Clerk will enter:

Defendant Champlain Construction Company appeals from an order granting plaintiffs Jeffrey and Joan Forbes summary judgment on their claim to an easement over a former town road in Middlebury, Vermont. We affirm.

We review the court' s summary judgment order under the same standard the trial court used. Mellin v. Flood Brook Union Sch. Dist., \_\_\_ Vt. \_\_\_, \_\_\_, 790 A.2d 408, 417 (2001). If no genuine issue of material fact exists for trial, and any party is entitled to judgment as a matter of law, summary judgment is proper. Id.; see also V.R.C.P. 56(c)(3).

The undisputed facts establish that the parties own adjoining property off of Route 116 in the Town of Middlebury. Plaintiffs acquired their property from Ramona Forbes on June 22, 2001. Defendant purchased the adjoining property from the estate of Dora Forbes on July 25, 2001. Two roadways run through defendant' s property which plaintiffs' predecessors used for many years to access a gravel pit on their property from Route 116. We will refer to the two roadways as the Old Abby Pond Road and the New Abby Pond Road. The roads join at each end and are roughly parallel to one another. The Old Abby Pond road is situated to the north of the New Abby Pond Road. It was a town road until 1996 when the town relocated it to the existing New Abby Pond Road, discontinuing the old road as a public highway. Plaintiffs claim a private easement over both roads, but the parties dispute plaintiffs' easement over the Old Abby Pond Road only. The present litigation began after defendant blocked plaintiffs' access to the Old Abby Pond Road.

Plaintiffs ground their easement claim over Old Abby Pond Road in a 1989 decree of the Addison Superior Court in a suit between the parties' predecessors in title. The stipulated decree settled a boundary dispute and declared the parties' respective rights to various easements each property owner had over the other' s land. Paragraph five of the decree, which the trial court in this case relied upon in granting summary judgment to plaintiffs, describes the rights of way at issue here as follows:

Ramona Forbes shall have the right to continue to use existing roadways leading from Route 116 at the start of the Old Mountain Road on the existing roadway and the roadway leading northerly of the sugar house and up to the so-called " Harold Forbes Pit" and lands of Ramona Forbes.

The rights-of-way above are limited in their future use to substantially the same uses that they have been used for in the past.

Defendant claimed below that the decree' s language is ambiguous because it does not refer " to any easement that runs

co-existent with the town road, but evidently only refers to roadways that were private." Defendant also contended that the plural word "roadways" is modified by the later use of the word "roadway" in the singular, creating an ambiguity in the decree as to the number and location of easements subject to paragraph five. In addition, defendant claimed that it would not make sense for its predecessor to agree to an easement over a road plaintiffs could lawfully use because it was a town road, and therefore the decree is ambiguous in light of the surrounding circumstances. The trial court found no ambiguity and entered summary judgment for plaintiffs based solely on the 1989 decree. Defendant appeals, arguing the same points here as it did below.

Like a contract, the question of ambiguity in a stipulation is a question of law. Murray v. Williams, 169 Vt. 625, 626 (1999)(mem.); see also Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 577 (1988) (whether a contract term is ambiguous is a matter of law for the court's determination). "Ambiguity will be found where a writing in and of itself supports a different interpretation from that which appears when it is read in light of the surrounding circumstances, and both interpretations are reasonable." Isbrandtsen, 150 Vt. at 579. If the court finds the document ambiguous, its interpretation is a question of fact for the trier of fact. Kipp v. Chips Estate, 169 Vt. 102, 107 (1999).

We agree with the trial court that the 1989 decree is not ambiguous, and that plaintiffs were entitled to summary judgment as a result. By its plain language, the decree granted plaintiffs easements over the "roadways leading from Route 116." There is no dispute that at the time of the 1989 decree two roadways leading from Route 116 existed over defendant's property adjacent to plaintiffs' property, namely the Old Abby Pond Road and the New Abby Pond Road. We find nothing in the decree's language to support defendant's assertion that the decree referred to private roads only, and defendant has failed to identify the language supporting that assertion.

We also do not find that the use of the word "roadway" in the singular creates an ambiguity in the decree. Indeed, when read in full, the sentence using the singular "roadway" identifies two roads: (1) "the start of the Old Mountain Road on the existing roadway and [(2)] the roadway leading northerly of the sugar house and up to the so-called 'Harold Forbes Pit' and lands of Ramona Forbes." (Emphasis added.) Moreover, the last sentence of paragraph five of the decree uses the plural form of right of way when referring to the rights granted plaintiffs' predecessor. Thus, the decree plainly grants to plaintiffs rights of way over both the New Abby Pond Road and the Old Abby Pond Road as those roads are the only two roads leading from Route 116 to plaintiffs' property.

Finally, we reject defendant's claim that the decree is ambiguous because it made little sense for defendant's predecessor to stipulate to a declaration of an easement over Old Abby Pond Road because it was a public road. The trial court dismissed that claim by noting that a private easement over a public road may legally coexist with the public right of way. See, e.g., Anderton v. Gage, 726 S.W.2d 859, 862 (Mo. Ct. App. 1987) ("Factual situations may result in the dedication of a use to the public and the creation by grant of a private easement in the same property."). Defendant did not dispute that point below and insists that it is immaterial on appeal. To a degree defendant is correct that the point is immaterial here; the plain language of the decree unambiguously establishes a right of way over both of the roads plaintiffs' predecessors used for several decades to access their property. Considering that a private easement may coexist with a public easement, defendant's contention fails to give rise to any ambiguity in the otherwise clear meaning of paragraph five of the decree. We conclude that the trial court properly entered summary judgment for plaintiffs based on the stipulated 1989 decree setting forth plaintiffs' right to use both the Old Abby Pond Road and the New Abby Pond Road.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice