

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Cook v. Massey*,
2026 BCCA 165

Date: 20260421
Docket: CA50884

Between:

Diane Margaret Cook and Justin Arthur Marshall

Appellants
(Plaintiffs)

And

**Brenda Massey, Roger Massey, Kevin Grant Watt, Kamloops Truss Ltd.,
Mat Ward Construction Ltd. and Noremac Industries Ltd.**

Respondents
(Defendants)

Before: The Honourable Chief Justice Marchand
The Honourable Mr. Justice Butler
The Honourable Justice Warren

On appeal from: An order of the Supreme Court of British Columbia,
dated July 23, 2025 (*Cook v. Massey*, 2025 BCSC 1410,
Kamloops Docket S60929).

The Appellants, appearing in person:

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Kamloops Truss Ltd.:

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Place and Date of Hearing:

Kamloops, British Columbia
March 31, 2026

Place and Date of Judgment:

Vancouver, British Columbia
April 21, 2026

Written Reasons by:

The Honourable Chief Justice Marchand

Concurred in by:

The Honourable Mr. Justice Butler
The Honourable Justice Warren

Summary:

This appeal arises from a dispute between neighbours about the scope of an easement. The appellants appeal the trial judge's interpretation of the easement, the dismissal of their claims in trespass and an award against them in private nuisance, among other things. Held: Appeal dismissed. The appellants have not shown palpable and overriding error in relation to any of their grounds of appeal. The outcome in this case largely turned on the judge's interpretation of the easement which was reasonable and error free.

Reasons for Judgment of the Honourable Chief Justice Marchand:**Introduction**

[1] This appeal arises from a dispute between neighbours about the scope of an easement. It involves claims in trespass and counterclaims in private nuisance that were alleged to have occurred during the construction of a residential dwelling.

[2] The appellants, Diane Cook and her son Justin Marshall (the Cooks), are registered owners of a property in Chase. The respondents, Brenda and Roger Massey, are the registered owners of the neighbouring property. The two properties originally comprised one lot. The owners at the time, the Watts, subdivided the lot creating the parcels now owned by the Cooks and the Masseys. At that time, the parcel now owned by the Masseys was bare land.

[3] As part of the subdivision, the Watts registered an easement against the lot now owned by the Cooks in favour of the lot now owned by the Masseys to provide access to the Masseys' lot across a small triangular area on the Cooks' lot. In technical terms, this means the Masseys' lot is the "dominant tenement" and the Cooks' lot is the "servient tenement". The Masseys' lot benefits from the easement while the Cooks' lot is burdened by it.

[4] The appeal largely turns on the interpretation of a clause in the easement that granted the Masseys:

... the full, free and uninterrupted right, licence, liberty, easement, privilege and permission at all times and from time to time:

- a) to install, use, repair, replace and maintain a roadway, right of way or travel area and other controls and materials required in connection

therewith ... over, under and through that part of the Easement Area shown on Plan EPP96886 for the purpose of supplying a travel corridor for ingress and egress to the Dominant Tenement and all related purposes (hereinafter called “the Purposes”);

- b) to enter upon and pass and repass over the Easement Area for the purpose of ingress and egress for any of the Purposes...

[Empasis added.]

[5] In reasons indexed as *Cook v. Massey*, 2025 BCSC 1410 [RFJ], the trial judge interpreted the easement broadly to permit “stopping, loading and unloading, and limited parking” by the Masseys and their contractors during the construction of the Masseys’ home. As a consequence, and due to shortcomings in the evidence the Cooks adduced, the judge dismissed the Cooks’ trespass claims against the Masseys and a number of their contractors, including the respondent, Kamloops Truss Ltd. The judge also made awards in favour of the Masseys – one in private nuisance and the other in relation to a minor encroachment of the Cooks’ fence onto the Masseys’ property.

[6] The Cooks allege the judge erred in his interpretation of the easement, in his findings of fact, in his awards of damages and by ignoring aspects of the Cooks’ claims. Although the Cooks advance a defensible interpretation of the easement and point to potential errors in the judge’s findings and awards, in my respectful view, their appeal must be dismissed on the basis of the applicable appellate standard of review. The Cooks have not identified any palpable (obvious) and overriding (material) errors in the judge’s analysis.

Did the trial judge err in his interpretation of the easement?

