

DATE: 20041027
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COURT OF APPEAL FOR ONTARIO

RE: JOHN GILLARD and LORRAINE GILLARD
(Plaintiffs/Appellants) v. DAVID GILLARD and MAXINE
LANE (Defendants/Respondents)

BEFORE: DOHERTY, LASKIN and JURIANSZ JJ.A.

COUNSEL: Margaret A. Hoy
for the appellant

R. Burns
for the respondent

HEARD &
ENDORSED: October 21, 2004

On appeal from the judgment of Justice William Festeryga of the Superior Court of Justice dated June 26, 2003.

APPEAL BOOK ENDORSEMENT

[1] It was open to the trial judge to find that the use, although continuous, was permissive. The trial judge was entitled to consider the nature of the use, the understanding of participants and the effect of the use on the property.

[2] We also see no error in the trial judge's application of the law to the facts as he found them.

[3] We need not decide whether the trial judge's finding on the "reasonably necessary" issue was sustainable.

[4] The appeal is dismissed. Costs to the respondent in the amount of \$5,000.00, all inclusive.