

Docket No.: CA 160170
Date: 20000913

NOVA SCOTIA COURT OF APPEAL
[Cite as: **Brown v. Bellefontaine, 2000 NSCA 103**]

Roscoe, Flinn and Cromwell, JJ.A.

BETWEEN:

DAVID EDWARD BELLEFONTAINE

Appellant

- and -

VALERIE E. BROWN and ERIK JENSEN

Respondents

REASONS FOR JUDGMENT

Counsel: Richard A. Bureau, for the appellant
Alan J. Stern, Q.C., for the respondents

Appeal Heard: September 13, 2000

Judgment Delivered: September 13, 2000

THE COURT: Appeal dismissed with costs per oral reasons for judgment of
Roscoe, J.A.; Flinn and Cromwell, JJ.A. concurring.

ROSCOE , J.A. (Orally):

[1] After a seven day trial of a boundary dispute and action for trespass between family members, involving land on the shores of Grand Lake in Hants County, Justice J. E. Scanlan, ordered and declared that the disputed eastern and northern boundaries of land owned by the respondents were, respectively, the Lake Road and the high water mark of Grand Lake and as more particularly described in Schedule A of the order. Alternatively the trial judge determined that the respondents had established title by adverse possession. He also found that the appellant had committed trespass, and awarded damages for trespass in the amount of \$15,000.00, plus pre-judgment interest and costs. Since the decision of Justice Scanlan is now reported at (1999), 178 N.S.R. (2d) 72, reference can be made there to his reasons for judgment.

[2] The appellant submits on appeal that the trial judge erred in the application of the law of rectification of deeds, in the application of the burden of proof, in continuing with the trial after counsel advised him of details of attempts at settlement made after three days of trial, in the admission of and weighing of evidence, in accepting the evidence of a surveyor who was not qualified as an expert, in finding possessory title and in the assessment of damages.

[3] After reviewing the evidence and considering the appellant's written and oral arguments, we are not satisfied that Justice Scanlan erred in his conclusions. We agree that the weight of the evidence was that the intentions of the parties to the 1963 deed were as determined by the trial judge and confirm his decision to correct the legal

description of the respondents' property.

[4] With respect to his decision to continue with the trial after the unsuccessful attempt to settle, he was simply complying with the express request of both counsel, and did not err in so doing. There is no merit in the appellant's assertion that the trial judge should have disqualified himself.

[5] The award of damages, having regard to the on-going acts of trespass and their effect on the owners was not so inappropriate as to justify appellate interference.

[6] Accordingly we dismiss the appeal with costs to the respondents which we fix at \$2,000.00 plus disbursements.

Roscoe, J.A.

Concurred in:

Flinn, J.A.

Cromwell, J.A.

