

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-09-111

ROBERT F. ALMEDER et al.,)
)
)
) Plaintiffs,)
)
v.)
)
TOWN OF KENNEBUNKPORT and)
ALL PERSONS WHO ARE)
UNASCERTAINED,)
)
) Defendants.)

PLAINTIFFS’ MOTION *IN LIMINE*
TO EXCLUDE TESTIMONY BY
EDWIN A. CHURCHILL

NOW COMES Plaintiffs, by and through their undersigned counsel, and hereby files the following Motion *in limine* to exclude testimony by Town of Kennebunkport’s (the “Town”) designated expert, Edwin A. Churchill.

FACTS

The Town claims for the purposes of this trial that the public has established a prescriptive easement over Plaintiffs’ properties for recreational purposes. On July 29, 2011, the Town designated historian Edwin A. Churchill as its historical expert in this case. Specifically, the Town stated that “Mr. Churchill will testify concerning Maine’s colonial history, and specifically as it relates to the use of Goose Rocks Beach, and the Use of Goose Rocks Beach and other coastal beaches in Maine as a Road.” Town’s Expert Designation at 3.

On June 1, 2012, Plaintiffs deposed Mr. Churchill. Mr. Churchill testified that his opinion specifically relates to the historical time period of 1620 to 1720. (Churchill Deposition at 9). Consistent with the Town’s designation, Mr. Churchill stated that he will be testifying that beaches in Maine were historically used as public roads. *Id.* at 14. Mr. Churchill further testified that those travelling on Maine coasts from 1620 to the 1700s did so to get from one

place to another. *Id.* at 29. At no time during his deposition or by way of the Town's expert designation has there been any indication that Mr. Churchill will testify as to recreational uses of Goose Rocks Beach during the historic period of 1620 to 1720.

ARGUMENT

Mr. Churchill's testimony regarding the use of Maine beaches as public roads 300 years ago is not relevant to the Town's claim of a public prescriptive easement for recreation. Relevant evidence is any evidence that has "a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." M.R. Evid. 401. While relevant evidence is admissible unless limited by law, "[e]vidence which is not relevant is not admissible." M.R. Evid. 402.


In this case, Mr. Churchill's testimony regarding the use of Maine's coastline as public roads from 1620 to 1720 has no bearing on whether the public has acquired a recreational prescriptive easement. First, the time period of such testimony is extremely far removed from the recreational prescriptive period sought by the Town. What uses the public may have made of the beaches for travel 300 years ago does not support the Town's claim of a recreational prescriptive easement.

Second, in this case, the Town is claiming that the public has the right to *stay* on beach property for the purpose of recreation, which includes walking. Mr. Churchill's testimony on use of Maine coastline as a road supports a claim for what is essentially a *right of way* over property for the purposes of *travel* and does not evidence a right to stay on the beach and generally recreate.

Therefore, in the interests of judicial efficiency and to spare Mr. Churchill the inconvenience of travelling to Portland to testify for trial, Plaintiffs respectfully request this

Court exclude Mr. Churchill's testimony regarding use of the Maine Coastline 300 years ago as a public road.

Dated: August 10, 2012



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NOTICE

Pursuant to Rule 7 of the Maine Rules of Civil Procedures and the Court's oral order issued August 2, 2012, opposition to this Motion must be filed not later than Friday, August 17, 2012. Failure to file a timely objection will be deemed a waiver of all objections to this Motion which may be granted without further notice or hearing.

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ORDER

UPON CONSIDERATION of Plaintiffs’ Motion in Limine to Exclude Testimony By Edwin A. Churchill, with/without opposition, and with/without hearing, the motion is GRANTED.

IT IS SO ORDERED that testimony by the Town of Kennebunkport’s designated expert, Edwin A. Churchill, regarding the use of Maine’s coastline as public roads from 1620 to 1720 has no bearing on whether the public has acquired a recreational prescriptive easement is excluded. Neither the Town nor any other party may offer testimony, via Mr. Churchill or other witness, relating to the use of Maine’s coastline or beaches as a public road. The clerk is directed to incorporate this Order into the docket by reference. M.R. Civ. P. 79(a).

Dated: August _____, 2012

Justice, Superior Court