

STATE OF MAINE
Waldo, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-2019-18

JEFFREY R. MABEE and JUDITH B. GRACE,
et al,

Plaintiffs / Counterclaim Defendants

v.

JANET ECKROTE AND RICHARD
ECKROTE'S PRETRIAL BRIEF

NORDIC AQUAFARMS, INC., JANET
ECKROTE, RICHARD ECKROTE, et al.,

Defendants, Counterclaim Plaintiffs

AND

UPSTREAM WATCH, et al.,

Parties-in-Interest / Cross-Claim Defendants

This matter comes before the Court on the question of the Plaintiffs' title claims against Janet and Richard Eckrote. After multiple attempts, and failures, to impact Nordic Aquafarms, Inc.'s ability to develop a sustainable salmon fishery in Belfast, Maine at the administrative level, Plaintiffs have now trained their lens on a novel legal argument that the Eckrotes, despite 75 years of continuous ownership and use, do not own the intertidal land in front of their camp in an attempt to nullify any agreement that the Eckrotes may have with Nordic Aquafarms to use their land. In their zealous attempt to halt Nordic Aquafarms' operations, the Plaintiffs have claimed ownership to their neighbors' property and placed a conservation easement on their land in an attempt to limit access and use of the intertidal zone in front of the Eckrotes' property, land that the Eckrotes and their family have used for three-quarters of a century with no question or dispute as to ownership by any of their neighbors or their predecessors in title until now.

The Eckrotes join in Nordic Aquafarms' pretrial submission related to the title issues, specifically, did Hartley sever the upland from the intertidal zone when she conveyed the property to Fred Poor in 1946¹, and if she did, did she subsequently convey the intertidal zone in front of the Poor lot to Butler. Only if the court answers both questions in the affirmative is it necessary to get to the Eckrotes' other theories relative to ownership – namely their use-based counterclaim of boundary by acquiescence.

At trial, the evidence will show that there is a stream, visible on the face of the earth at both high tide and low tide, which forms a natural boundary line, and has formed a natural boundary line between the Eckrotes' lot southerly boundary and that of the northerly boundary of Lot Owner 37, formerly owned by Larry D. Theye and Betty B. Becker Theye, now owned by Donald Schwikert and Wendy Schweikert, and further described in a deed recorded in the Waldo County Registry of Deeds at Book 4441, Page 184, and any other southerly abutters to the Eckrote lot. The location of the stream (gully) is the record common boundary line to the abutting property to the South as expressed in the various deeds. The evidence will also show that prior to Nordic Aquafarms' attempts to obtain various permits related to the development of an aquaculture facility, and for at least 25 years before the instant lawsuit, neither Mabee nor Grace believed they owned the intertidal zone in front of the Eckrote parcel and did not assert any dominion or control over such intertidal property.

In order to establish a boundary by acquiescence, a party must prove:

- (1) possession up to a visible line marked clearly by monuments, fences or the like;
- (2) actual or constructive notice to the adjoining landowner of the possession;

¹ Prior to ownership, Fred Poor's father and Janet Eckrote's paternal great-grandfather, Clarence O. Poor, had rented the land and cottage beginning in 1885.

(3) conduct by the adjoining landowner from which recognition and acquiescence not induced by fraud or mistake may be fairly inferred;

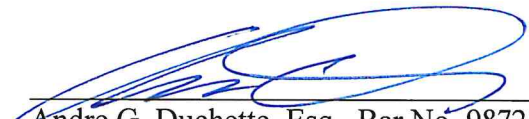
(4) acquiescence for a long period of years such that the policy behind the doctrine of acquiescence is well served by recognizing the boundary.

Dowley v. Morency, 1999 ME 137, ¶16, 737 A.2d 1061, 1067. The establishment of a boundary by acquiescence requires proof by clear and convincing evidence. *Id.* Evidence is considered to be “clear and convincing” when it “place[s] in the ultimate fact[-]finder an abiding conviction that the truth of [the party with the burden of proof’s] factual contentions are ‘highly probable.’” *Taylor v. Comm’r of Mental Health and Mental Retardation*, 481 A.2d 139, 153 (Me. 1984) (citations omitted).

The facts presented at trial will reveal that there is sufficient evidence to support a finding that the stream/gully is clear and visible and has been in the same location for generations. The facts will also demonstrate that Janet and Richard Eckrote, and their predecessors in title, have used and possessed the (now) disputed intertidal property up to the edge of an intertidal stream that forms the natural boundary between the Eckrotes’ property and any/all abutters to the Eckrote property on its southerly side. Mabee and Grace, and any other southerly abutters, had notice of the possession taken by the Eckrotes and their predecessors of their use to the north of this natural boundary line of the stream. Finally, the facts will demonstrate that Mabee and Grace and their predecessors in title, and any other southerly abutters, acquiesced to the possession and use made by the Eckrotes and their predecessors north of this natural boundary (extending to low tide) by failing for a period longer than 20 years to order that the possession and use be stopped, to otherwise mark or attempt to mark any different boundary, or to otherwise

take any action to cease the Eckrotes' and their predecessors possession of the disputed intertidal area north of this natural (and clearly visible) boundary.

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