

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-26-128

JEFFREY R. MABEE et al.,

Plaintiffs-Appellants

v.

NORDIC AQUAFARMS, INC. et al.

Defendants-Appellees

On Appeal from Order of Business and Consumer Docket
Docket No.: BCD-REA-2024-00009

BRIEF OF APPELLEE NORDIC AQUAFARMS, INC.

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INTRODUCTION

There was a trial in this case. After that trial, the trial judge found – as fact – that Nordic had a genuine (though ultimately incorrect) belief that it owned the relevant property. Accordingly, the trial court found that Appellants had not sustained their burden of proving that Nordic acted with malice in making any statements of ownership, a necessary element of the slander of title claim that Appellants advanced. It thus entered judgment for Nordic.

Under the applicable standard of review, the question on appeal is whether the evidence at trial compelled a contrary result. *St. Louis v. Wilkinson L. Offs., P.C.*, 2012 ME 116, ¶ 16, 55 A.3d 443. Yet, in their Blue Brief, Appellants hardly discuss the trial court's findings. They certainly do not identify any necessary finding that was not made or any finding that was not supported by adequate evidence. Instead, acting as if this Court is sitting as a new finder of fact, they argue from their preferred interpretation of the evidence – which was rejected by the trial court – that Nordic should be found to have acted with malice. Their entire brief is thus irrelevant to the issue on appeal.

Applying the proper standard of review, there is little to say. The trial court made all necessary findings, and there is a raft of evidence supporting those findings. The decision below should be affirmed.

STATEMENT OF THE FACTS

Consistent with the applicable standard of review, *see infra* at 14-15, the relevant facts, as established in Phase I of this case and as found by the trial court, are as follows.

A. In 2018, Nordic obtained certain rights to real estate that it believed were necessary to develop a land-based aquaculture facility in Belfast.

In 2018, Nordic was pursuing development of an aquaculture facility in Belfast, Maine. II Tr. 2, 86:4-87:3.¹ Nordic purchased the fee interest in the parcel abutting the Little River and Northport Avenue, which bears the compass rose in the image below:

