

STATE OF MAINE  
AROOSTOOK,ss

DISTRICT COURT  
CIVIL ACTION  
DOCKET NO. RE-98-020

RICHARD and ANN CAYER,  
Plaintiffs,

v.

ORDER

ROBERT and JANINE DESCHENE, *et al.*,  
Defendants.

After consideration of the evidence presented on September 27, 2001, and after review of the agreed-to Order signed this date, the court is satisfied that all of the work performed by Ed Pelletier & Sons Co. was necessary to match the intent of the parties and the court. If the site had been left as depicted in plaintiffs' exhibits 2 and 3, erosion and run off would soon have caused problems.

Based upon the evidence presented, the court finds that the parties owe Mr. Pelletier \$5703.18. Of that amount, plaintiffs shall pay \$4277.38; and defendants shall pay \$1425.80. In addition, defendants owe Mr. Pelletier \$1177.90 for the crushed stone used on the job, including the additional crushed stone placed at the edge of the Collin property on July 18, 2001.

Plaintiffs' motion for damages and injunctive relief is denied.


The parties shall pay their own attorney fees.

\$1177.90  
1425.80  
\$2603.70 - Defendant  
\$1277.38 (Use)

DOCKET ENTRY

The clerk is directed to incorporate this Order in the docket by reference, in accordance with M.R.Civ.P. 79(a).

DATED: September 27, 2001.

  
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Superior Court Justice

State of Maine  
Aroostook, SS.

Superior Court  
Civil Action *RE*  
Docket No. ~~CAD-98-020~~ 98-020

Richard Cayer and Ann Cayer  
of Madawaska in the County of  
Aroostook and State of Maine

Plaintiffs

vs.

Robert and Janine Deschene,  
Roger and Greta Collin, and  
James and Helene Gogan, all of  
Madawaska, County of Aroostook  
and State of Maine

Defendants

Order

At a settlement conference held at the request of the parties at Birch Point on Long Lake in Madawaska on May 9, 2001, the parties reached an agreement in full settlement of the matters at issue in this case.

Pursuant to the agreement of the parties, the Court orders the following:

1. The right of way defined by Aroostook County Superior Court by order of Justice David Roberts dated May 26, 1977, is depicted on a survey plan prepared by Michael P. Cyr, PLS, dated June 16, 1997, entitled "Limited Plan Of Survey Prepared For Richard & Ann Cayer." The parties agree that this plan accurately shows the right of way defined by the Court. The Plaintiffs shall record the plan and a copy of this order at the Northern District Aroostook Registry of Deeds.

2. The parties agree that the right of way has not changed since the Court order in 1977, and that plaintiffs and defendants share the right to use the way.

3. The parties agree that the fences, pipes, and lighting shown in the survey plan referred to above, located along the westerly edge of the right of way, encroach into the right of way to the extent shown on the plan. The parties agree that despite the encroachment, the defendants may continue to maintain the encroaching fences and lighting, but may not replace, enlarge, or improve the encroachments. The structures are not actionable as a nuisance or as a trespass upon the land of plaintiffs. The parties also agree, however, that the defendants (camp owners) acquire no additional rights in the right of way by virtue of the existence of fences and lighting located within the way. Further, at such time that the fences and lighting are removed or replaced, in whole or in

part, any new construction shall not be placed within the bounds of the way as defined by the survey.

4. The parties agree that Ed Pelletier & Sons Co. shall go onto the right of way, by consent of the parties and under contract with all of them, to grade and slope the right of way to accomplish, as much as is practicable, the following purposes:

- a) to cause water draining from the road to drain in a generally easterly direction, away from the lake;
- b) to cause the road elevation to be raised so that it causes less of an embankment between the easterly edge of the right of way and the property of plaintiffs (Cayers), and so that it provides a gradual slope from the way to plaintiffs' property suitable for campground use;
- c) to maintain the traveled portion of the way as it was laid out by defendants as a result of their excavations of the roadway in 1998;
- d) to create a gradual, convenient slope between the roadway and the lots of the defendants (camp owners) to facilitate convenient and safe ingress and egress from the roadway to the respective lots of the camp owners.

By agreement, three-quarters of the costs of the road work performed by Ed Pelletier & Sons Co. shall be borne by plaintiffs; one quarter shall be borne by defendants, jointly and severally.

5. Following the completion of road work performed by Ed Pelletier & Sons Co., neither plaintiffs nor defendants shall alter the right of way, over its full width of thirty-three (33) feet, in any way. For example, but without limiting the generality of the proscription against altering the way, no gravel shall be placed or removed from the roadway, except to fill potholes or to perform routine maintenance; no additional trees or fences shall be placed in the roadway; and the level or grade of the way shall not be altered.

6. The three trees located within the way at the southerly end of the way shall be preserved by the parties, except that if any one of the trees should become an obvious safety hazard due to damage to the tree, it may be removed, after consultation with the parties or their successors.

7. This agreement does not add to or diminish the rights of any other persons (other than the parties) to use the right of way, and shall not be construed as an agreement or adjudication with respect to any of the rights of persons not parties to this agreement.

8. The parties to this agreement or their successors in interest may not depart from the terms of this agreement and order except by unanimous written agreement of all the above parties served by the right of way, which agreement shall be recorded at the Northern District Aroostook Registry of Deeds.

9. The parties are enjoined from parking vehicles in the right of way.

10. The nuisance actions brought by plaintiffs and defendants are dismissed with prejudice. The Court further orders that all owners of the land abutting the right of way are enjoined from violating the terms of the agreement set forth above. The parties shall bear their own costs of this action.

*September 27, 2001*

Dated: *June* ~~2001~~

*Ellen Gorman*  
Ellen Gorman  
Presiding Justice

Seen and agreed:

Defendants:

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\_\_\_\_\_

Plaintiffs:

*Richard Cayer 6/20/01 Ann Cayer 6/20/01\**

\* See alternate copy for signatures of defendants