Vermont Superior Court
Filed 09/23/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 25-CV-05697

JSN, LLC v. Harwood Unified Union School District

ENTRY REGARDING MOTION

Title: Motion for Partial Summary Judgment (Motion: 1)
Filer: Christopher J. Smart
Filed Date: May 21, 2026

The motion is GRANTED IN PART and DENIED IN PART.

Plaintiff JSN, LLC asserts that its and Defendant Harwood Unified Union School District's respective deed histories leave it with a right of way (ROW) extending from Route 100 in Duxbury, across Harwood's property, where it eventually provides access to JSN's property. The ROW is alleged to travel along the centerline of an existing driveway used by Harwood until the driveway turns toward a parking lot. Where the driveway turns, the ROW is alleged to continue forward in a straight line corresponding strictly with the centerline of the driveway until it reaches JSN's property. The implication in the record is that neither JSN nor any predecessors-in-interest ever developed the ROW on the ground where it extends past the driveway. JSN alleges that in 2025, Harwood installed a stormwater pond that obstructs and prevents development of the ROW. Now it seeks partial summary judgment addressing the declaratory claims establishing its ownership of and Harwood's obstruction of the ROW and its entitlement to injunctive relief.[1]

I. *Procedural Standard*

Summary judgment shall be granted when the moving party shows that there is no genuine issue as to any material fact "and the movant is entitled to a judgment as a matter of law." V.R.C.P. 56(a). Although the Court gives the nonmoving party "the benefit of all

[1] Technically, JSN seeks, in its partial summary judgment motion, an order "enjoining defendant to remove or relocate" the obstruction. There is no motion for preliminary injunction. If it is so entitled, a final injunction in some manner restoring JSN's ability to use its ROW would be part of a final judgment. No such final injunction would be entered during the interlocutory phase of this case. Additionally, JSN has other claims that are not addressed in the pending motion, so the case will remain in an interlocutory phase following this decision.

reasonable doubts and inferences in determining whether there is a genuine issue of material fact, the nonmovant bears the burden of submitting credible documentary evidence or affidavits sufficient to rebut the evidence of the moving party." *Ziniti v. New England Cent. R.R., Inc*., 2019 VT 9, ¶ 14, 209 Vt. 433 (quotation omitted).

II. *Undisputed Facts*

Both parties are represented by capable counsel. Harwood sought and was granted several unopposed extensions of time to respond to JSN's motion. Nevertheless, no opposition ever was filed. The Court construes Harwood's silence as general assent to JSN's version of the material facts.

The Court further deems the facts, to the extent well-supported, in JSN's Rule 56(c)(1) statement as undisputed pursuant to Rule 56(e)(2) due to Harwood's failure to challenge them.

Additionally, counsel for JSN represents, and the Court accepts for purposes of this decision, that Harwood never responded to its requests to admit. The subject matter of a request for admission is treated as admitted unless the opposing party responds or objects within 30 days. V.R.C.P. 36(a). "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." V.R.C.P. 36(b). No such motion has been filed.

The basic undisputed facts are as follows. In 1996, the State conveyed to the Town of Duxbury the land over which the ROW travels. That quitclaim deed reserved the ROW as follows:

> Grantor hereby reserves to itself, its successors and assigns a 50' wide right-of-way for vehicular and pedestrian traffic which shall commence at or near the intersection of Vermont Route 100 and the "Old" Route 100 and run approximately parallel to Crossett Brook until it reaches the boundary line of the Remaining Lands of the State of Vermont, a distance of approximately 1,500 feet. Said right-of-way shall correspond with a two lane gravel road which Grantee shall construct across the premises being conveyed by this deed. Grantor further reserves to itself, its successors and assigns the right to align a road on the Remaining Lands of the State of Vermont with the right-of-way reserved under this deed and make the entire roadway, including the right-of-way, accessible to the general public.

Shortly thereafter, the Town conveyed its interest in the property to the Town of Duxbury

School District. This quitclaim deed includes this: "This conveyance is subject to a reservation to the State of Vermont as set forth in the Quitclaim Deed from the State of Vermont to the Town of Duxbury of even date herewith." The face of the deed does not more explicitly describe the reservation.

Shortly after that, still in 1996, the Town of Duxbury School District conveyed its interest in the property to a unified school district that became Harwood's predecessor-in-interest. This quitclaim deed includes this: "This conveyance is subject to a reservation to the State of Vermont as set forth in the Quit-Claim Deed from the State of Vermont to the Town of Duxbury, dated June 28, 1996, and recorded in Volume 74, at Pages 117–119, of the Town of Duxbury Land Records." The face of the deed does not more explicitly describe the reservation.

In 2014, the State conveyed property to JSN to which the ROW provides access. This quitclaim deed does not detail the ROW, but generally provides as follows:

> The Parcel conveyed hereby includes the benefit of and is subject to any matters of record, casement, rights-of-way and visible servitudes and applicable state and local environmental, zoning and subdivision permits, law and regulations (including Act 250 Permit Series No. 5W1243). Lot 1, as referenced in the Act 250 Permit Series No. 5W1243, is subject to the covenants running with the land for the benefit of the State of Vermont, Agency of Commerce and Community Development, Division for Historic Preservation.

A 2023 site plan created by Otter Creek Engineering in relation to a stormwater project documents relevant features of Harwood's property, including the location of the stormwater pond and associated grading. According to the affidavit of Mr. Kris Jurentkuff, senior surveying and engineering technician and project manager at Chase & Chase Surveyors & Septic Designers, Inc., the pond and grading nearly entirely obstruct the ROW, the location of which he depicted in red on the Otter Creek site plan. The Court accepts this evidence as documenting the fact of obstruction.

III. *Analysis*

Short of remedy, there is little to analyze here. The undisputed facts, largely by admission, establish the locations of the ROW and the stormwater pond and the fact that the latter obstructs the former. JSN, the dominant owner, has the right to develop and use the ROW;

Harwood, the servient owner, has no right to obstruct that use. See Restatement (Third) of Property (Servitudes) § 4.10 ("[T]he holder of an easement . . . is entitled to use the servient estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude.").

JSN claims that the obstruction necessarily entitles it to an injunction requiring Harwood to remove the pond and related features so that it may develop its ROW in the location set out in the 1996 State-to-Town of Duxbury deed. JSN may be right, even though that may be a harsh outcome for the defendant school district.

As the Court understands the facts, the ROW remains undeveloped where it would depart from Harwood's driveway. Harwood has admitted the location of the undeveloped ROW by not challenging JSN's evidence. The Court notes, however, that Mr. Jurentkuff's red markup on the Otter Creek plan presumes that the ROW must proceed from the driveway to JSM's property in a perfectly straight line. It is not clear to the Court that the deed language requires precisely that. It appears to say only that the ROW will "correspond" with what became the driveway such that it will "align" with a road on JSM's property. The summary judgment record does not address this matter (other than by the conclusory presumption that "align" requires a straight line, which this Court is not obligated to accept on its face), and it may reflect on whether there is room to reasonably locate the undeveloped portion of the ROW to ensure that JSM receives its benefit while Harwood does not suffer a harsh and expensive result. Moreover, there could be other circumstances that counsel in favor of flexibility.

The general rule is that once a surface easement is located on the ground, it may be relocated only with the consent of both the dominant and servient owners. See *Sweezey v. Neel*, 2006 VT 38, ¶ 10, 179 Vt. 507. There is at least some uncertainty in this record whether the deed so specifically locates the ROW that it cannot reasonably accommodate the pond. Moreover, as *Sweezey* expressly points out: "Although the owner of an easement is generally entitled to injunctive relief when the servient estate encroaches upon the easement, the trial court **is not necessarily confined to requiring the removal** of the encroaching structure irrespective of the extent or impact of the encroachment." *Id*. ¶ 12 (citation removed, emphasis added).

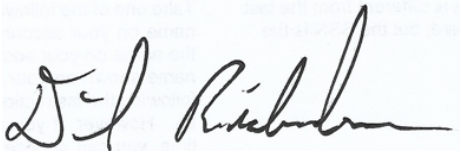
Given the circumstances, including Harwood's curious silence in the face of such a potentially harsh remedy, the Court declines on this record to resolve the precise nature of the injunctive relief to which JSN will be entitled. This case will be scheduled for a status

conference to determine next steps.

ORDER

For the foregoing reasons, JSN's motion for partial summary judgment is **granted in part** and **denied in part**.

Electronically signed on 9/22/2026 5:41 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge