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August 23, 2011

Via E-Mail & U.S. First-Class Mail

William R. Shane, Town Manager
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04021

Re: Drowne Road School

Dear Bill:

I understand that a question has arisen in regard to the original terms of the conveyance of the Drowne Road School property and whether those terms would prohibit redevelopment of that School into a senior housing project.

As you and I have discussed, the actual original conveyance to the Town is by virtue of Elizabeth Drowne's Will from 1891. That Will had a specific clause in it stating that if the Town failed to use the property for educational purposes longer than 18 months at anyone time, the property would go to her heirs. The question imposed by long-time former Councilor Harland Storey is based on his recollection of that Will. I enclose a copy of the abstract of the Will. The Registry of Probate burned in the early 1900s so only the abstract is available. You can see from review of the marked area, the condition is not a specific reverter, but rather a direction that if the Town failed to accept the property or failed to comply with her direction, the property should go to others named in the Will.

~ Over 50 Years of Service ~


Jensen Baird
Gardner Henry

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This is not an uncommon circumstance. I call your attention to the case of Mildram v. Town of Wells, 611 A.2d 84 (Me. 1992). In that case, the Town of Wells had been deeded property in 1905 along Route 1 that was to be used for a Town house and, if it failed to be used as such, it was supposed to revert to the heirs of that Grantor. The Town had grown substantially and wanted to relocate its offices. The Maine Supreme Court held that "the continued use of the Mildram property for municipal purposes constitutes sufficient observance of the condition in light of these changing circumstances." In this instance, the changed circumstance is that Cumberland alone is not a school department and the SAD has determined that it no longer has any use for the School. The Town is redeveloping it in a quasi-public manner by attempting to provide housing for senior citizens in the Town, so the Court's general holding in the Mildram case and in earlier cases is controlling: "When a fee on condition subsequent is created by a deed or Will stating no time during which the condition must remain satisfied, a reasonable time will be implied." *Id.* at 85. In the Mildram case, it was 82 years and in the Town of Cumberland's case, it is 120 years.

If you need anything further from me, please let me know.

Very truly yours,



Kenneth M. Cole III

KMC/lts
Enclosures

outside the business, see *Northeast Bank & Trust Co. v. Soley*, 481 A.2d 1123 (Me. 1984), they are admissible only if they contain the "indicia of reliability that form the basis of the business record exception." *Id.* at 1127. Here, Web sought to introduce through the testimony of its own agent records of business correspondence prepared by others, without providing any foundation to suggest that the records were prepared by a person with knowledge of the cause of the delays or were created in the ordinary course of business. The fact that a document is received in the ordinary course of business does not alone satisfy the foundational requirements of rule 803(6).

The entry is:

Judgment affirmed.

All concurring.



John MILDAM, et al.

v.

TOWN OF WELLS.

Supreme Judicial Court of Maine.

Argued March 17, 1992.

Decided July 24, 1992.

Heirs brought suit claiming ownership in property deeded to town on condition subsequent. The Superior Court, York County, Lipez, J., entered judgment for the town, and the heirs appealed. The Supreme Judicial Court, Wathen, C.J., held that where town satisfied a condition subsequent for 82 years, the town owned the property in fee simple absolute.

Affirmed.

1. Deeds ⇐162

Wills ⇐662

Where a deed or will creates a fee on condition subsequent but states no time during which the condition must remain satisfied, a reasonable time will be implied.

2. Towns ⇐35(1)

Where a town satisfied a condition subsequent by using deeded property as a "town house" for 82 years and the property continued to be used for municipal purposes, though center of government was moved elsewhere due to traffic and space problems, a reasonable time had passed for satisfying the condition and the town owned the property in fee simple absolute.

J. Armand Gendron (orally), Sanford, Edmund R. Pitts (orally), Pitts & Pitts, Boston, Mass., for plaintiffs.

Durward W. Parkinson (orally), Bernstein, Shur, Sawyer & Nelson, Kennebunk, for defendant.

Before WATHEN, C.J., and ROBERTS, GLASSMAN, CLIFFORD and COLLINS, JJ.

WATHEN, Chief Justice.

Plaintiffs, heirs of Georgia Mildram, appeal from a Superior Court judgment (York County, Lipez, J.) declaring defendant Town of Wells owner in fee simple absolute of property located on Route 1 in Wells. Plaintiffs maintain that the Superior Court should have found the property had reverted to them due to defendant's breach of a condition in the 1905 deed from Georgia Mildram to the Town. We agree with the Superior Court that the condition in the deed has been fulfilled, and affirm the judgment.

The following facts and findings are relevant to this appeal. By deed dated August 10, 1905, Georgia Mildram conveyed a lot of land on Route 1 to the Town of Wells. The deed contained the following condition subsequent:

Said lot of land is given and granted for a Town House lot and is to revert to me, or my heirs, if it should not be improved

MILDGRAM v. TOWN OF WELLS

Cite as 611 A.2d 84 (Me. 1992)

Me. 85

or maintained for such purpose. Provided also:—Town House erected and maintained thereon shall be not less than two stories, of such style, architecture and finish as shall be proper, suitable, becoming and appropriate to said location and locality and said Town.

In 1906, the Town built a town hall on the property, which was rebuilt in 1912 and again in 1969 after being destroyed. During the years 1906–1988, the Mildram heirs participated in the decisions to renovate and upgrade the building at various times. In 1988, faced with increased traffic and shortage of space, the Town built a new municipal building on Route 109. The new building houses the Town Manager, Town Clerk, Tax Assessor and Codes Enforcement Officer. The original building is still used for certain municipal purposes, such as Board of Personnel meetings, Budget Board meetings, and the police and fire departments. It is not the center of municipal government, however, and plaintiffs brought suit in Superior Court claiming ownership in the property by virtue of a breach of the condition.

[1] In *Independent Congregational Society v. Davenport*, 381 A.2d 1137 (Me. 1978), we adopted the rule that when a fee on condition subsequent is created by a deed or will stating no time during which the condition must remain satisfied, a reasonable time will be implied.¹ The condition in *Davenport* required that a church be erected in one year, and if the premises should “cease to be used occupied and improved by said Society as a place of the public religious meetings of said Society [the] deed [was] to be void, and the said premises [were] to revert to” the grantor or his heirs. *Id.* at 1138. In construing the above language, we stated that it did not reflect the grantor’s purpose “to require the church in perpetuity to observe the second condition regardless of all changes that might ever occur in the city of Bangor or in the church congregation itself,” and that as a matter of law, 150

years was a reasonable time of compliance. *Id.* at 1140.

[2] The Mildram deed also contains no reference to duration, other than the word “heirs.” Thus the Superior Court properly considered all the circumstances, including the purpose the condition was intended to achieve, to determine whether a reasonable time had passed satisfying the condition in the deed. *See id.* As in *Davenport*, nothing in the language of the condition suggests that Georgia Mildram’s purpose was to require the perpetual maintenance of the property as a “Town House” regardless of all the changes that might occur in the town of Wells. The record supports the Superior Court’s factual finding that construction of a new town hall on the Mildram property would have been impractical due to the increased population and resulting traffic. Additionally, the continued use of the Mildram property for municipal purposes constitutes sufficient observance of the condition in light of these changing circumstances. It was not error for the Superior Court to conclude that eighty-two years is a reasonable length of time on the facts of this case. The condition has been fulfilled, and the Town owns the property in fee simple absolute.

The entry is:

Judgment affirmed.

All concurring.



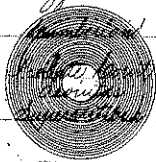
¹ Cf. 33 M.R.S.A. § 103, providing that conditions in deeds to private parties shall be deemed fulfilled after 30 years from date of creation.

This section does not apply to grants to the state or its political subdivisions.

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Digest

and the residue to be equally divided between my son Stephen Longfellow and my daughter Phigab and their respective heirs.
 Witness my hand and the Seal of the Probate Court for said County of Cumberland, the day and year first above written.



Edward L. Reynolds. Register

Received March 2, 1892 at 11h. - m, A. M. and recorded according to the original
 Attest:

James M. Thompson Register

L. Drowne
 To
 Browne
 L. Drowne

Extract from the Will of
 Elizabeth D. Drowne.
 State of Maine.

Cumberland County,

Probate Office.

Portland, March 1st A. D. 1892.

I hereby certify, That the last Will and Testament of Elizabeth D. Drowne late of Portland in said County, deceased, was proved, approved and allowed by the Judge of Probate for said County, at a Court held at Portland, on the tenth day of February, 1892, and that the following is a true copy of so much of said Will as devises Real Estate in the County aforesaid:-

Copy.

I, Elizabeth D. Drowne, of Portland, in the County of Cumberland and State of Maine, do hereby make publish and declare this instrument to be my last will and testament, hereby revoking any and all other wills, by me heretofore made.

First: I give, devise and bequeath unto my niece Edith L. D. Browne of the City, County and State of New York, one third part share and proportion of whatever interest I now have, or which I, or my estate, may or shall at any time hereafter, have or acquire in and to the Underwood Spring Company (said spring and premises belonging to said Company are situated in the town of Falmouth, Maine) or in any property connected with, or that shall hereafter belong thereto and in which I, or my estate, can or shall have an interest, right or title therein.

I also give and bequeath unto the said Edith L. D. Browne all shares and interest I may own at my decease in and to the Boston and Maine Railroad Company. I also give and bequeath unto the said Edith L. D. Browne all the furniture I may own at my decease now in my homestead on State Street, in said

lara, and to Phillip Drowne Stewardant of Boston, Massachusetts the sum of Two hundred dollars.

Eighth. I give and bequeath to the following named persons, the following sums or amounts - the same to be paid by my Executors to said persons - when payment can be made conveniently and without injury to my estate, and of this my Executors are to be the sole judges, viz: To Mrs. Isabella C. Osgood of Boston, Massachusetts the sum of One thousand dollars. To Mary A. Battelle of Portland, Maine the sum of One thousand dollars. To Harriet C. Blanchard of Portland the sum of Five hundred Dollars. To Annie H. Blanchard of said Portland the sum of Five Hundred Dollars. To Mrs. Harriet P. McCallan of Portland, the sum of Four hundred dollars - this amount is to be used by the said Harriet P. McCallan for the benefit of Mary F. Bradford of Cumberland, Maine. To Mrs. Annie H. Folson of Exeter, New Hampshire, the sum of Two hundred dollars - and to Mrs. Eleanor A. May of said Portland the sum of One hundred dollars.

Ninth. I give and bequeath to my husband Joseph Drowne, for life, as herein set forth, the use and income of my said farm situated upon the Tuttle Road, in said town of Cumberland, but to John H. True of Portland I give the use and occupancy, for himself and family, of the house, garden, and such portions of the out buildings, as he may need upon said farm, on said Tuttle Road, in said town of Cumberland, free of rent and taxes, for the term of fifteen years from the date of the probate of my will, if he or his family desire so to use and occupy the same. If said John H. True and his family do not desire to use and occupy said house, garden, etc. then the same is to be devised to my husband Joseph Drowne during his life.

Tenth. Upon the death of my husband the income of said farm, so given and bequeathed by me to my husband as above mentioned, I give and bequeath to the Inhabitants of the town of Cumberland, Maine, said income to be used and expended for the cause of education, within its limits, by the officers of said town who have charge of the schools therein. Said income is to be expended annually by them or a majority of said officers, in said cause, as they shall think is best and prudent.

Eleventh. Upon the death of my husband and at the end of fifteen years from the probate of my will, I give and devise and bequeath unto the said Inhabitants of said town of Cum-

berland, said farm, house, buildings etc., situated upon said Tuttle Road in said town of Cumberland. The income of said farm, house etc., is to be used and expended in the cause of education by those who have charge of the schools, within the limits of said town, in such manner as a majority of said officers shall judge and determine is best and wise. Said farm shall not be sold, and the income thereof is to be expended for the cause of education, as above mentioned, and for that cause alone.

Should said inhabitants refuse to accept said gift or fail to use and expend the income as I have directed them, and in that case, if such failure should continue for more than eighteen months at any one time I give and bequeath said farm to the persons named in the sixth item of this my last will and testament, and in the proportions therein mentioned. Should any of said persons have deceased the share he, she or they would have received if alive shall descend to the survivors in the same proportions as I have mentioned in said item.

Twelfth. Should any Personal Estate remain after the payment of all debts, charges of administration and the aforesaid legacies I give and bequeath said rest, residue and remainder of said personal estate to my adopted daughter Mary Frances True, my nieces Edith L. D. Browne and Ella Christine Deake and to my nephew Charles Standish Deake share and share alike and to their heirs and assigns forever. This gift is not to take effect until the death of said Joseph Browne as he is to have the use and income of said residue during his life.

Thirteenth. All my wearing apparel, ornaments and jewelry and personal belongings I give and bequeath unto my adopted daughter Mary F. True and my niece Edith L. D. Browne; they to keep the same, or dispose of the same, in the manner they should judge to be in accordance with my wishes.

Fourteenth. I appoint my husband Joseph Browne and Frederick Fox or the survivor, both of said Portland, Executors of this my last will and testament, and I request the Judge of Probate to grant letters testamentary to them, or the survivor, without requiring bonds or sureties of them, or either of them. And in witness whereof that this instrument is my last will and testament I have hereunto set my hand and seal upon this the twenty-second 22^d day of July in the year of our Lord one thousand eight hundred and ninety one.

(July 22, 1891).

Elizabeth J. Browne.

> Seal.