

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-599

WEBSTER VENTURES, LLC

vs.

HERBERT J. DUMORE & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, Webster Ventures, LLC, owns land that is divided into eight lots that front on the northernmost portion of Lakeview Road in Webster. Five of those lots lie on the eastern side of that road, and three on the western side. Thus, Lakeview Road separates five of the lots from the other three, although for each lot, Webster Ventures claims ownership to the centerline of Lakeview Road pursuant to the Derelict Fee statute.

¹ Sharon A. McCormick; Gail C. Brochu; Linda Jeneski; Mohamed Jaber; Annett T. Criasia; Suzanne J. Vallee; Joseph J. Woodman, III; Barbara J. Woodman; Lee J. Parker; Linda C. Chambless, trustee of the Lakeview Road Irrevocable Trust; Cyrilla Spoka; Faith D. Rubin; Henry E. Hopkins; Lori J. Hopkins; Chad R. Stawiecki, trustee of the Robert Stawiecki Irrevocable Trust; Jeremy T. Stawiecki, trustee of the Robert Stawiecki Irrevocable Trust; Emanuel J. Leo; Linda J. Leo; J. Terrence Sullivan; Nancy Sullivan; Mark H. Brooks; Linda A. Croteau-Brooks; Maureen E. Duffy; Donald Farquar; Robert A. Martell; Craig Hanford; Laura Hanford; Paul Swenson; Tracy Swenson; Bruce Finley; and Dylan Brown.

The defendants are the owners of lots on Lakeview Road that lie to the south of the ones owned by Webster Ventures. They claim an easement to pass over the entirety of Lakeview Road; that is, including over the northernmost portion of the road that runs between the lots now owned by Webster Ventures. Spurred by its desire to develop its eight lots in a particular manner, Webster Ventures brought this quiet title action in Land Court seeking to establish that the defendants do not hold an easement with respect to that portion of the road.²

On summary judgment, a Land Court judge ruled in the defendants' favor, concluding that under the undisputed facts, they do hold an easement along the entirety of Lakeview Road.³ Almost two years later, but before final judgment had entered, Webster Ventures sought to press a new count seeking to modify the easement. The judge rebuffed such efforts, and instead entered judgment in the defendants' favor on Webster Ventures'

² The record indicates that Webster Ventures wants to develop the eight lots as a single, unified parcel, and that its ability to do so under local land use bylaws or regulations may depend on its having exclusive rights to the northern portion of Lakeview Road. The correctness of that premise is not before us, nor is the application, if at all, of the doctrine of merger.

³ As noted infra, at its northern terminus, Lakeview Road connects with an access road on other land owned by Webster Ventures. As part of the judgment, the judge ruled that the defendants had no right to use that access road, even though such relief arguably went beyond the scope of the quiet title action that Webster Ventures had brought (which was confined to the parties' respective rights in Lakeview Road). The defendants filed no cross appeal challenging that ruling.

quiet title action. In doing so, however, the judge made it clear that this was without prejudice to Webster Ventures' ability to file a separate action to modify the easement. On Webster Ventures' appeal, we affirm.

Background. The essential facts are undisputed. Lakeview Road is an existing unpaved road that runs in a general north-south direction, roughly parallel to the eastern shore of Lake Chargoggagoggmanchauggagoggchaubunagungamaugg (also known as Webster Lake). For purposes of this appeal, we assume that the road is private (as both parties appear to maintain).

At least according to the maps included in the record, Lakeview Road connects to public ways through its intersection with a road labeled "Community Road." That intersection lies toward the southern end of Lakeview Road. From there, Lakeview Road runs north until it terminates at a large parcel, also owned by Webster Ventures. That parcel, known as Indian Ranch, is currently the site of "a trailer park and recreational facilities." At the point that Lakeview Road meets the Indian Ranch parcel, it connects with a private access road that runs through the trailer park area of Indian Ranch, eventually connecting with Gore Road (also known as Route 16). There is a gate that controls access to the trailer park access road from Lakeview Road. In the off-season -- that is, during periods when the recreational portion of Indian Ranch is not in use --

the gate sometimes has been left open. Historically, the defendants and others on Lakeview Road "have often been allowed to use the [u]npaved [r]oad through the trailer park for access to Gore Road (Route 16) during snowstorms and winter weather." The record does not elucidate how long the Indian Ranch access road has been there.

