

STEPHEN BABIRAK et al.

v.

SAMUEL R. TIBBETTS SR. et al.

Submitted on Briefs May 25, 2001  
Decided

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY,  
ALEXANDER, and CALKINS, JJ.

#### MEMORANDUM OF DECISION

Samuel R. Tibbetts Sr. and Samuel R. Tibbetts Jr. appeal from a judgment entered in the Superior Court (Lincoln County, *Cole, J.*) (1) declaring the location and scope of allowable use of a right of way over the Tibbetts' land benefitting the land of Stephen and Brenda Babirak, (2) requiring the Tibbetts to remove obstructions placed in the right of way, and (3) awarding compensatory damages to the Babiraks. Contrary to the Tibbetts' contentions, (1) the court's declaration as to the location of the right of way and the scope of its use are supported by the evidence in the record, *see Crispin v. Town of Scarborough*, 1999 ME 112, ¶ 30, 736 A.2d 241, 250 (upholding factual findings regarding original parties' intent); *Anchors v. Manter*, 1998 ME 152, ¶ 16, 714 A.2d 134, 139-40 (stating that intention of parties in creating easement is question of fact); (2) the court acted within its discretion in excluding from evidence aerial photographs purporting to depict the right of way area because, in the absence of proper

authentication, the photographs lacked the proper foundation for admissibility, *see* M.R. Evid. 901(b)(1); and (3) the court's award of damages to the Babiraks for interference with their use of the right of way is not excessive. *See Maine Farmers Exch. v. McGillicuddy*, 1997 ME 153, ¶ 12, 697 A.2d 1266, 1270; *Phillips v. Gregg*, 628 A.2d 151, 153 (Me. 1993) (upholding damage assessment absent bias, prejudice or improper influence).

The entry is:

Judgment affirmed.

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