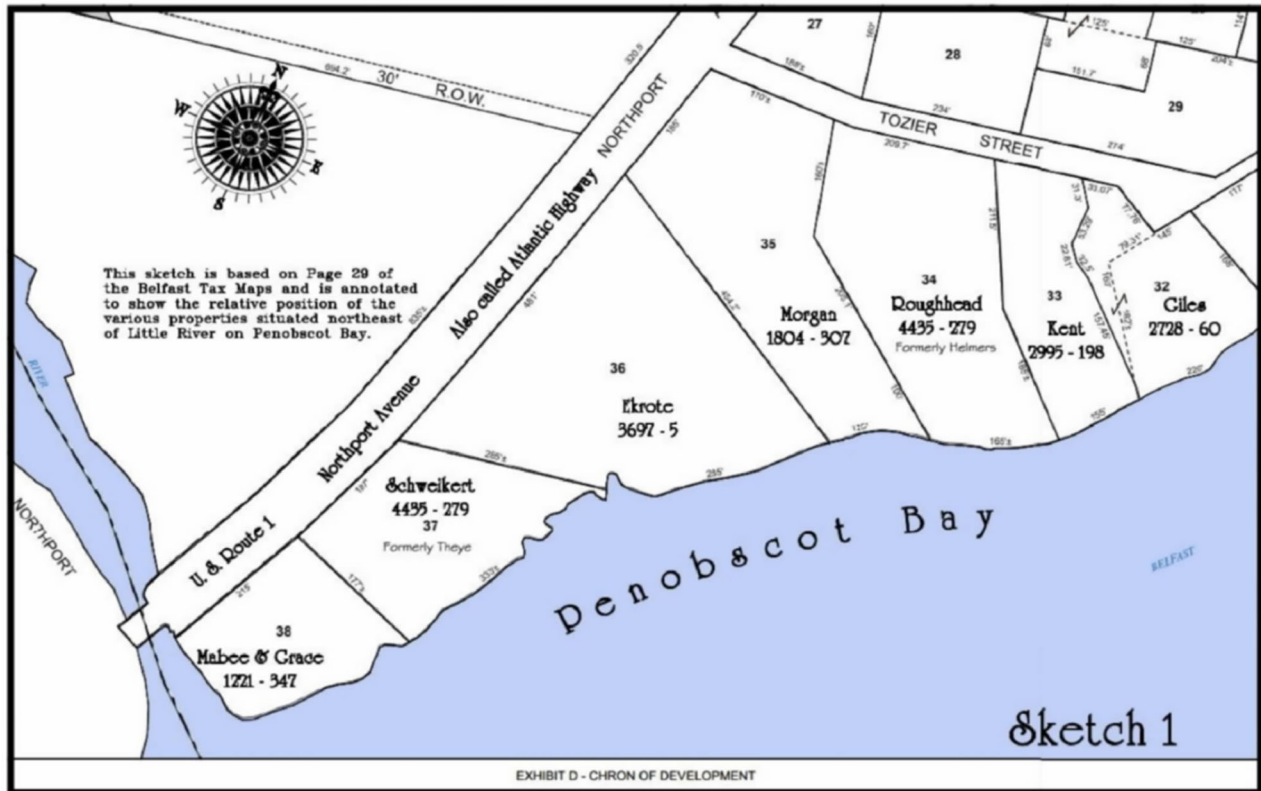


Figure 1

¹ This citation format, which is used for transcript references throughout this brief, indicates the phase of litigation (II), the day of trial (1), page number (165), and line number (17).

Mabee v. Nordic Aquafarms Inc., 2023 ME 15, ¶ 5, 290 A.3d 79 (*Mabee I*). Because the facility would require access to salt water, Nordic investigated several possible locations for utility pipes to carry water to and from Penobscot Bay.² II Tr. 89:11-91:24. Nordic ultimately entered into an easement agreement with a nearby landowner, the Eckrotes, to bury pipes under their lot and under the intertidal flats between the Eckrote upland lot and Penobscot Bay. *See Mabee I* at ¶ 3.

At the time of the agreement with the Eckrotes, everybody, including Appellants, believed that the Eckrotes owned the intertidal land adjacent to their property. I Tr. 2, 70:8-10; II Tr. 1, 149:6-9; II Tr. 2, 93:25-94:3. Nordic then hired a surveyor, James Dorsky, who uncovered discrepancies in deeds from the 1940s and 1950s splitting the mother parcel that ultimately became the Eckrote lot, the Mabee-Grace lot, and the Morgan and Schweikert lots depicted in Figure 1, *supra*. Based on these discrepancies, Dorsky concluded that the owner of the mother parcel, Harriet Hartley, likely died inadvertently retaining ownership of the intertidal flats abutting the Eckrote property. II Tr. 1, 165:17-166:4.

Given the possibility that Hartley died inadvertently owning the intertidal, Nordic sought to obtain release deeds from Hartley's descendants who would have received the intertidal via intestate succession. II Tr. 2, 97:17-98:20. Nordic hired a genealogist who traced the genealogy of Hartley's potential inheritance chain to the present. *Id.*

² Nordic considered purchasing the Mabee-Grace parcel, which had been on the market, or laying pipes underneath the Little River, which would not have required purchasing any additional property rights. II Tr. at 90:21-91:24.

Nordic's experienced real estate counsel undertook the typical process for identifying the living persons who would have obtained ownership of the intertidal. A. 1272. Nordic's CEO conducted her own independent research to identify Hartley's descendants and reached the same conclusions as the genealogist. II Tr. 2, 98:4-101:15. She personally spoke with several of the descendants, and those conversations reinforced for her that Nordic had identified the correct people. *Id.*

As a result of these efforts, Nordic always believed that it had valid property rights in the intertidal, either by means of the lease agreement between the Eckrotes and Nordic, or via release deeds from the descendants of Harriet Hartley. II Tr. 2, 36:11-16, 94:16-95:8; 98:13-101:21. Nordic's CEO developed this belief based on her extensive conversations with Ms. Eckrote regarding the Eckrote family's understanding and use of the intertidal over more than half a century; her conversations with individual descendants of Harriet Hartley; Mr. Dorsky's conclusions; and the common-sense understanding that the owner of an upland parcel likely owns to low-water. *Id.* And Mr. Dorsky himself always believed that either the Eckrotes or the descendants of Harriet Hartley owned the intertidal, and never informed Nordic that Mabee-Grace owned the intertidal.³ II Tr. 1, 217:6-18. Neither Mr. Dorsky nor anyone else working for Nordic ever informed Nordic that Mabee-Grace owned the intertidal land in front of the

³ Nor did anyone at Nordic ever instruct Mr. Dorsky to reach a particular conclusion. II Tr. 1, 217:15-18.