Webster Ventures' eight lots and the defendants' various lots all trace back to a common deed held by Kelsey D. Purdy. During the period that Purdy still owned the undivided common parcel, it was laid out on a subdivision plan (1924 plan) and eventually was subdivided in accordance with that plan.⁴ The 1924 plan -- which formally was titled Map No. 1, La Vue du Lac -- was recorded in the registry of deeds. As shown on that plan, Lakeview Road served as an access road for the subdivision, and individual lots were strung along both sides of the road over its entire length. The individual deeds out for each lot did not expressly state that each lot included an easement to use Lakeview Road. However, these deeds all referenced the 1924 plan. In addition, the respective property descriptions in each deed stated that the lot was bounded by Lakeview Road.

⁴ Purdy sold the parcel to Killdeer Properties, Inc., which apparently was the actual developer. The deeds out for the individual lots therefore are from Killdeer.

Unlike the eight lots that Webster Ventures now owns, the Indian Ranch parcel at the end of the northern terminus of Lakeview Road was not part of the subdivision depicted on the 1924 plan. That plan does not show Lakeview Road as extending onto the Indian Ranch parcel; rather, the road is depicted as running to but not beyond the border between Indian Ranch and the parcel being subdivided. In fact, virtually no detail is shown on the 1924 plan beyond the confines of the subdivided parcel itself. As discussed infra, based on how the northern portion of Lakeview Road is depicted on the 1924 plan, Webster Ventures assumes that the road was intended to terminate as a "dead end."

Discussion. 1. The quiet title claim. As the parties agree, none of the individual lot owners hold an express easement to use Lakeview Road. The debate instead is whether they hold one or more of the following types of easements to use it: an easement by estoppel, an implied easement, or an easement by common design (a specific form of implied easement). The Land Court judge ruled that the defendants held an easement to use Lakeview Road that could be characterized as falling into all three of these taxonomic categories. He based his ruling on the history of the development outlined supra, including the fact that each deed out referenced the recorded 1924 plan showing Lakeview Road, the fact that each lot was described as

bounded by Lakeview Road, and particular evidence that the lots were developed as part of a common scheme.⁵ The judge's conclusion that the defendants held such easements fits easily within well-established case law regarding the law of easement by estoppel. See, e.g., Goldstein v. Beal, 317 Mass. 750, 755 (1945) (recognizing long line of "cases holding that, where land situated on a street is conveyed according to a recorded plan on which the street is shown, the grantor and those claiming under him are estopped to deny the existence of the street for the entire distance as shown on the plan"). We need not resolve whether it also fits the other categories.

Viewed in its best light, Webster Ventures' argument is that while the defendants may hold easements to use Lakeview Road, those easements are limited in scope. Based on the premise that Lakeview Road was, from its inception, intended as a dead end, Webster Ventures argues that the easement rights that each lot owner obtained were limited to traveling from his or her lot to the way out of the subdivision, and back again.⁶

⁵ As the judge pointed out, the 1924 plan reveals that the subdivision was designed to include a "community park" on the lake to which the internal access roads led. See Reagan v. Brissey, 446 Mass. 452, 459 (2006).

⁶ As indicated by the 1924 plan, the intersection of Lakeview Road and the road marked Community Road provides the subdivision's connection to the outside world (regardless whether Community Road is a private or public way). Under Webster Ventures' theory, each lot owner would hold an easement to travel on only that portion of Lakeview Road between its

According to Webster Ventures, because all of the defendants own property between its lots and the way out of the subdivision, Community Road, they have no need to use the portion of Lakeview Road that lies to the north of their land and ends in a dead end. Based on this, Webster Ventures argues that the defendants' easement rights should be interpreted as not including that portion of the road.

Webster Ventures' premise that Lakeview Road necessarily was intended as a dead end street is subject to at least some doubt. While it is true that the 1924 plan does not show that road as extending beyond the border between the subdivision and the Indian Ranch parcel, neither does it show a cul de sac there or some other direct evidence that transit was intended to terminate at that spot. In any event, for the reasons that follow, we conclude that Webster Ventures' argument fails on its own terms.

Webster Ventures has not pointed to any case in which a court has found that lot owners hold rights in an access road

intersection with Community Road and his or her lot. A particular quirk of the layout of Lakeview Road -- unmentioned by either party -- illustrates the practical difficulty of trying to define the easements in the manner Webster Ventures suggests. At one point, Lakeview Road forms a loop, and two of the lots owned by defendants are in fact on that loop. The owners of those lots could access the intersection of Lakeview Road and Community Road by turning either left or right from their properties. It is not at all clear how Webster Ventures would suggest the scope of their easements be defined.

(whether by an easement by estoppel, implied easement, or easement in a common scheme), where the court at the same time limited such an easement to portions of the road in the manner that Webster Ventures suggests.⁷ The case law in fact is to the contrary. See, e.g., Maslow v. O'Connor, 93 Mass. App. Ct. 112, 115 (2018), quoting Murphy v. Mart Realty of Brockton, Inc., 348 Mass. 675, 677 (1965) ("an abutter to a private way has an easement to traverse 'the entire length of the way,' not just to use it as access to the nearest public way"). See also Downey v. H.P. Hood and Sons, 203 Mass. 4, 10 (1909) (where doctrine of easement by estoppel applies to access road shown on recorded plan, party claiming no easement "is estopped to deny the existence of the street for the entire distance").⁸

Webster Ventures is left to argue that the case law should evolve based on general background principles and what it characterizes as "the modern trend." For example, Webster

⁷ Notably, this is not a case where a landlocked property is claiming an easement by necessity, a scenario in which such an owner would be permitted to assert only limited rights due of necessity. Bedford v. Cerasuolo, 62 Mass. App. Ct. 73, 81-82 (2004).

⁸ In Downey, there were three connected streets that, taken together, exited onto a public way at two locations. See 203 Mass. at 9-10. Although the configuration of these subdivision roads did not include a dead end, many of the lots were far closer to one exit than the other. There was no suggestion that each lot owner was limited to using the exit closest to his or her lot. Id. at 10.

Ventures argues that the defendants' rights in Lakeview Road should be interpreted in such a narrow fashion because of the principle that doubts concerning easement rights "are to be resolved in favor of freedom of land from servitude." See Butler v. Haley Greystone Corp., 352 Mass. 252, 258 (1967). We are unpersuaded by such arguments and decline to upend settled case law in the manner that Webster Ventures urges.

2. The claim to modify the easement. As noted, Webster Ventures was not allowed to proceed on a separate new claim through which it sought to modify the easement. Some additional background is necessary to understand the context in which this occurred.

The 2016 summary judgment ruling resolved the legal issues raised by Webster Ventures' quiet title action, the only claim that it had brought at that time. However, with the parties having entered into settlement negotiations, the judge held off entering final judgment.⁹ In 2018, Webster Ventures moved to amend the complaint (its second amendment) to add a count to modify the easement that the defendants held in Lakeview Road in a manner that could allow its proposed development to go forward. It appears undisputed that at that point in time, the

⁹ As noted, the summary judgment ruling was not entirely in the defendants' favor, because the judge concluded that they had no rights to use the access road on the Indian Ranch property. See note 3, supra.

parties appeared to be close to a final settlement, and Webster Ventures proffered its amendment to the complaint as a necessary means of implementing the specific settlement that was contemplated. In this context, the defendants did not oppose the motion to amend, and Webster Ventures was allowed to file its second amended complaint.

The settlement eventually fell apart, however, which prompted the defendants to file a motion to strike the second amended complaint. They maintained, *inter alia*, that Webster Ventures had acted in bad faith in securing the amendment to the complaint. They further argued -- with at least some force -- that Webster Ventures was seeking in effect to relitigate issues that the judge already had decided in the defendants' favor. Without finding that Webster Ventures had acted in bad faith, the judge concluded that it was a legitimate question whether the second amended complaint should be allowed to go forward when two years had passed since all the existing legal issues in the case had been resolved. Therefore, even though Webster Ventures' motion to file the second amended complaint already had been allowed, the judge treated its desire to move forward on that complaint as tantamount to a new motion to amend.

The judge went on to conclude that, based on applicable precedent, "the relief sought by Webster Ventures [in its second

amended complaint] is likely unavailable as a matter of law."¹⁰ After so concluding, however, the judge did not rest on grounds of futility, and he made it clear that he was not determining that Webster Ventures' new count failed as a matter of law. Instead, the judge concluded that given how this all came to pass, Webster Venture was not entitled to have its new claim addressed in the current -- otherwise long-resolved -- litigation. He therefore struck the second amended complaint to the extent that it sought to add the new claim.¹¹ This resolution expressly was without prejudice to Webster Ventures' refiling its new claim (should it choose to do so notwithstanding the judge's thoughtful analysis of why such a claim was very likely to fail on the merits).¹²

The judge's striking of the new count added by the second amended complaint was without prejudice, and the extent to which

¹⁰ Webster Ventures' claim seeking to modify the easement is based on M.P.M. Bldrs., LLC v. Dwyer, 442 Mass. 87, 93 (2004) (setting forth the circumstances under which the owner of a servient estate can pursue a unilateral modification of an easement there). The judge outlined the difficulties that Webster Ventures would face in making such a showing.

¹¹ Because the ownership of some of the relevant lots had changed in the interim, the second amended complaint also corrected who the proper defendants were. The judge allowed the new parties to be substituted.

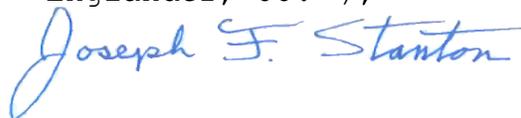
¹² Specifically, the judge stated that "[t]he striking of the [s]econd [a]mended [c]omplaint is without prejudice to any of the claims asserted therein and this court does not purport to have reached any binding legal conclusions in its determination regarding the present futility of Webster Ventures' claims added in the [s]econd [a]mended [c]omplaint."

Webster Ventures was aggrieved by that ruling is not clear. Nevertheless, we assume arguendo that Webster Ventures' appeal of that ruling is properly before us. See Arsenault v. Bhattacharya, 89 Mass. App. Ct. 804, 808 n.5 (2016) (discussing appealability of dismissals without prejudice). In any event, Webster Ventures has failed to demonstrate that in the circumstances presented, the judge abused his discretion in

leaving final resolution of the new count to another day.¹³

Judgment affirmed.

By the Court (Milkey, Shin &
Englander, JJ.¹⁴),



Clerk

Entered: May 22, 2020.

¹³ In their brief, the defendants requested an award of their appellate "costs, including reasonable attorneys' fees to the extent the law permits." This request did not state the grounds on which attorney's fees were sought, and we therefore need not entertain it. See Gustin v. Gustin, 420 Mass. 854, 858 (1995) (where request for appellate fees and costs fails to identify legal grounds on which award allegedly would be justified, that request does not rise to level of adequate appellate argument contemplated by Mass. R. A. P. 16 [a] [4], now Mass. R. A. P. 16 [a] [9], as appearing in 481 Mass. 1628 [2019]).

¹⁴ The panelists are listed in order of seniority.