

VERMONT SUPREME COURT
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Case No. 26-AP-041

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

AUGUST TERM, 2026

In re Ranney Dairy Farm, LLC Major	}	APPEALED FROM:
Subdivision Appeal (Daniel Deitz et al. *)	}	
	}	Superior Court, Environmental Division
	}	CASE NO. 22-ENV-00018
		Trial Judge: Thomas G. Walsh

In the above-entitled cause, the Clerk will enter:

Neighbors appeal a permit issued by the Town of Westminster to applicant Ranney Dairy Farm LLC for the subdivision of land applicant owns in Westminster, Vermont. We affirm.

In January 2022, applicant obtained a permit from the Town of Westminster Development Review Board to subdivide its property to add two residential lots with frontage on Old Coddling Road.¹ Neighbors appealed to the Environmental Division. In 2023, the Environmental Division issued a merits decision concluding that applicant had demonstrated sufficient access to the proposed subdivision, as required by 24 V.S.A. § 4412(3) and the town bylaws, by making a “threshold showing” that it had a right to use Old Coddling Road. The court declined to adjudicate that right, however, concluding that it lacked jurisdiction to do so. Neighbors appealed to this Court.

We concluded that the Environmental Division had jurisdiction to determine whether applicant owned a permanent easement or right-of-way that provided access to a public road as set forth in § 4412, and to determine whether applicant had a residual right-of-way over Old Coddling Road. In re Ranney Dairy Farm, LLC Major Subdivision Appeal-Westminster DRB Permit No. 21-70 (Ranney I), 2024 VT 66, ¶ 10, 220 Vt. 172. We therefore remanded for the Environmental Division to determine whether applicant had an easement or right-of-way over the road. Id. ¶ 14.

Applicant then moved for summary judgment. Applicant asserted that there was no evidence that the road, which had existed since at least the early 1800s, was ever formally laid

¹ The parties dispute whether Old Coddling Road was ever a public road but agree that it was discontinued by the town in 1893 and is now a private road.

out as a public road. However, applicant asserted that the evidence showed that it owned the land under the road and therefore the road itself. Neighbors opposed the motion and cross-moved for summary judgment in their favor.

In August 2025, the Environmental Division granted applicant's motion and denied neighbors' motion, concluding that the undisputed evidence demonstrated that applicant owned the first 1800 feet of Old Coddington Road from where it intersected with the town road, and thus had the right to use that section to access the proposed lots. The court indicated that it was unclear whether its decision resolved the dispute between the parties because it could not tell from the summary-judgment record whether the 1800-foot section reached the proposed subdivision.

At a subsequent status conference, applicant conceded that the 1800-foot section fell short of where the proposed lots and access would be located on Old Coddington Road. After a one-day trial, the court issued a decision making the following findings and conclusions. There was no record of Old Coddington Road being formally laid out. However, the evidence showed that Old Coddington Road was a public road by implication because it was treated that way throughout the 1800s. The road was discontinued by the town in 1893. At that point, all owners of property along the road, including applicant's predecessor-in-interest, retained a right-of-way over the road. The court alternatively concluded that, even if the road was never public, the undisputed evidence showed that applicant owned the land underlying the road all the way to the proposed subdivision. The court therefore entered judgment affirming the subdivision permit issued by the town. Neighbors appealed.

Neighbors first argue that the Environmental Division exceeded the scope of its authority on remand by altering the parties' underlying ownership interests in real property. We disagree. In Ranney I, we explained that the Environmental Division was required to determine whether applicant had a "permanent easement or right-of-way" providing access to a public road from the proposed subdivision. 2024 VT 66, ¶ 12. We noted that "where, as here, a question of private property rights is statutorily assigned to the Environmental Division's jurisdiction, the court's jurisdictional limitations are not implicated, and the court is required to make complete determinations as to the statutory elements." Id. ¶ 12 n.3. To determine whether applicant had the required access, "the court necessarily had to determine whether the road was laid out as a public road prior to 1893. Alternatively, applicant could seek to prove the existence of an easement or right-of-way through other means." Id. ¶ 13.

As explained above, on remand it became evident that there was no record of Old Coddington Road being laid out as a public road. Applicant therefore presented alternative evidence showing that it had the right to use the road because it owned the land over which the road passed. The Environmental Division acted consistently with our direction in Ranney I in considering this evidence and determining applicant's right to use the road. See Will v. Mill Condo. Owners' Ass'n, 2006 VT 36, ¶ 9, 179 Vt. 500 ("Unless the Court states explicitly otherwise . . . the scope of the remand must encompass the scope of the error found on appeal.").

We next address neighbors' claim that the court improperly allowed applicant to submit additional evidence in support of its summary-judgment motion. After we remanded the case, applicant filed a motion for summary judgment supported by a statement of undisputed material

facts. Neighbors filed an opposition with a paragraph-by-paragraph response to applicant's statement of undisputed facts. They also cross-moved for summary judgment but did not file their own statement of undisputed facts in support of their motion. Applicant filed a reply and an opposition to neighbors' motion, along with a supplemental statement of undisputed facts. Neighbors did not respond to this supplemental statement or reply to applicant's opposition to their cross-motion. The court granted applicant's motion and denied neighbors' motion in its August 2025 decision. Neighbors then moved for reconsideration but did not argue that applicant's supplemental statement was improper. The court denied that motion. Then, at the December 2025 merits hearing, neighbors objected for the first time that applicant's supplemental statement of facts was improper and untimely filed such that the court should not have considered it. The court rejected neighbors' argument, noting that they were not entitled to a second motion for reconsideration and concluding that applicant's statement was permitted under Vermont Rule of Civil Procedure 56(c)(2).

On appeal, neighbors argue that their own cross-motion for summary judgment was not supported by a memorandum or statement of material facts and therefore applicant's supplemental statement was not truly a response within the meaning of the rule. In essence, they argue that their motion was so procedurally deficient that applicant was not entitled to respond. We are unpersuaded. Assuming without deciding that applicant's supplemental statement was permissible under Rule 56(c)(2) as the trial court reasoned, neighbors failed to respond to the statement, despite being permitted to file a reply under Rule 56. The trial court therefore did not err in relying on the undisputed statement in its summary-judgment decision or rejecting neighbors' belated objection to the statement.

Neighbors appear to further claim that the trial court erred in admitting two exhibits referenced in applicant's supplemental statement at the merits hearing. We see no error. Applicant's exhibits 24 and 26 depicted the original plan for the subdivision of the town, with numbered lots and ranges. Neighbors objected at the merits hearing that these documents did not indicate on their face that they were properly recorded and therefore were inadmissible under Vermont Rule of Evidence 803(14). The trial court overruled their objection and admitted the exhibits under Vermont Rule for Environmental Court Proceedings 2(e)(1), which states that the Environmental Division may admit evidence not admissible under the Rules of Evidence "if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs." The court based its decision on testimony by applicant's expert land surveyor that he commonly relied on such ancient documents in the course of his work. The court's decision was within its discretion under the rule. Cf. Pion v. Bean, 2003 VT 79, ¶ 18, 176 Vt. 1 ("The question of whether a map is sufficiently accurate to be helpful to the fact-finder, and therefore admissible, is reserved for the trial court."). Neighbors suggest that it was improper for the court to question the expert on this issue. However, it is well-settled that the court may "interrogate witnesses, whether called by itself or by a party." V.R.E. 614(b). Neighbors have not demonstrated that the court's interrogation was so excessive as to suggest judicial bias. Cf. Auger v. Auger, 149 Vt. 559, 563 (1988) (reversing decision where judge expressed inclination in favor of plaintiff early in trial and actively questioned defendant's witnesses in manner that appeared to defend his prior inclination).

Neighbors next argue that the evidence does not support the court's determination that applicant's southerly boundary line was located to the south of Old Coddington Road on either the

initial, westerly 1800-foot section of the road or the second, easterly section where the road turns southeast.

As to the initial 1800-foot section, we review the trial court's grant of summary judgment de novo, applying the same standard as the trial court. In re Mountain Top Inn & Resort, 2020 VT 57, ¶ 18, 212 Vt. 554. Summary judgment is appropriate "if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Id. (quotation omitted).

The relevant portion of applicant's property is made up of two parcels that originated in the original plan for the subdivision of the town laid out in the 1770s. One parcel ran the length of the southern boundary of Lot 3, Range 3, and the other was located in the northeast corner of Lot 2, Range 3, to the south of the first parcel. The parties agreed that Old Coddington Road runs parallel to the southern boundary of applicant's property for its first 1800 feet; they disagreed which side of the boundary line it was on. Applicant's expert surveyed applicant's property and determined, based on the historical maps, deeds in both applicant's and neighbors' chains of title, and ground monuments, that the southern boundary of Lot 3, Range 3, was located to the south of Old Coddington Road, and therefore that the road was on applicant's property. Neighbors denied this but failed to genuinely dispute the surveyor's opinion with their own expert survey or expert affidavits.² See Webb v. Leclair, 2007 VT 65, ¶ 14, 182 Vt. 559 (mem.) (explaining that party opposing summary judgment cannot "rely on bare allegations alone to meet the burden of demonstrating a disputed issue of fact"). Neighbors pointed to some twentieth-century deeds from property owners south of Old Coddington Road conveying rights-of-way over the road, some of which described their boundary lines as the centerline of Old Coddington Road. Given the surveyor's undisputed opinion based on the earlier deeds and other evidence, however, the Environmental Division properly concluded that the deeds proffered by neighbors transferred rights to use a right-of-way that lay wholly on applicant's property.³ See Church v. Stiles, 59 Vt. 642, 645 (1887) ("[W]here the grantor does not own the fee of the land the law will not presume that he intended to convey that which he did not own.").

