

DENNIS BUTLER et al.

v.

DANNY STROUT et al.

Submitted on Briefs December 1, 2011

Decided December 6, 2011

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, MEAD, GORMAN, and
JABAR, JJ.

MEMORANDUM OF DECISION

Danny and Candy Jo Strout appeal from a judgment of the District Court (Waterville, *Murphy, J.*) declaring that Dennis and Terry Butler may use a right of way lying between the Strout and Butler properties in Clinton to accept and make deliveries at their store. The court's cogent and well-reasoned decision also required the Strouts to remove a stockade fence that it found impaired the Butlers' use of the right of way. Contrary to the Strouts' contention, the court did not clearly err in finding that the right of way, created in its current form in 1869, was intended by the original parties to benefit commercial property, nor did it err in finding that the Butlers' current use fell within the scope of their easement. *See Flaherty v. Muther*, 2011 ME 32, ¶¶ 55, 60, 17 A.3d 640. Furthermore, the court's finding that the stockade fence built by the Strouts materially impaired the Butlers' proper use of the right of way was not erroneous. *See id.* ¶ 63.

The entry is:

Judgment affirmed.

On the briefs:

Daniel J. Bernier, Esq., Law Office of Daniel J. Bernier, LLC, Waterville,
for appellants Danny and Candy Jo Strout

Robert M. Marden, Esq., Marden Dubord Bernier & Stevens, Waterville, for
appellees Dennis and Terry Butler

Waterville District Court docket number CV-2010-10
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