

ALAN ATKINS et al.

v.

MARIE F. ADAMS et al.

Argued June 6, 2022  
Decided July 12, 2022

Panel: STANFILL, C.J., and MEAD, JABAR, HORTON, CONNORS, and  
LAWRENCE, JJ.

## MEMORANDUM OF DECISION

Alan Atkins and Gail P. Atkins appeal from a partial summary judgment entered in the Superior Court (Cumberland County, *McKeon, J.*) in favor of Marie F. Adams and Peter T. Adams with respect to their declaratory judgment claim, finding as a matter of law that the Adamses “have a right to trim, cut or remove branches or limbs” of an oak tree that sits on the Atkinses’ property, but whose crown and branches that stem from the oak tree’s “leader”<sup>1</sup> extend over the Adamses’ property.

There is no dispute that the court’s order is not a final judgment for purposes of the final judgment rule due to the single remaining count for trespass against Peter T. Adams. *See O’Connor v. Counseling Servs., Inc.*, 2008 ME 114, ¶ 3, 951 A.2d 78 (recognizing that “an appeal taken from entry of a partial summary judgment is generally interlocutory and nonappealable”). The Atkinses argue, however, that their appeal is subject to the death knell

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<sup>1</sup> A “leader” is a portion of a tree much larger than a normal branch that often forms a large section of the tree’s crown.

exception to the final judgment rule. *See Sanborn v. Sanborn*, 2005 ME 95, ¶ 6, 877 A.2d 1075 (explaining that “[a] party urging that we reach the merits of an otherwise interlocutory appeal has the burden of demonstrating . . . that . . . [an] exception[] to the final judgment rule justifies our reaching the merits of the appeal”). Specifically, the Atkinses maintain that they will suffer irreparable harm because the tree will die if the Adamses are not enjoined from cutting off the leader of the tree. Contrary to the Atkinses’ contention, their claim does not meet the requirements of the death knell exception. *See Fiber Materials, Inc. v. Subilia*, 2009 ME 71, ¶ 14, 974 A.2d 918 (positing that “[w]hether the [death knell] exception is applicable in a particular case is a fact-specific question”). The Atkinses’ allegation that they will suffer imminent, concrete, and irreparable harm is entirely speculative given the lack of factual support in the record manifesting any intention on the part of the Adamses to actually cut off the leader of the oak tree.<sup>2</sup> *See In re Bailey M.*, 2002 ME 12, ¶ 7, 788 A.2d 590 (concluding that we will review an interlocutory appeal pursuant to the death knell exception only when “the injury to the plaintiff’s claimed right would otherwise be imminent, concrete, and irreparable” (quotation marks omitted)); *Pierce v. Grove Mfg. Co.*, 576 A.2d 196, 198 (Me. 1990) (concluding that an interlocutory appeal was not subject to the death knell exception because the harms alleged were merely speculative).

The entry is:

Appeal dismissed.

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Fulton S. Rice, Esq. (orally), Alan R. Atkins & Associates, Portland, for appellants Alan Atkins and Gail P. Atkins

Daniel P. Keenan, Esq. (orally), McCloskey, Mina, Cunniff & Frawley, LLC, Portland, for appellees Marie F. Adams and Peter T. Adams

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<sup>2</sup> The Atkinses conceded at oral argument that the Adamses have the right to trim encroaching tree limbs, branches, or roots of the oak tree if doing so does not extend to the destruction or injury to the main support system of the oak tree.