We turn to neighbors' arguments concerning applicant's boundary along the easterly section of the road, where it turns southeast, which the court determined following the December 2025 merits hearing. "The court's determination of a boundary line is a question of fact to be determined on the evidence." Pion, 2003 VT 79, ¶ 15. "We will not disturb the trial court's findings of fact unless they are clearly erroneous, despite inconsistencies or substantial evidence to the contrary." Id.

² Neighbors also claimed below that the 1774 subdivision map was inadmissible; as explained above, the trial court acted within its discretion in admitting the map into evidence. On appeal, neighbors argue that the surveyor's opinion was inconsistent with unrecorded surveys they introduced through one of the neighboring property owners at the merits hearing. However, neighbors did not present these surveys in their opposition to summary judgment.

³ The court further noted that there were additional deeds from applicant's predecessors-in-interest that granted rights-of-way over the road, indicating that applicant's predecessors held the right to use the road and could grant easements to others.

The court found that the easterly section of Old Coddington Road ran through Lot 2, Range 3. Lot 2, Range 3 was formerly part of a single lot owned by Ephraim Ranney. In 1810, Ephraim Ranney sold a ten-acre portion of the northeast corner of Lot 2, Range 3, on the northeast side of Old Coddington Road, to Elijah Ranney. In 1817, Ephraim sold the rest of Lot 2, Range 3 to Elijah; the deed described the remaining portion of the lot as lying south of Old Coddington Road, consistent with the other descriptions. In 1818, Elijah sold the southern half of Lot 3, Range 3 and the ten-acre portion of Lot 2, Range 3—the parcels that are now applicant’s property—to Joseph Ranney. An 1846 partition of Joseph’s estate described the ten-acre portion as falling southerly on the road. Taken together, these deeds showed that the southern boundary line of the ten-acre portion lies on the south side of Old Coddington Road, meaning that the road lies on applicant’s property. The court noted that there were a series of deeds created later in time that purported to assert that property owners to the south of the road owned to the centerline of the road. The court found these deeds inconsistent with the last deed separating Lot 2, Range 3 into the ten-acre parcel that is part of applicant’s property and a seventy-acre parcel south of the road. The court noted that neighbors had not provided any instrument indicating that they owned to the north side of the road or any expert testimony to rebut applicant’s surveyor’s testimony. The court’s findings are supported by the exhibits and by applicant’s surveyor’s testimony.

Neighbors argue that the 1810 deed from Ephraim Ranney to Elijah Ranney describes the ten-acre portion as “com[ing] so far into the road as to cover the stone wall on the northeast side of said road,” and the 1818 deed from Elijah to Joseph Ranney purports to convey “the same I had of Ephraim.” However, the existence of some countervailing evidence does not render the court’s findings erroneous where they are supported by other evidence in the record. See Pion, 2003 VT 79, ¶ 17 (“As the trier of fact, it [is] the province of the trial court to determine the credibility of the witnesses and weigh the persuasiveness of the evidence.” (quotation omitted)).

Neighbors claim that applicant’s ownership of the land does not give it a right to use the road because that right was deeded away by applicant’s predecessor-in-interest. They point to a 1988 deed purporting to transfer the right to use the road from all adjoining property owners to Douglas and Veronica Cate without reserving a right to the grantors. Neighbors did not raise this argument during the proceedings on remand or introduce the 1988 deed into evidence at the merits hearing or in connection with summary judgment.⁴ They have therefore failed to preserve this argument for our review. See Bull v. Pinkham Eng’g Assocs. Inc., 170 Vt. 450, 459 (2000) (“Contentions not raised or fairly presented to the trial court are not preserved for appeal.”). For the same reason, we decline to consider neighbors’ argument that the Environmental Division “allowed the Town of Westminster to play an inappropriate role” in the proceedings. Neighbors do not identify where they raised this argument in the proceedings on remand; furthermore, their claim is inadequately briefed. See V.R.A.P. 28(a)(4)(A) (stating that arguments presented in appellant’s brief must contain “the issues presented, how they were preserved, and appellant’s contentions and the reasons for them—with citations to the authorities, statutes, and parts of the record on which the appellant relies”).

⁴ In addressing neighbor’s claim both parties refer to the transcript of an October 2023 hearing in the Environmental Division. However, neither party requested that the October 2023 transcript be included as part of the record in this appeal.

Finally, neighbors argue that the court erred in concluding that Old Coddington Road was dedicated by implication as a public road. Because we affirm the trial court's holding that applicant owned the land under Old Coddington Road, and therefore had a right to use the road to access its proposed subdivision, we need not reach this issue.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice