

Bond Case Briefs

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PRESCRIPTIVE EASEMENTS - NEW HAMPSHIRE

Jesurum v. WBTSCC Limited Partnership

Supreme Court of New Hampshire - December 9, 2016 - A.3d - 2016 WL 7177669

Town resident brought action against landowners seeking declaratory judgment that both the resident and the public had right to prescriptive easement over portion of landowners' property, which was connected to beach by walking path, for parking and access to the beach.

The Superior Court determined that members of the public had acquired prescriptive easement and awarded attorney's fees to resident. Landowners appealed.

The Supreme Court of New Hampshire held that:

- Public's use of portion of landowners' property, which was connected to beach by walking path, for parking and access to the beach was adverse, as required to support resident's claim for prescriptive easement;
- Scope of public's prescriptive easement over portion of landowners' property was not limited to digging for worms and searching for shellfish;
- Landowners did not interrupt the public's ability to park on portion of their property by conducting three construction projects in the area over the course of nearly a decade, and thus, public's use of the property was continuous, as required for the public to attain prescriptive easement over the property; and
- Award of attorney's fees against landowners, as private litigants, under the public benefit theory was unwarranted.