Eckrote property, and nobody at Nordic ever believed that Mabee-Grace owned the intertidal. II Tr. 2, 96:1-24.

Against this backdrop, after Appellants filed their complaint to quiet title, *see infra*, Nordic “never fathomed” losing the quiet title litigation. II Tr. 2, 104:1-3.

B. In Phase I of this case, the trial court found that Nordic’s view of ownership was correct, and this Court then reversed.

Mabee-Grace also analyzed the underlying deeds, and they concluded that Harriet Hartley had actually granted the intertidal in front of all those lots to their predecessors-in-interest, such that Mabee-Grace owned the intertidal in front of their own parcel and three of their neighbors’ lots. Mabee-Grace filed a complaint to quiet title to these intertidal flats. *Mabee I*, ¶ 18. Following a three-day trial that included a visit to the disputed intertidal flats, the trial court held that Mabee-Grace had failed to establish superior title to the disputed flats. *Mabee v. Nordic Aquafarms Inc.*, 2021 WL 6932428 at *2 (Me. Super. Oct. 27, 2021). The trial court (R. Murray, J.) concluded as follows:

The Hartley to Poor deed does not clearly sever the flats from the upland. Its language describing the waterside property boundary is affected by latent ambiguities that cause considerable uncertainty on Hartley and Poor’s intent regarding the intertidal flats. The extrinsic evidence on the issue does not favor plaintiffs’ assertion that Hartley intended to exclude the intertidal flats from her grant; the evidence instead strongly indicates that Hartley intended to include the intertidal flats in her grant.

Id. at *16-17.

Mabee-Grace appealed that decision, and this court vacated and remanded for the trial court to enter judgment in their favor. *Mabee I*, ¶ 61. This Court interpreted the

relevant deeds as unambiguously retaining the intertidal for Hartley and conveying the intertidal in front of all the adjoining parcels in a deed from Hartley to Mabee-Grace's predecessors-in-interest. *Id.* ¶ 52.

C. Following remand, the trial court found as fact that Nordic had a genuine belief that it owned the relevant land and that Plaintiffs had otherwise failed to carry their burden to establish their claims.

Phase II of the case involved Mabee-Grace's claim for slander of title and a claim for declaratory judgment. A. 65-66. Trial took place on October 6 and 7, 2025. A. 59. After hearing all the evidence, the trial court entered judgment in favor of Nordic, finding that "it is far from obvious that [the] Eckrotes did not hold title to the flats, nor that Mabee-Grace held a superior title." A. 63. The court understood "Nordic's belief that the Eckrotes owned the flats, or, at minimum, that Mabee-Grace did not" as "consistent with [the Eckrotes' historical use of the property], the parties' own beliefs, and the judicial presumption that an upland owner also owns the abutting intertidal zone." *Id.* The court pointed to "diligent investigation by Nordic," and rejected as "immaterial" Appellants' challenges to the definition of "heirs" Nordic used in identifying the descendants of Harriet Hartley. A. 64.

Based on these findings, the trial court concluded:

There is no evidence that Nordic acted maliciously or with willful disregard of the available facts, nor was it unreasonable for Nordic to rely on their experts' conclusions. Nordic's un rebutted testimony unequivocally establishes their good faith belief that their asserted interest was valid. That good faith does not disappear merely because they were ultimately wrong.

A. 65.

Following entry of judgment for Nordic, Appellants requested amended findings of fact under Me. R. Civ. P. 52.⁴ The court denied the request to reconsider its decision but did enter additional findings:

As a matter of common sense and physical appearances—to Nordic, any objective observer, and to Mabee and Grace themselves—it appeared highly unlikely that Mabee and Grace owned the flats in front of the Eckrotes’ lot [] which was two lots to the northeast of Mabee and Grace’s lot. Nordic undertook substantial due diligence, relying first on the physical location of the flats in accordance with established Law Court precedence ... and then the opinions of a land surveyor, a title searcher, and a real estate attorney, to determine that they could obtain rights to use the flats. This is more than sufficient to demonstrate they did not act with malice or reckless disregard when asserting rights to the intertidal zone.

A. 69-70. Following the court’s denial of several additional post-trial motions, Appellants filed this appeal.

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the evidence in the record compels the finding that Nordic acted with malice or reckless disregard for the facts in asserting claims to the intertidal.
2. Whether the record compels the finding that Plaintiffs suffered actual or special damages.

⁴ Appellants’ motion consisted of 20 single-spaced pages of proposed “findings” that sought a wholesale reconsideration of the facts found by the trial court. *See* January 16, 2026, Motion to Make Amended and Additional Findings Pursuant to Me. R. Civ. P. 52(b); *cf. also Wandishin v. Wandishin*, 2009 ME 73, ¶¶ 18-19, 976 A2d 949 (affirming denial of a ninety-item motion for additional findings, explaining a Rule 52(b) motion should “concisely indicate the conclusions on which additional fact-finding is desired); *accord Gammon v. Boggs*, 2018 ME 152, ¶ 12, 196 A.3d 900 (in boundary dispute, affirming denial of Rule 52(b) motion that “simply attempts to reargue points”).

3. Whether the trial court correctly denied Appellants' request to order corrective filings that the trial court in Phase I had rejected.

SUMMARY OF THE ARGUMENT

To prevail in this appeal, Appellants must establish that the trial record compels the finding that Nordic acted with a subjectively improper state of mind when making statements about ownership of the relevant land. *See Kelley v. Maine Pub. Emps. Ret. Sys.*, 2009 ME 27, ¶ 16, 967 A.2d 676; Blue Br. at 35; *Lester v. Powers*, 596 A.2d 65, 71 (Me. 1991); Blue Br. at 39. Such a showing is impossible, as there is overwhelming evidence supporting the trial court's conclusions with respect to Nordic's state of mind. Most directly, this includes the testimony of Nordic's CEO, Nordic's retained surveyor, and Nordic's real estate counsel, all of whom testified that they believed Nordic owned the land at issue, all of which the trial court was entirely free to credit. Far less would be sufficient, and Appellants do not even attempt to address this fatal flaw in their appeal. For this reason alone, the Court should affirm the decision below.

This Court could also affirm for the independent reason that the record does not compel a finding that Appellants suffered damages recoverable in a slander of title claim. The trial court heard evidence that Appellants' "carrying costs" were not caused by any cloud on title to the intertidal mudflats down the road but instead by their voluntary choice not to sell the property. It also heard evidence that Appellants had failed to segregate attorneys' fees relating to the quiet title action from those relating to

an eminent domain proceeding and permitting activities. These facts plainly support the trial court's findings that Appellants did not sufficiently prove damages.

ARGUMENT

I. Standard of Review

“To overturn a finding that a plaintiff has failed to prove one or more elements of a claim, the plaintiff must demonstrate that a contrary finding is compelled by the evidence.” *St. Louis v. Wilkinson L. Offs., P.C.*, 2012 ME 116, ¶ 16, 55 A.3d 443. Accordingly, this Court applies the clear error standard with respect to all facts found, and “will affirm those findings, even if the evidence in the record might support alternative findings, unless a contrary finding is compelled by the record.” *Id.* ¶ 17; *Aalberg v. Stevens*, 489 A.2d 1, 3 (Me. 1985) (factual findings should be affirmed if supported by “competent evidence in the record even if other evidence supports contrary findings”). A factual finding is clearly erroneous only when “no competent evidence supports it.” *Grondin v. Hanscom*, 2014 ME 148, ¶ 8, 106 A.3d 1150 (“[T]he weight to be given to a surveyor’s opinion is the prerogative of ... the fact-finder.”).

II. The record does not compel a finding that Nordic acted with malice or reckless disregard for the facts when it asserted claims to the intertidal.

One necessary element of a slander of title claim is “malice,” *i.e.* that the speaker of a slanderous statement knew it was false or acted with reckless disregard of its falsity. *See Colquhoun v. Webber*, 684 A.2d 405, 409 (Me. 1996). The malice required to establish a claim for slander of title is a “purely subjective state of mind.” *Lester v. Powers*, 596

A.2d 65, 71 (Me. 1991); Blue Br. at 39. Neither “inadequate investigation” nor conduct that is “aggressive and premature” is sufficient to establish recklessness or malice. *Harvey v. Furrow*, 2015 ME 149, ¶ 26, 107 A.3d 604. “A reckless disregard for the truth exists only if the speaker had a high degree of awareness of the probable falsity or serious doubt as to the truth of the statement.” *Morgan v. Kooistra*, 2008 ME 26, ¶ 34; *see also* Restatement of the Law (Second) of Torts, § 647 (“A rival claimant is conditionally privileged to disparage another’s property in land, chattels or intangible things by an assertion of an inconsistent legally protected interest in himself.”).

A. The record supports the trial court’s findings that Nordic did not act with malice.

At the risk of understatement, the evidence submitted in the Phase II trial supports the finding that Nordic acted in good faith when it asserted rights in the intertidal flats through the Eckrotes or through release deeds acquired from Harriet Hartley’s descendants. The trial testimony establishes that Nordic always believed it had valid property interests and “never fathomed” losing the quiet title litigation. II Tr. 2, 36:11-16, 94:16-25, 98:13-101:21, 102:24-104:3. The Court need go no farther than that – all that matters is Nordic’s subjective state of mind, *Lester*, 596 A.2d at 71, and the trial court was entitled to credit the direct testimony that Nordic actually believed it had valid property rights.

In any event, Nordic’s belief, while ultimately rejected by the Law Court, was well supported. First, Nordic’s belief was supported by common sense. II Tr. 2, 46:6-

13. It was hardly self-evident that Harriet Hartley intended – without saying so directly – to split the intertidal from three lots such that a fourth lot ended up with hundreds and hundreds of feet of mudflats in front of other people’s property. *See* A. 69 (“As a matter of common sense and physical appearances – to Nordic, any objective observer, and to Mabee and Grace themselves – it appeared highly unlikely that Mabee and Grace owned the flats in front of the [Eckrotes’] lot, Lot 36, which was two lots to the northeast of Mabee and Grace’s lot.”); *cf. also Grondin v. Hanscom*, 2014 ME 148, ¶ 10, 106 A.3d 1150 (“[I]t seems highly unlikely ... that the grantor would have intended to convey a parallelogram shaped piece of land while retaining a remaining triangular piece with shore frontage so limited that one would be hard pressed to enter the lake for a swim without trespassing.”).

Second, consistent with this commonsense understanding, none of the property owners in the area had believed Mabee Grace owned the intertidal. I Tr. 2, 70:8-10 (Plaintiff Mabee did not think he owned the land); II Tr. 1, 149:6-9 (Plaintiff Grace did not think she owned the land); I Tr. 3, 190:7-23 (Janet Eckrote believed she owned the intertidal and no one had ever objected to the Eckrotes’ use of the intertidal); *see also* II Tr. 2, 46:6-24 (Nordic’s CEO testifying that the Eckrotes’ historical treatment of the intertidal led her to conclude they owned it).

Finally, Nordic retained a professional land surveyor, whose opinion at all times was that Plaintiffs did not own the relevant intertidal. II Tr. 229:15-230:13. Mr. Dorsky reached this conclusion following a complete analysis, and he repeatedly stamped

drawings to that effect. II Tr. 1, 217:3-18. As Appellants' own expert acknowledged, such a stamp indicates that the plans represent the considered opinion of a qualified land surveyor and it would be reasonable for a client to rely on such an opinion even in the face of a competing opinion from another surveyor. II Tr. 1, 77:11-81:4.

Any one of these facts is sufficient, on its own, to affirm the trial court's findings, and certainly they are sufficient collectively. *Gutcheon v. Becton*, 585 A.2d 818, 821 (Me. 1991) ("we review factual findings ... for clear error ... and will affirm a court's finding of fact if there is any competent evidence in the record to support it.").

B. Appellants' arguments completely ignore the applicable standard of review.

Despite expending nearly 50 pages of briefing and submitting an appendix that runs well over 1,000 pages, Appellants never actually address the relevant issue. They do not identify a single factual finding that was not supported by record evidence. They do not identify any necessary findings that the trial court failed to make. They do not explain how the trial court's findings are insufficient to support the determination. Appellants instead offer a series of conclusions and characterizations that Justice Duddy squarely rejected after hearing all the evidence. See Blue Br. at 32-33, 41-42. But it is entirely irrelevant whether a factfinder might have reached different conclusions on the same evidence. *Westleigh v. Conger*, 2000 ME 134, ¶ 12, 755 A.2d 518 ("A different factfinder may have reached a different result based on the evidence ... [but appellant], as the party with the burden of proof, can prevail on a sufficiency of the evidence

challenge to a finding that her burden has not been met only if she demonstrates that a contrary finding is compelled by the evidence.”); *cf. also Bartlett v. Lindahl*, 560 A.2d 563, 564-65 (Me. 1989) (“We defer to the court’s assessment of ... credibility” and will not vacate merely because of conflicting evidence.).

Moreover, Appellants never ever explain how these various blends of argument and characterizations compel any particular factual finding, much less a conclusion that Nordic acted with malice. Nordic and the Court are left to guess at what Appellants mean and to which of the Court’s factual findings these characterizations might be relevant. Needless to say, Nordic and the Court should not have to guess or to go hunting for all the evidence in the record that is contrary to Appellants’ argumentative and unexplained characterizations.

On even a cursory review, though, it is apparent that rafts of contrary evidence do exist. Appellants say, for example, that Nordic “knew” that at least three surveyors concluded that the Eckrotes did not own the intertidal land as of November 2018. Blue Br. at 32. But that misses the point. The key question is whether Nordic thought it owned the property, and the record citation Appellants offer directly supports Nordic on this relevant point: Nordic’s CEO explained that the surveys were “repeatedly telling us about the errors” in deeds, that the Eckrotes “never viewed that property as anything other than theirs,” and that “it didn’t make sense [that the] intertidal was separated.” II Tr. 2, 46:3-24. Justice Duddy was persuaded by this testimony, explaining that “Nordic’s belief that the Eckrotes owned the flats, or, at minimum, that Mabee-Grace did not,

was consistent with this history, the parties' own beliefs, and the judicial presumption that an upland owner also owns the abutting intertidal zone." A. 63.

Moreover, Nordic's awareness of possible omissions in the Eckrotes' chain of title does not compel a finding of malice. Quite to the contrary, that awareness is what led Nordic to obtain release deeds from Harriet Hartley's descendants. See A. 65 ("[I]n fact, obtaining both an easement agreement [from the Eckrotes] and the release deeds indicates Nordic sought to acquire their rights from the rightful owner."). Missing from the trial record, and from Appellants' lengthy brief, is anything to suggest Nordic believed that Mabee-Grace owned the intertidal. Nordic did not.

Appellants similarly say that Nordic's awareness of Pennsylvania probate court documents suggesting Hartley believed she had sold all her property during her lifetime, or Nordic's failure to identify Hartley's statutory "heirs," suggests Nordic was acting in bad faith. The trial court squarely addressed the same challenges Appellants raise here and found they "fail[] for multiple reasons." A. 63. For one, "[s]tatements made by another state's probate court seventy-five years ago could reasonably be interpreted differently in the present day." A. 64. There was also "no evidence that the probate court litigated the issue of intertidal land" and Nordic "acted consistently with [the Pennsylvania probate court's] comment" by obtaining an easement agreement from the Eckrotes. *Id.* And Hartley's comment that she died without owning any land in Maine is consistent with the position Nordic advanced that she died inadvertently retaining the intertidal flats. II Tr. 2, 226:21-23. Even more fundamentally, the Phase II trial is

replete with evidence that Nordic always believed it was doing the right thing. *E.g.*, II Tr. 2, 101:5-7 (nobody at Nordic ever believed they had identified the wrong heirs); A. 1272 (Nordic’s real estate counsel had been practicing for 40 years and followed the appropriate procedures for identifying intestate heirs); II Tr. 1, 217:6-8 (Nordic’s surveyor confirming he would never stamp a plan he did not believe was correct).

Appellants offer other irrelevant conclusions and characterizations that are not borne out by the record. They say Nordic and the Eckrotes’ attorney “intimidated” a surveyor at a meeting, but the testimony reveals only that attorneys from Nordic and the Eckrotes (one of whom is now a sitting judge) met with the surveyor, that she left with a sense “in the air” that her employers might be sued, and that no threat was ever made. II Tr. 1, 108:20-24, 111:18-25.

And they say that Nordic “continued to claim a right to retain permits” following this Court’s decision in *Mabee* I. Blue Br. at 42. In fact, Nordic accurately summarized this Court’s decision in *Mabee* I to each of the permitting agencies, expressed it was “well aware that the Project Approvals do not and cannot convey any property rights,” and merely advanced a (correct) argument about administrative procedure and the retroactive effect of a finding that undermines an applicant’s claim to right, title, or interest. A. 384.

The remaining arguments Appellants advance are so untethered to the facts and evidence, and so conclusory, that they are impossible to meaningfully address, especially since none of them is actually linked to the relevant standard. *Cf. Westleigh*, 2000 ME

134 at ¶ 12 (“A different factfinder may have reached a different result based on the evidence ... [but appellant] as the party with the burden of proof, can prevail on a sufficiency of the evidence challenge to a finding that her burden has not been met only if she demonstrates that a contrary finding is compelled by the evidence.”).

C. The only case to which Appellants cite is inapposite.

Appellants cite to a single, non-jurisdictional decision to buttress their argument. That case has no bearing on the outcome here. To begin, the Vermont Supreme Court in *Massucco* affirmed a finding of malice made by the trial court. *Massucco v. Kolodziej*, 2024 VT 76, 220 Vt. 291, 328 A.3d 1256 (2024). Of course, even if *Massucco* were a Maine decision, the affirmance of a factual finding would have effectively zero bearing on the outcome of this case. And the facts of *Massucco* actually support Nordic’s position here. In *Massucco* the trial and appellate courts emphasized that the plaintiff always believed she owned the disputed land – just like the Eckrotes here. Both Vermont courts also emphasized that the defendant advanced essentially frivolous claims based on his own analysis, without hiring a lawyer or any other professionals. *See Massucco at* 1268-69 (“Mr. Kolodziej testified that he had no training in title searches or surveying, and that he did not hire an attorney.”). Here, in contrast, the trial court found “ample evidence of diligent investigation by Nordic: they employed professional surveyors (including Dorsky), a title searcher (Elizabeth Hunter), and real estate counsel (Tucker), all of whom supported Nordic’s belief that they could obtain rights in the flats.” A. 63. Finally, the actual land dispute in *Massucco* bore only superficial similarities – there was

no need in that case to analyze centuries of intertidal jurisprudence, and no serious basis to doubt the original land grantor's intention. *Id.*

For all these reasons, the trial court's finding that Appellants failed to prove actual malice should be affirmed.

III. The record also does not compel a finding that Appellants proved either actual or special damages.

In *Colquhoun*, this Court identified two categories of damages recoverable in a successful claim for slander of title. *Colquhoun v. Webber*, 684 A.2d 405, 413 (Me. 1996). First, a prevailing plaintiff may recover actual damages – that is, “the pecuniary loss that results directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement.” Restatement (Second) of Torts § 633 (1977); *see also Colquhoun* at 413 (applying Section 633). Second, a prevailing plaintiff may recover “special” damages, which this Court clarified authorizes only recovery of “attorney fees and expenses accruing from removing the cloud on title.” *Colquhoun*, 684 A.2d at 413. Because Appellants proved neither quantum of damages here, the trial court's order should be affirmed.

A. The evidence does not compel a finding that Appellants suffered carrying costs as a result of any uncertainty about whether they owned the mudflats up the street.

Appellants confusingly elide special and actual damages in their brief, as they have throughout this litigation. It is difficult to even know whether Appellants continue to press their entitlement to damages for carrying costs at all, given their view that “all

the damages and special damages Appellants have claimed were *incurred to remove clouds on title* by prosecuting the Phase I litigation.” Blue Br. at 42 (emphasis original).

If Appellants are still seeking actual damages, the record certainly did not compel an award of such damages. Appellants conceded at trial that they did not lose a sale because of any question over whether they owned the intertidal adjacent to neighboring lots, and that they voluntarily took the property off the market after learning that they might have some claim to those flats. II Tr. 1, 148:23-149:2 (“We took it off the market. That’s why we haven’t sold it.”). The trial court was perfectly entitled to find based on the evidence that any uncertainty about who owned the mudflats down the road was no barrier to their ability to sell their house such that any carrying costs were not caused by any cloud on title. The record does not compel the contrary result.

