Casenote: <u>Cedar Beach/Cedar Island Supporters, Inv. v. Gables Real Estate LLC</u> (July 19, 2016)

The Maine Supreme Court overturned a 2014 lower court decision that had found a prescriptive easement was held by the public over a beach access road in Harpswell. The 2014 decision, which was an unusual 73 pages long, declared that the general public had acquired the right to use the road to reach Cedar Beach. In overturning the earlier ruling, the Supreme Court found that the elements of adversity and nonacquiescence were not established, therefore the claim of a public prescriptive easement failed. Specifically the court found the efforts to prevent the public use of the road by someone who only held easement rights to use the road could prevent the establishment of a prescriptive easement.

The case concerns the use of a privately owned access road to a beach long used by the public in Harpswell, Maine.[1] After the road was again blocked in 2011, the case was filed to have the court establish the public's right to use the road to get to the beach, something that had been done since at least the 1920s. The lower court's decision ruling in favor of a public right-of-way was based on the finding of the required elements of a prescriptive easement from the years 1959-1987.[2]

In overturning the lower court's decision, the Supreme Court unanimously found that there was adequate opposition to the public's use of the road. The primary evidence of this opposition was the erecting of a fence across the road in 1978. Even though the fence was taken down by someone driving a truck through it a few days after it was installed and not put back up, the fact that the fence was erected terminated the period of acquiescence to the public's use of the road. While the lower court had found that the tearing down of the fence supported the element of adversity by the public, the Supreme Court found that the installation of the fence was evidence that there was not acceptance of the use of the road even though the fence was not put up by the owner of the road.

The court's ruling on the issue of the fence is significant because it establishes that the holder of an easement over land, and not just the owner, can terminate a prescriptive period

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[1] The issue was not the use of the beach itself, but the use of the road that is the only way to access the beach by land.

[2] The elements of a prescriptive easement was be shown to have existed for a twenty year period, which is this case the lower court found to have existed from 1959 - 1987, but not before or after.

needed to establish an easement. The court reaffirmed that the easement holder did have the right to attempt to exclude others from using the road as part of their easement rights. But the the court then went on to rule that an easement holder, and not just the owner of the land, can defeat a prescriptive easement claim by an act of nonacquiescence.

This appears to change the required elements needed to establish a prescriptive easement in Maine. The long standing rule is that those seeking to establish a prescriptive right must prove that their use of the land was done "with the ***owner's*** knowledge and acquiescence; or [that the use was] so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed." [3] Based on the court's ruling, someone who has an easement over a right-of-way can step in to prevent the establishment of a prescriptive easement over that way, and that it does not take the ***owner*** of that land to take action to prevent a claim of prescriptive rights.

This rule has the potential to impact a large number of easement disputes throughout the state. While this case dealt only with a public prescriptive easement, as opposed to the more common private prescriptive easement, the court's ruling will apply to cases concerning private prescriptive easements also as the relevant required element is the same in both.

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[3] Lyons v. Baptist Sch. of Christian Training, 2002 ME 137 (emphasis added).