THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2019-0688

LAUREN SHEARER

v.

TOWN OF RICHMOND, RON RAYMOND & SANDRA AUVIL

MANDATORY APPEAL PURSUANT TO SUPREME COURT RULE 7 OF THE DECISION ON THE MERITS OF THE CHESHIRE COUNTY SUPERIOR COURT

ANSWERING BRIEF FOR PLAINTIFF

Lauren Craig Shearer, *pro se*
1 Old Loudon Road
Concord, NH 03301
(603) 380-5760

Lauren C. Shearer will argue the case.

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STATUTES

(This Answer Brief has been structured, to the extent possible, to mirror the structure of the Opposing Brief to aid in cross-reference by the Court.)

STATEMENT OF CASE AND FACTS: CORRECTIONS[1]

The Defendants incorrectly state that, "Before it was discontinued, the road's southern terminus was Whipple Hill Road. Apx. 18 – 21." OB. 9. This is incorrect and likely to cause confusion. The 1766 layout of what is now called Bowker Road clearly states "...than running southerly to Warwick line...".OB. 9. Warwick is the town in Massachusetts approximately 1000 feet south of the discontinued portion of Bowker Road. That ~1000 feet was laid out in 1766 as part of the discontinued road, was retained by the Town and now is part of Whipple Hill Road. It also serves as the frontage of one of the Defendants' 2 homes. This may be important if the layout terminii of the discontinued road are scrutinized (terminii of the 1766 road layout are at Barrus Road and Town line at Warwick, MA).

Defendants also state, "Finally, he was aware that there was nothing in writing from Raymond or Auvil, or their predecessors in title, that granted him, or his predecessors in title, an easement to cross their land. Tr., p. 75-

[1] Citations to the records are as follows:
"**OB"** refers to the Opposing Brief;
"**AB"** refers to this Answering Brief;
"**Add.**" refers to the Addendum attached to Lauren Shearer's opening brief;
"**Apx.**" refers to the separate Appendix submitted by Lauren Shearer with his opening brief;
"**PB**" refers to the petitioner's brief; and
"**Tr.**" refers to the consecutively-paginated transcript of the trial, held April 15, 2019.

76." OB. 12. This statement grossly oversimplifies the Plaintiffs position. As is clear from the transcript pages noted, the Plaintiff considers the 1766 layout as something in writing, granting him an easement to cross their land. Both Plaintiff and Defendants predecessors-in-title were party to this presumed valid layout. Merriam-Webster defines deed (https://www.merriam-webster.com/dictionary/deed) as**: "**a signed and usually sealed instrument (see instrument entry 1 sense 5) containing some legal transfer, bargain, or contract." The 1766 layout article appears to satisfy this definition. Apx. 3.

ARGUMENT

To simplify the issues presented to the Supreme Court in this appeal process, the Plaintiff makes the following observation. The Defendants were served with the pleading for the action in the Superior Court on 08/01/2018. AB. 34. Under Rule 9 of the Superior Court Rules, all Defendants were afforded 30 days to provide an Answer or other responsive pleading stating "in short and plain terms the pleader's defenses to each claim asserted". On 08/24/2018, Defendants Raymond/Auvil separately filed their Answers, and Motions to Dismiss. AB. 35. These responses pleaded no affirmative defences as detailed and enumerated in Rule 9(d) of the Superior Court Rules. Under the strictures of Rule 9(d) that action does now "constitute waiver of such defenses". As of the Superior Court clerk's notices of 11/26/2018, the Superior Court also denied both remaining

Defendants Motions to Dismiss. AB. 30-33. Raymond and Auvil, having neither sought Reconsideration nor appealed the order to the Supreme Court, should now be precluded from using any such affirmative defenses in the appellate process.

The Defendants do not contest: the validity of the 1766 layout of Bowker Road; that the 1766 layout took the viatic use rights for a 3 rod wide strip of land to the west side of marked trees for use of a public highway to be held in trust by the Town; that the creation of Bowker Road reserved viatic use rights to the public held in trust by the Town and, by the act of its creation, created separate rights of access held by all abutters to the road; that the 1898 discontinuation only partially discontinued the road and the remaining 1000+ feet going to the Massachusetts border is now incorporated in Whipple Hill Road (the frontage to the Defendants' 580 Whipple Hill Road property); Bowker Road's existence and use for residential and agricultural purposes until 1898; the validity of the 1898 discontinuance vote; that after the 1898 discontinuance both Plaintiff and Defendants or their predecessors-in-title continued to hold the fee in the soil under the 3 rod strip adjacent to their properties (Plaintiff to center line, Defendants across whole strip); that Bowker Road borders the Plaintiff's property and several other lots that otherwise have no access to the maintained road network. OB. 15.

The Defendants argue that, under New Hampshire common law, when a town discontinues a road, absolute title to the land reverts to those who hold the fee simple in the roadbed. This is where the Plaintiff and Defendants positions diverge. Defendants cite numerous cases purporting to support this theory. We consider each section of their argument from their Opposing Brief.

A. Standard of Review for Cross-Appeal

The Plaintiff does not contest their position on the standard of review for their questions.

B. When Bowker Road was discontinued, absolute title to the roadbed reverted to Raymond and Auvil's predecessors in title, and therefore Shearer does not have a common law easement to use the road.

1. The Defendants cite Sleeper v. Hoban Family P'ship, No. 05-E-086, 2009 N.H. Super. LEXIS 9 at *7 (Belknap Co. Superior Ct., Jan. 8, 2009). OB. 15. This is not a Supreme Court precedent, but a decision made on remand. Its conclusions are not binding on this Court. It is purported to support the idea that "when a town discontinues a road ... absolute title to the land reverts to those who hold the fee simple in the roadbed." The Supreme Court case from which it was remanded involved res judicata,

which the Defendants have waived, as mentioned above. AB. 9. As such, Sleeper v. Hoban Family P'ship is not applicable to the instant case.

2. To further support the idea of reversion to absolute title on discontinuance, the Defendants cite Avery v. Rancloes, 123 N.H. 233, 237 (1983) (explaining that after the town discontinued the road, the property owner had title to the land which had been part of the road and "[t]here was nothing legally to distinguish the land which had constituted the road from the surrounding land."). OB. 15. In Avery, the "...nothing to legally distinguish..." arose from unity of title in the parties' common predecessor-in-title at the time of discontinuance, not the discontinuance in and of itself. This case is factually distinct from the instant case, because in Avery the parties involved had a common predecessor in title at the time of the road discontinuance. As a general rule, one cannot have an easement against oneself. Thus, for all successors-in-title, all easement in the road, when this unified property is later severed and conveyed is gone unless explicit reservation is made at conveyance. From Blaisdell v. Raab, 132 N.H. 711 (1990) According to the law of easements, a landowner cannot have an easement over his or her own property independent from the ownership of it. *Hayes v. Moreau,* 104 N.H. at 125, 180 A.2d at 439; *cf.* 25 Am. JUR. 2d *Easements and Licenses* § 24 (1966).

In the instant case, there was no unity of title in Plaintiff and Defendant's holdings at the time of the road discontinuance. Without such

unity no dissolution of the Plaintiff's easement would occur. For this reason, Avery v. Rancloes is not applicable to the instant case.

3. Defendants also cite Sheris v. Morton, 111 N.H. 66, 71-72 (1971) (affirming that title to the a full roadbed that ran between the defendants' land and the ocean reverted back to the defendants when the road was discontinued). OB. 15. This case does not mirror the instant case as it concerns title to the roadbed of a discontinued road. No question as to fee owners in the discontinued road bed exists in the instant case. In Sheris, title reverted to the road abutters. The other side of the discontinued road was the ocean. The continued existence of the easement, in Sheris, was not under review. Land locking was not under consideration in Sheris. For these reasons, it lacks applicability to the instant case.

4. In citing Nylander v. Potter, 423 Mass. 158 (Mass. 1996), OB. 17., the Defendants suggest that Massachusetts rejects the theory of "common law easements".

Although Nylander was mentioned in Plaintiff's Requests for Rulings of Law, it was not cited in the Order this Court is reviewing. The 'no-"common law easements"' position is not supported by a thorough reading of Nylander. From the case summary:

> "Landowners who owned property on both sides of a road discontinued as a town road in 1879 had full ownership interest in

the roadbed; where abutters to the road further down the way did not claim an express easement, did not support their claim of easement by prescription, did not demonstrate conduct that would warrant an easement by estoppel and could not claim an easement by necessity, the abutters had no right to pass over the other landowners' stretch of the road. [161-163]"

What was rejected, during the Nylander second appeal, was detailed thusly:

"We reject both the Appeals Court's theory of a so-called "abutter's easement,' and the Superior Court's theory of a "public access" private way as contrary to settled Massachusetts law."

From its endnotes:

"[Note 10] Cf. Rexroat v. Thorell, 89 Ill. 2d 221, 228-229, cert. denied, 459 U.S. 837 (1982) (majority of other States hold that private easement which existed prior to abandonment of public way. survives; otherwise, easement only implied if reasonably necessary for means of ingress or egress). We believe that sound public policy supports this result because an easement founded ***solely*** on the fact that land abuts a former public way would leave no indication in the public records and could prove disruptive to the title examination systems of this Commonwealth." (emphasis added).

The Nylander case states:

> "The record discloses no conduct by the Nylanders or their predecessors in title that would warrant an easement by estoppel."

That the parties in Nylander all had alternative access to maintained roads made any such an easement not "reasonably necessary". As no land locking occurred, as it has in the instant case, Nylander is not as the Defendants suggest, "...a Massachusetts case with factual circumstances virtually identical to the case at bar." *OB p.17.*

Please note, [Note 10] from Nylander above counters the Defendants assertion that: "This theory of common law easement has never been recognized by this Court and has been rejected by numerous jurisdictions.". *OB p.16.*, in that Nylander states, "majority of other States hold that private easement which existed prior to abandonment of public way, survives".

5. Also cited by the Defendants is Rudewicz v. Gagne, 582 A.2d 463 (Conn.App. Ct. 1990). OB. 18. This is an appeal of a summarily dismissed case based on Connecticut statute. In Rudewicz, the Plaintiff argued that the statute enacted in 1959 should protected his rights in a road discontinued in 1910 retroactively. No other issue was before that court. The summary judgment to dismiss was affirmed.

Comparatively, in the instant case, the similar New Hampshire Statute of 1943 was not argued in the court below to have applied retroactively, but that the 1943 statute codified existing common law precedent in New Hampshire. This is apparently the rationale accepted by the Superior Court in deciding. And as Rudewicz is a case based on Connecticut statute rather than common law, it provides no support for the Defendants' case in this action.

6. Further, Frederick v. Consolidated Waste Serv., Inc., 573 A.2d 387 (Me.1990) OB. 18. cited by the Defendants also provides no help. This case involved a land locking from a road discontinued in 1950. As this Maine case involves events that occurred after New Hampshire had enacted statutes that would govern the same situation, it was and is inapplicable. The court concluded that the Fredericks had failed to establish that CWS's land was subject to any easement. It had been noted of the plaintiffs in their appeal that, "The Fredericks presented no evidence to establish an easement by estoppel, see Bathport Bldg, Inc. v. Perry, 490 A.2d 663, 665-66 (Me.1985), and we find no merit in their claim of an implied easement." Both the establishment of an easement and the probability of easement by estoppel differentiate Frederick from the instant case.

7. Similarly, Warchalowski v. Brown,17 A.2d 425, 428 (Me. 1980), OB.18. cited by the Defendants, involves a road discontinued in 1951. As this is also after the enactment of An Act Relative to Discontinuance of

Highways, ch. 68, § 1-a (1943), common law was, again, superseded by New Hampshire statute, making Warchalowski, irrelevant to the instant case.

8. The Defendants attempt to characterize the cases cited in the Order below as inapplicable. Okemo Mountain Inc. v. Town of Ludlow,762 A.2d 1219, 1224 (Vt. 2000); State ex rel. OTR v. City of Columbus, 667 N.E.2d 8 (Ohio 1996); Moore v. Comm'r Court of McCulloch County, 239 S.W.2d 119 (Tex. Civ. App. 1951), Smith v. State Highway Comm'n., 346 P.2d 259 (Kan. 1959), are characterized as concerning government overreach, and Southern Furniture Co. of Conover, Inc. v. Dep't of Transp., 516S.E.2d 383 (N.C. Ct. App.1999) is characterized as a contract dispute. Sebree v. Bd of County Comm'r, 840 P.2d 1125 (Kan. 1992) is suggested to be merely a question of whether land abutted an old highway. OB. 20-23.

The common thread underlying these decisions is that of estoppel. The conclusions rely on the basis of past agreements. These cases provide support for the existence of the easement in the instant case. Such reasoning also provides a basis for modifying the decision of the court below to limit the easement to 16 feet, to a limit of 3 rods (50 feet) stated in the presumed valid road layout of 1766 in the instant case.

The Defendants suggest Gillmor v. Wright, 850 P.2d 431, Mason v. State, 656 P.2d 465, and Hague v. Juab County Mill & Elevator Co., 107 P.

239, to be inapplicable based on their presumed "established New Hampshire common law principle that fee simple to a discontinued road reverts back to the underlying property owner." OB. 24. The layout of Bowker Road did not take fee in the soil, but merely viatic use rights across this 3 rod wide strip, which was described in a metes and bounds style description as:

> "to extend three rods in width through out the west side of the said marked trees for the marked is all on the east side of said way and to be open for public use forever as witness our hands."*OB p.31*

Absolute title to this strip was not acquired by the town, merely a servitude across it, so their argument regarding the fee is without merit. They further argue, "There is no reason why Shearer's property interests should be prioritized over Raymond and Auvil's...". They fail to note that the defendants continue to enjoy access to the system of maintained road via the ~1000 ft. of Whipple Hill road frontage that was created by the same layout of 1766. A road frontage that still receives maintenance by the Town. A road frontage that allowed the installation of utilities and enabled the construction of a residence Tr. 122 and for a short time a farm Tr.148. The Plaintiff is not asking for prioritization, but to merely be afforded equal opportunity. In an ironic twist, it is Raymond and Auvil's property interests that should not be prioritized over other Bowker Road property owners, including the Plaintiff.

9. Paul v. Carver, 24 Pa. 207 (Pa. 1855), is noted by the Defendants without specific reference. OB. 16. That decision appears to have been overturned by the later Paul v. Carver 26 Pa. 223 (Pa. 1856). Of particular note is that the analysis in Paul v. Carver, 26 Pa. 223, 225-26 (Pa. 1856) contradicts the Defendants position that there is no 'common law easement'. Excerpted text from Paul is included inline below.

> "...The general rule is well established that where a stream not navigable is called for in a deed as a boundary or monument, it is used as an entirety to the centre of it, and to that extent the fee passes. It would require an express exception in the grant, or some clear and unequivocal declaration, or certain and immemorial usage, to limit the title of the grantee, in such cases, to the edge of the river: 3 Kent's Com. 428. So land bounded by an artificial ditch extends to the centre of the ditch: 6 Conn. 471. So, where a street is called for as a boundary, the title passes to the centre of the street. " The law with respect to public highways and to freshwater rivers is the same, and the analogy perfect as concerns the right of soil. The presumption is that the owners of the land on each side go to the centre of the road, and they have the exclusive right to the soil subject to the right of passage in the public; 3 Kent's Com. 432. Chancellor Kent declares that " the established inference of law

is that a conveyance of land bounded on a public highway, carries with it the fee to the centre of the road, as part and parcel of the grant: .The idea of an intention in a grantor to withhold his interest in a road to the middle of it, after parting with all his right and title to the adjoining land, is never to be presumed. It would be contrary to universal practice; and it was said in Peck v. Smith, 1 Conn. Rep. 103, that there was no instance where the fee of a highway, as distinct from the adjoining land, was ever retained by the vendor. It would require an express declaration, or something equivalent thereto, to sustain such an inference 3 Kent's Com. 433. If no other reason could be assigned in support of this rule of construction, the general understanding of the people, and, the extensive and immemorial practice of claiming and acquiescing in such rights, ought to have great weight. A contrary opinion would introduce a flood of unprofitable litigation. But the rule has its origin in a regard to the nature of the grant. Where land is laid out in town lots, with streets and alleys, the owner receives a full consideration for the streets and alleys in the increased value of the lots. The object of the purchasers of lots is to enjoy the usual benefits of the streets. The understanding always is that houses may be erected fronting on the streets, with windows and doors, and doorsteps and vaults. These latter always extend beyond the line of the street, and it is necessary

that they should so extend. If a right of property in the streets might, under any circumstances, be exercised by the grantor, he might deprive his grantee of the means of entry into or exit from his house, and of all the enjoyments of light and air, and might thereby deprive him of the means of deriving any benefit from his purchase. In large cities vaults under the sidewalks for receiving fuel and other necessaries are almost universally constructed. In some instances where lots are owned by the same person on each side of the street, these vaults extend entirely across it, forming an under-ground communication between the two properties. Shade trees, posts, awnings, and many other convenient structures, are constantly erected. All these might be prohibited by the original grantor, if his right of property remained after parting with the lots. If the streets were to be vacated, of what value would they be to the original grantors, unless for the purposes of annoyance to the lot owners? A long strip of ground fifty or one hundred feet wide and perhaps several miles in length, without any access to it except at each end, is a description of property which it is not likely either party ever contemplated as remaining in the grantor of the lots on each side of it. Influenced by these considerations, the law has carried out the real intention of the parties by holding that the title passed to the centre of the street ***subject to the right of passage***. Where a street is called for as a

> boundary it is regarded as a single line. The thread of the road is the monument of abuttal: 8 Cush. 595. Measurements are of small importance where monuments are called for. Monuments control measurements..."(emphasis added)

The "subject to the right of passage" would appear to include the right of access that accrues to abutters upon layout of a public road. This excerpted analysis appears applicable whether or not the grantor is all of the predecessors-in-title of the land owners abutting Bowker Road, or if the grantor is the Town of Richmond re-granting the easement back to the Bowker Road abutters upon discontinuance.

C. Standard of Review for Appeal

The Defendants cite Balise v. Balise, 170 N.H. 521, 526 (2017) to support their "Rule of Reason" argument. We note that the Court in Balise used reasonableness to clarify expanded rights not specified by the evidence submitted, not diminish the rights held. These included the right to install utilities in a road discontinued under RSA 231:43.

In the instant case, the 1766 layout is explicit that the width of the easement is '3 rods'. The Order under cross-appeal has no reference to reason or reasonableness in its determination. New Hampshire easement

cases can be complex and many look at both layouts and prescriptive use to determine rights. It would appear the analysis by the court below used the type normally applied to roads formed by prescription. The finding of the court below appears contrary to precedent. See Coffin v. Town of Plymouth, 49 N.H. 173, 173 (1870)("Where a tract of land of the usual width of a highway has been used as a highway, although only part of the width has been used as a travelled path, such use is evidence of a right in the public to use the whole tract as a highway"); see also Hoban v. Bucklin, 88 N.H. 73 (1936) (determining the usual width of public highways was 3 rods). 3 Rods (50 feet) was the usual width of a highway in 1766. Apx. 3. It remains the minimum standard for rural roads today. Apx. 50. Easements include all other rights necessary to use them (for instance, maintenance). Since the scope of this easement includes "residential and agricultural use" Add. 44, the order needs to be modified, at a minimum, to suit those purposes.

Defendants also attempt to use Cote v. Eldeen, 119 N.H. 491, 493 (1979) to bolster their case. OB. 26. Cote is not applicable here as their easement was "limited to reasonable use" because the parties had previously agreed to a stipulation whose meaning had to be clarified by the Court. No such stipulation exists in the instant case.

Even if this Court should agree with the theory of "rule of reason", the Defendants own cited case of Heartz v. City of Concord, 148 N.H. 325,332

does not support their position. OB. 26. Heartz, 148 N.H. at 331 (explaining that the rule of reason applies at two points in the analysis of written easements: (a) to interpret any unclear language in the deed granting the easement; and (b) to determine whether a certain use of the easement would be unreasonably burdensome).

It is the Plaintiff's contention that the law laid down by the proprietors of the Town of Richmond with the parties predecessors-in-title in its 1766 layout is clear, especially regarding the width of the road.

D. The trial court's decision regarding the scope of the easement is supported by the evidence.

The Plaintiff is not contesting the evidence. It is the Plaintiff's position that "the aforesaid way to extend three rods in width" is not ambiguous. OB. 31. The agreement between the Town of Richmond and the ancient Bowker Road abutters is the law that governs that collaboration. The parties in the instant case are in privity with those abutters through the predecessor-in-title relationship. Evidence is not being contested. Interpretation of the law as laid out in the warrant article of 1766 ***is*** being contested. Interpretation of how the parties, in the present day, are bound by that law is being contested.

Defendants contest that the layout is a deed. From Merriam-Webster defines deed: **"**a signed and usually sealed instrument containing some legal transfer, bargain, or contract."AB. 8. The 1766 layout appears to comply. Apx. 3.

The Defendants further say, "The 1766 road layout was a town instrument, not a deed from Raymond and Auvil's predecessors in title. Whatever "intent" the municipal authorities may have had in laying out the road does not bind Raymond and Auvil." This assertion is patently absurd. The frontage of 580 Whipple Hill Road owned by the defendants was defined by the 1766 layout and is still a town maintained road. That Raymond and Auvil are not bound by the consequences of the road layout is incomprehensible.

E. Shearer's argument that Raymond and Auvil's use of the old road must "cede to accommodate" his use has no merit and was not preserved.

Here the Defendants are arguing to prevent the posing of questions that were not asked by the Plaintiff, and against absolute restrictions upon them that were not suggested by the Plaintiff. The section of the Plaintiff's Opening Brief discussed describes the effect more regular use of the easement by the dominant estate will have. As the easement is a right-of-way, those things that interfere with that right-of-way (ie. gates, stumps,

encroaching growth, etc.) may be altered or removed so that the easement may be used for its purpose. See White v. Hotel Co., 68 N.H. 38, 42 (1894) ("The grantee of a defined way has the right to do whatever is necessary to make it passable or usable for the purposes named in the grant.").

F. The reference to liability in the trial court's order was dicta.

The Plaintiff has no issue if this is true.

G. The reference in the order to the property being in gates and bars was dicta

The Plaintiff has no issue if this is true.

H. Final Comments

The Plaintiff's summary of the salient features of this case is as follows:

- Proprietors of the Town of Richmond and the parties predecessors-in-title collaborated/planned to layout a road in Richmond in 1766.
- Upon ratification by a vote at Town Meeting, the road was constructed on a pre-marked 3 rod wide strip for use by the public, the viatic use rights to be held in trust by the Town.
- Consequently, abutters to the aforementioned strip accrued rights (not a licence) in addition to those rights held by the Town, for the purpose of accessing their properties, and the rest of the maintained road network, from this road.

- Said abutters relied on those rights for 120+ years to access and convey their properties.
- In 1898, the Town discontinued a major portion of the road, from present day Barrus Road to present day Whipple Hill Road. The remaining portion of the road became the last ~1000 feet of Whipple Hill Road going to the Massachusetts border.
- This discontinuance released the rights being held in trust by the Town for the public for this major portion of the road. It relieved the Town of liability and maintenance obligations for the same portion of the road.
- Discontinuance is not an anti-layout. No evidence is before this Court that the Town engaged in inverse condemnation. No theory of easement termination has been argued, nor can they now be argued by virtue of the application of Rule 9 of the Superior Court.
- Maintaining the holding of the court below, with respect to the width of the easement, appears to undermine the nature of property rights in New Hampshire. Its holding not only damages the Plaintiff by diminishing his ability to utilize and dispose of his Residential/Agricultural property as he sees fit. It also undermines reasonable expectations of anciently defined easements throughout New Hampshire, public and private.

CONCLUSION

For the reasons set forth above, the Trial Court's decision declaring the width of the Bowker Road easement to be 16 feet in width should be modified to change the width to the 3 rods (50 feet) stated in the 1766 layout, in order to be consistent with standing construction rules. As well removal of the language restricting the road use to agricultural and residential purposes should be removed. Any inference of increased liability to the plaintiff stemming from his exercise of his easement rights should likewise be removed. Additionally, any confusing text from the order that erroneously indicates Bowker Road is Class VI should be modified by removal. See Add. 46,50,52.

Respectfully submitted,

Lauren C. Shearer, *pro se*

Dated: August 3, 2020

By : /s/ Lauren C. Shearer
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REQUEST FOR ORAL ARGUMENT

Pursuant to New Hampshire Supreme Court Rule 16, the Plaintiff hereby requests 15 minutes oral argument. Lauren C. Shearer, Plaintiff *pro se*, shall present oral argument.

CERTIFICATE OF COMPLIANCE

Pursuant to New Hampshire Supreme Court Rule 26(7), I served the foregoing document upon Clara E. Lyons, Esq. the attorney of record for the Defendants by electronically filing it with the Clerk of Court using the Court's electronic filing system, which will automatically send email notification of such filing to registered attorneys of record.

Dated: August 3, 2020 /s/ Lauren C. Shearer
Lauren C. Shearer

CERTIFICATION AS TO WORD COUNT

The undersigned certifies that the above brief consists of 4961 words, exclusive of the Table of Contents and Table of Authorities.

Dated: August 3, 2020 /s/ Lauren C. Shearer
Lauren C. Shearer

CERTIFICATION CONCERNING TRIAL COURT DECISIONS

The undersigned certifies that the written Superior Court's Orders: Motion for Dismissal of Paragraph 4-19 and 21-25: Motion Denied, and Motion for Dismissal of Paragraphs 4-25: Motion Denied, are are included in the Addendum at pages 30 through 33.

Dated: August 3, 2020 /s/ Lauren C. Shearer
Lauren C. Shearer

ADDENDUM

Table of contents:

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Cheshire Superior Court
33 Winter Street, Suite 2
Keene NH 03431

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

File Copy

Case Name: **Lauren C Shearer v Town of Richmond, et al**
Case Number: **213-2018-CV-00114**

Enclosed please find a copy of the court's order of November 20, 2018 relative to:

Motion for Dismissal of Paragraph 4-19 and 21-25: Motion Denied

November 26, 2018

Daniel J. Swegart
Clerk of Court

(555)

C: Lauren C Shearer; Ronald Raymond; Sandra Auvil; Joseph Scott Hoppock, ESQ

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Cheshire Superior Court

Case Name: Lauren C Shearer vs Town of Richmond, Ronald Raymond & Sandra Auvil

Case Number: 213-2018-CV-00114
(if known)

MOTION FOR: Dismissal of paragraphs 4-19 and 21-25

1. Name of Person filing Motion Ronald Raymond
   Relationship to case: defendent
2. Attorney Name _____ Bar ID# _____
3. The specific basis is or reasons for my Motion are as follows:
See attachments

4. I request the following relief:
Materials, mileage, >4 days of my time, threat resulting in canceling family visit to watch our property, concerns for son, wife and my ~~safety, not knowing what is going on in Lauren's head; I now have suspicions of him being involved with vandalism we had back around~~ 2008, including shooting out windows with pellet gun. Per what the court deems fair and reasonable amount of monies or $3,000.

8-24-18
Date

Signature

I certify that on this date I provided a copy of this Motion to Plaintiff and all defendents (other party or other party's attorney) by:
☑ Hand-delivery (court) OR ☑ US Mail (Lauren Shearer) OR ☑ E-mail (Town of Richmond) (E-mail only by prior agreement of the parties based on Court Administrative Order).

8-24-18
Date

Signature (must be signed in presence of notarial officer)

State of NH, County of Cheshire

This instrument was acknowledged before me on 8-24-18 by Ronald B. Raymond

My Commission Expires
Affix Seal, if any AIMEE M. HOLLIS, Notary Public My Commission Expires January 27, 2021

Signature of Notarial Officer / Title

ORDER

☐ Motion granted. ☒ Motion denied.

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Date 11-20-18

Signature of Judge

Printed Name of Judge

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Cheshire Superior Court
33 Winter Street, Suite 2
Keene NH 03431

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

File Copy

Case Name: **Lauren C Shearer v Town of Richmond, et al**
Case Number: **213-2018-CV-00114**

Enclosed please find a copy of the court's order of November 20, 2018 relative to:

Motion for Dismissal of Paragraphs 4-25: Motion Denied

November 26, 2018

Daniel J. Swegart
Clerk of Court

(555)

C: Lauren C Shearer; Ronald Raymond; Sandra Auvil; Joseph Scott Hoppock, ESQ

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Cheshire Superior Court

Case Name: Lauren C Shearer vs Town of Richmond, Ronald Raymond & Sandra Auvil

Case Number: 213-2018-CV-00114
(if known)

2018 AUG 24 PM 03:21

MOTION FOR: Dismissal of paragraphs 4-25

1. Name of Person filing Motion Sandra Auvil

   Relationship to case: defendent

2. Attorney Name _____ Bar ID# _____

3. The specific basis is or reasons for my Motion are as follows:
See attachments

4. I request the following relief:

Date _____ Signature _____

I certify that on this date I provided a copy of this Motion to Plaintiff and all defendents (other party or other party's attorney) by:

☑ Hand-delivery (Court) OR ☑ US Mail (Lauren Shearer) OR ☑ E-mail (Town of Richmond) (E-mail only by prior agreement of the parties based on Court Administrative Order).

Date _____ Signature (must be signed in presence of notarial officer) _____

State of NH, County of Cheshire

This instrument was acknowledged before me on 8-24-18 by Sandra L. Auvil

My Commission Expires _____
Affix Seal, if any AIMEE M. HOLLIS, Notary Public ~~My Commission Expires January 27, 2021~~

Signature of Notarial Officer / Title _____

ORDER

☐ Motion granted. ☒ Motion denied.

Date 4-20-18

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Signature of Judge _____

Printed Name of Judge _____

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Cheshire

Case Summary

Case No. 213-2018-CV-00114

Lauren C Shearer v Town of Richmond, et al	§	Location: **Cheshire**
	§	Filed on: **07/24/2018**

Case Information

Case Type: Declaratory Judgment
Case Status: **12/02/2019 Appealed to Supreme Court**

Assignment Information

Current Case Assignment
Case Number 213-2018-CV-00114
Court Cheshire
Date Assigned 07/24/2018

Party Information

Plaintiff	**Shearer, Lauren C**	
Defendant	**Auvil, Sandra** DOB: 08/01/1956	**Lyons, Clara E. ESQ** ***Retained*** 603-634-4300(W)
	Raymond, Ronald	**Lyons, Clara E. ESQ** ***Retained*** 603-634-4300(W)
	Town of Richmond	**Hoppock, Joseph Scott ESQ** ***Retained*** 603-357-8700(W)

Events and Orders of the Court

07/24/2018	Complaint for Declaratory Judgment	Index # 1
07/25/2018	Summons on Complaint	Index # 2
07/25/2018	**Service** Raymond, Ronald Served: 08/01/2018 Town of Richmond Served: 08/01/2018 Auvil, Sandra Served: 08/01/2018	
08/01/2018	Return of Service Party: Attorney Hoppock, Joseph Scott ESQ	Index # 4
08/01/2018	Service	
08/06/2018	Appearance Party: Attorney Hoppock, Joseph Scott ESQ	Index # 3
08/14/2018	Motion to Dismiss Party: Attorney Hoppock, Joseph Scott ESQ	Index # 5

Case Summary

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08/24/2018	Objection Party: Plaintiff Shearer, Lauren C	Index # 6
08/24/2018	Appearance Party: Defendant Raymond, Ronald	Index # 7
08/24/2018	Answer Party: Defendant Raymond, Ronald	Index # 8
08/24/2018	Motion to Dismiss Party: Defendant Raymond, Ronald	Index # 9
08/24/2018	Appearance Party: Defendant Auvil, Sandra	Index # 10
08/24/2018	Motion Party: Defendant Auvil, Sandra	Index # 11
08/24/2018	Answer Party: Defendant Auvil, Sandra	Index # 12
08/24/2018	Motion to Dismiss Party: Defendant Auvil, Sandra	Index # 13
08/29/2018	Response Party: Attorney Hoppock, Joseph Scott ESQ	Index # 14
08/31/2018	Objection Party: Plaintiff Shearer, Lauren C	Index # 15
08/31/2018	Non-Objection to Motion Party: Plaintiff Shearer, Lauren C	Index # 16
08/31/2018	Objection Party: Plaintiff Shearer, Lauren C	Index # 17
09/07/2018	Objection Party: Defendant Raymond, Ronald	Index # 18
09/10/2018	Motion for Summary Judgment Party: Plaintiff Shearer, Lauren C	Index # 19
09/10/2018	Exhibit	Index # 20
09/13/2018	Response to Objection Party: Plaintiff Shearer, Lauren C	Index # 21
09/26/2018	Objection Party: Defendant Raymond, Ronald	Index # 22
09/26/2018	Affidavit	Index # 23
09/27/2018	Objection Party: Attorney Hoppock, Joseph Scott ESQ	Index # 24
09/28/2018	Notice of Intent to Reply Party: Plaintiff Shearer, Lauren C	Index # 25
10/01/2018	**Status Conference** (8:30 AM) *Hearing Held*	
10/01/2018	Structuring Order - Proposed	Index # 26
10/04/2018	Motion to Amend *Summary Judgment with Affidavit* Party: Plaintiff Shearer, Lauren C	Index # 27
10/29/2018	Objection Party: Attorney Hoppock, Joseph Scott ESQ	Index # 28
10/29/2018	Court Order (Judicial Officer: Ruoff, David W)	Index # 29
10/31/2018	Objection Party: Plaintiff Shearer, Lauren C	Index # 30
10/31/2018	Ex Parte Motion	Index # 31

Case Summary

Case No. 213-2018-CV-00114

	Party: Plaintiff Shearer, Lauren C	
11/13/2018	Objection Party: Attorney Hoppock, Joseph Scott ESQ	Index # 32
11/13/2018	Other *Change of Address* Filed by: Plaintiff Shearer, Lauren C	Index # 33
11/13/2018	Motion to Amend	Index # 34
11/20/2018	Objection Party: Defendant Raymond, Ronald	Index # 35
11/20/2018	Denied (Judicial Officer: Ruoff, David W)	
11/20/2018	Denied (Judicial Officer: Ruoff, David W)	
11/20/2018	Granted (Judicial Officer: Ruoff, David W)	
11/20/2018	Approved (Judicial Officer: Ruoff, David W)	
11/20/2018	Denied (Judicial Officer: Ruoff, David W)	
11/20/2018	Granted (Judicial Officer: Ruoff, David W)	
11/20/2018	Denied (Judicial Officer: Ruoff, David W)	
11/26/2018	Response Party: Plaintiff Shearer, Lauren C	Index # 36
11/26/2018	Objection Party: Attorney Hoppock, Joseph Scott ESQ	Index # 37
02/01/2019	Appearance Party: Attorney Lyons, Clara E. ESQ	Index # 38
02/08/2019	Motion to Amend Complaint Party: Plaintiff Shearer, Lauren C	Index # 39
02/19/2019	Objection Party: Attorney Lyons, Clara E. ESQ	Index # 40
02/22/2019	Response Party: Plaintiff Shearer, Lauren C	Index # 41
02/25/2019	Court Order (Judicial Officer: Ruoff, David W)	Index # 42
03/14/2019	Objection *to Motion in Limine*	Index # 43
03/15/2019	Motion in Limine Party: Attorney Lyons, Clara E. ESQ	Index # 44
03/15/2019	Motion in Limine Party: Attorney Lyons, Clara E. ESQ	Index # 45
03/15/2019	Pretrial Statement Party: Attorney Lyons, Clara E. ESQ	Index # 46
03/18/2019	Objection Party: Plaintiff Shearer, Lauren C	Index # 47
03/27/2019	**Trial Management Conference** (1:30 PM) (Judicial Officer: Ruoff, David W)	
03/27/2019	Witness List *and Exhibit List* Party: Plaintiff Shearer, Lauren C	Index # 48
03/27/2019	Final Pre-Trial Order (Judicial Officer: Ruoff, David W)	Index # 49
04/08/2019	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Ruoff, David W) *Continued*	
04/11/2019	Exhibit List *Joint*	Index # 50

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04/15/2019	**Bench Trial** (8:30 AM) *Hearing Held*	
04/15/2019	ADR Report	Index # 51
04/15/2019	ADR - Case Did Not Settle at	
04/16/2019	**Bench Trial** (8:30 AM) (Judicial Officer: Ruoff, David W)	
04/22/2019	Memorandum of Law	Index # 52
04/22/2019	Request Finding-Fact and Ruling-Law Party: Plaintiff Shearer, Lauren C	Index # 53
04/25/2019	Request Finding-Fact and Ruling-Law Party: Attorney Lyons, Clara E. ESQ	Index # 54
04/29/2019	Memorandum of Law *Supplemental Memorandum of Law* Party: Plaintiff Shearer, Lauren C	Index # 55
10/02/2019	Court Order (Judicial Officer: Ruoff, David W)	Index # 56
10/02/2019	**Finding for Plaintiff** (Judicial Officer: Ruoff, David W)	
10/11/2019	Motion to Reconsider Party: Plaintiff Shearer, Lauren C	Index # 57
10/21/2019	Objection Party: Attorney Lyons, Clara E. ESQ	Index # 58
10/23/2019	Denied (Judicial Officer: Ruoff, David W)	
11/12/2019	Taxation of Costs	Index # 59
11/20/2019	Objection	Index # 60
11/25/2019	Response	Index # 61
11/26/2019	Court Order (Judicial Officer: Ruoff, David W)	Index # 62
12/02/2019	Notice of Appeal to Supreme Court	Index # 63
12/09/2019	Notice of Appeal to Supreme Court Party: Attorney Lyons, Clara E. ESQ	Index # 64
12/12/2019	Email-Address Notification or Change Filed by: Plaintiff Shearer, Lauren C	Index # 65
12/12/2019	Motion to Reconsider Party: Plaintiff Shearer, Lauren C	Index # 66
12/16/2019	Objection *to Motion to Reconsider*	Index # 67
01/02/2020	Supreme Court Order	Index # 69
01/06/2020	Court Order (Judicial Officer: Ruoff, David W)	Index # 68
01/13/2020	Motion to Reconsider	Index # 70
01/15/2020	Objection Party: Attorney Lyons, Clara E. ESQ	Index # 71
01/15/2020	Order Made (Judicial Officer: Ruoff, David W)	
02/06/2020	Supreme Court Order	Index # 72