B. The trial court correctly found that Appellants did not delineate attorney fees incurred in the quiet title phase from those incurred in proceedings challenging the exercise of eminent domain or Nordic’s proposed aquaculture facility.

Appellants also contend that the trial court should have known that “in this SOT action, all attorneys’ fees claimed were for work performed in Phase I of *this case* to remove clouds on title.” Blue Br. at 44 (emphases original). Again, the trial record does not compel that finding. In fact, the only witness who meaningfully testified regarding the fees incurred acknowledged that she had not separated out or excluded anything paid for permitting proceedings or eminent domain proceedings from those fees incurred in connection with the quiet title litigation. II Tr. 1, 133:6-17.

Because Appellants did not offer any testimony or evidence segregating the fees they incurred in pursuing the quiet title litigation, the trial court was not compelled to try to make a guess at what fees were for quieting title and what fees were for unrecoverable items like litigating eminent domain issues or contesting permits. The trial court's finding on this point should be affirmed.

IV. The trial court correctly denied Plaintiffs' request for a declaratory judgment.

Finally, Appellants argue that the trial court erred in denying their request for a declaration that the release deeds executed by Harriet Hartley's descendants are "null and void ab initio." Blue Br. at 45-46. Appellants' request should be denied because this Court already determined ownership of the property, such that there is no live dispute between the Parties as is required for a declaratory judgment action. *Brunswick Citizens for Collaborative Gov't v. Town of Brunswick*, 2018 ME 95, ¶¶ 7-8, 189 A.3d 248 (affirming dismissal of declaratory judgment action where there were "insufficient practical effects flowing from the resolution of the litigation"). Nor is it even correct that the deeds were "null and void ab initio" – they were perfectly valid release deeds that simply conveyed nothing because the grantors had nothing to convey. Further, even if Appellants could articulate some basis for a new declaration, their failure to do so following Phase I renders this aspect of their appeal untimely and non-justiciable.

As Justice Duddy observed, Appellants "previously moved the trial court to address these express concerns in *Mabee*, 2021 WL 6932428, and the court declined to

do so.” A. 66. Specifically, on May 11, 2023, Appellants filed a Motion for Final Judgment requesting that the trial court order the Registrar of Deeds to stamp all the release deeds “NULL AND VOID.” R. May 11, 2023, “Plaintiffs Proposed Amended Final Judgment and Declaration of Title.” The trial court entered an amended final judgment and declaration of title on June 23, 2023, declining to include Appellants’ proposed “NULL AND VOID” stamp, and ordering in relevant part as follows:

The clerk is directed to incorporate this AMENDED FINAL JUDGMENT and DECLARATION OF TITLE in the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure, and a copy of this AMENDED FINAL JUDGMENT and DECLARATION OF TITLE, with the Law Court’s February 16, 2023 Decision in *Mabee v. Nordic Aquafarms Inc.*, 2023 ME 15, 290 A.3d 79, attached thereto and incorporated therein, to be duly recorded in the Waldo County Registry of Deeds within thirty (30) days of the entry of this Order pursuant to 14 M.R.S. §§ 2401(3) and 6654.

R. June 13, 2023, Amended Final Judgment and Declaration of Title.

Appellants never appealed from that decision, and their failure to do so renders the decision final and unappealable. *See generally Fournier v. Flats Indus., Inc.*, 2023 ME 40, 298 A.3d 810 (holding Law Court lacked jurisdiction to entertain untimely appeal). Further, the controlling Maine statute and the trial court’s judgment in *Mabee I* grant Appellants all the relief they need. Specifically, 14 M.R.S. § 6657 provides that judgments in quiet title actions “operate directly on the land and shall have the force of a release[.]” Appellants need nothing more than what they have already obtained, and there is no authority for imposing any obligation beyond the statutory relief set forth in Title 14.

CONCLUSION

Because the trial court's findings and conclusions are supported in the record, this Court should affirm the entry of judgment in favor of Nordic Aquafarms, Inc.

Dated: July 31, 2026



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CERTIFICATE OF SERVICE

I, Gavin G. McCarthy, hereby certify that an electronic copy of this Brief of Appellee was served upon all counsel of record by email on the date of filing and a hard copy will be served by first class mail, postage-prepaid once the clerk has accepted the format pursuant to Me .R. App. P. 7(c)(4):

Dated: July 31, 2026



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