[7] After setting out the background to the parties’ dispute, the judge reproduced the easement, almost in full, including the essential terms set out above. Citing *Robb v. Walker*, 2015 BCCA 177 at paras. 31–32, he noted when interpreting an easement, the court must consider its plain and ordinary words to determine the parties’ intentions when the easement was granted. Surrounding circumstances – meaning objective evidence of background facts – at the time the easement was granted can be considered. The instrument’s wording should govern unless it is

ambiguous or the surrounding circumstances show the parties could not have intended a particular use of the easement: *RFJ* at para. 16.

[8] The judge rejected the Cooks' argument the easement only conveys a right-of-way for ingress and egress, as was the case in *Hellmen v. Hartwick*, 2025 BCSC 45. In that case, the easement was narrower in scope because it did not refer to a right to "install, use, repair, replace and maintain" a roadway, right-of-way or travel area for the purpose of providing a travel corridor for ingress and egress to the dominant tenement and "all related purposes": *RFJ* at paras. 17–21.

[9] In the judge's view, the phrase "all related purposes" in the definition of the "the Purposes" was "key" to properly interpreting the easement's scope: at paras. 23–25. Finding the phrase "all related purposes" ambiguous, the judge considered the surrounding circumstances. These included the fact: (1) the Watts owned and subdivided the original parcel; (2) the Watts granted the easement to themselves and were the owners of both the dominant and servient tenements; (3) the only way for a vehicle to enter or exit the lot now owned by the Masseys was through the easement area; and (4) if a single family residence was constructed on that property, some stopping, loading and unloading, and parking for short periods would necessarily occur in the easement during the construction period: at paras. 28–29.

[10] In interpreting the words of the easement within this factual matrix, the judge reasoned:

[30] Residential home construction sites are not serene environments. They are active. At times many activities occur at the same time. I have considered this contextual reality in determining what must have been within the contemplation of the Watts about the future use of the Easement, including during any future construction of a single-family residence on the sub-divided property adjacent to Chase Creek.

[31] I find that at the time the Watts granted the Easement to themselves, they contemplated that some stopping, loading and unloading, and parking for short periods of time, for the purpose of entering or exiting the property were included within the meaning of the phrase "all related purposes".

[11] The judge did not accept the Cooks' submission the Masseys were essentially the authors of their own misfortune by not considering the limited scope

of the easement when determining the size of their future home. In the judge’s view, this did not accord with the “common-sense realities” of building a single-family residence on a suburban property, including the need to deliver and unload equipment and materials: at para. 32.

[12] The judge then issued the following declaration regarding the easement’s proper interpretation:

[33] ... I issue a declaration that stopping, loading and unloading, and limited parking on the Easement are all authorized within the Easement Area. These activities are all within the meaning of the phrase “all related purposes” in respect of the purpose of supplying a travel corridor for ingress and egress to the Massey Property. There is no right of unrestricted parking. Parking of five minutes or less within the Easement Area is permitted. Parking of more than five minutes is only permitted if there are objectively exceptional circumstances, such as existed from time-to-time during construction of the Massey Residence.

[13] The Cooks submit the judge erred by expanding the scope of the easement. Beyond providing access, they say any work within the easement is limited to installing, maintaining or repairing the travel corridor itself. They maintain “any related purposes” must be confined to such work and the easement did not grant the Masseys the right to occupy or use their land as a construction staging area. According to the Cooks, the judge altered the balance between the dominant and servient tenements by imposing new burdens on the servient tenement. They say the judge transformed the Masseys’ right of passage to a right of use and enjoyment.

[14] While the Cooks advance a possible interpretation of the easement that differs from the judge’s interpretation, they do not suggest the judge misstated the applicable legal principles. Further, in oral submissions, they recognized the term “all related purposes” is ambiguous.

[15] Here, the judge did not just state the correct approach to interpreting the easement. He took it. And, having taken the correct approach, he arrived at a broader interpretation than the one advanced by the Cooks, but his interpretation is reasonable and defensible.

[16] The term “all related purposes” had to be given some meaning beyond simply providing ingress and egress. As the judge recognized at para. 31, in the context of the circumstances at the time the easement was entered, the easement was likely intended to permit “some stopping, loading and unloading, and parking for short periods of time, for the purpose of entering or exiting the property”, including to deliver construction materials to the Masseys’ lot.

[17] The judge’s interpretation of the easement was a question of mixed fact and law subject to review on a standard of palpable and overriding error: *Tessaro v. Langlois*, 2019 BCCA 95 at para. 18, citing *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 50 and *Robb* at paras. 30–31. The Cooks have not established any error, let alone a palpable and overriding one, in the judge’s interpretation. I would therefore not accede to this ground of appeal.

Did the trial judge err in his trespass findings?

[18] At trial, the Cooks adduced photographs as well as videos and still images from a surveillance camera on their property that purported to show unauthorized use of the easement area and/or incursions onto their property. The judge found these of limited assistance because it was difficult to determine the boundaries of the easement from the videos, still images and photographs, and it was not possible to determine the duration of any alleged transgressions. Further, the Cooks did not witness many of the events depicted in the videos, still images and photographs. All the judge could say was the duration of any alleged unauthorized use of the easement was “at least as long as the video”: at paras. 40–45.

[19] The judge made dozens of factual findings about the presence of vehicles in the easement area between July 2021 and May 2022: at para. 47. These included the Masseys’ vehicles, contractor vehicles and unknown vehicles. Ultimately, he found the Cooks failed to prove on a balance of probabilities there was any unauthorized use of the easement area. He found each instance was authorized use of the easement area or the evidence did not establish a breach: at paras. 48–49.

[20] The Cooks submit the judge made palpable and overriding errors in his findings of fact. They rely on various video clips and still images they say establish the Masseys and their contractors breached the easement's terms. Having reviewed the still images and video clips carefully, respectfully, I do not agree. A few examples suffice to make the point.

[21] The Cooks point to videos showing the delivery of trusses, the operation of a teleloader and gravel being thrown onto their property by the spinning tires of an exiting vehicle as providing clear evidence of the Masseys' contractors being outside the easement and trespassing on their property. They also point to date- and time-stamped still images they say demonstrate vehicles parked in the easement for far longer than five minutes.

[22] For the reasons stated by the trial judge, the video evidence of the delivery of the trusses is inconclusive. Given the location and angle of the video camera, it is simply not possible to say with any degree of certainty the boom of the Kamloops Truss Ltd. delivery vehicle and/or the trusses themselves invaded the airspace above the Cooks' lot. Further, the judge had concerns about the credibility and reliability of aspects of the Cooks' testimony and gave no weight to Ms. Cook's testimony concerning this incident.

[23] The video of the teleloader is clearer and appears to show it very briefly operating on the Cooks' property. The judge did not make a specific finding about the incident. But, even if I considered the video to establish a palpable error, I would not characterize it as an overriding one. A brief incursion by one contractor would not have changed the judge's overall view or the outcome of the case. The same can be said for other examples the Cooks say demonstrate factual errors in the judge's analysis.

[24] With respect to the gravel from the spinning tires, the judge concluded there was nothing untoward about the incident. He described it as "unremarkable". These findings were open to him.

[25] Finally, insofar as the date- and time-stamped photos appear to show vehicles parked within the easement for an hour in one case and several hours in another, at most they establish a palpable error but not an overriding one.

[26] For these reasons, I would not accede to this ground of appeal.

Did the trial judge err in his nuisance findings?

[27] The judge noted the easement requires the Cooks to provide the Masseys “full, free and uninterrupted right, license, liberty, easement, privilege and permission at all times and from time to time”: at para. 50. The judge concluded Mr. Marshall violated the easement on several occasions by parking his car in the easement area, by obstructing Mr. Massey when he was trying to leave his property and by sitting on a chair in the easement area and refusing to leave, even after police attended: at paras. 51–52.

[28] The judge did not accept the Masseys’ claim the Cooks’ conduct delayed construction of their residence: at paras. 53–54. However, he found some of the Cooks’ conduct amounted to private nuisance: at paras. 55–59, 77. Relying on the test set out in *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13, the judge found the Cooks had interfered with the Masseys’ use or enjoyment of their land in a way that was non-trivial and unreasonable. More specifically, the judge found:

- Mr. Marshall stood outside in an intimidating manner whenever the Masseys were outside;
- Mr. Marshall idled his truck for extended periods to generate exhaust fumes to blow into the Masseys’ garage;
- the Cooks routinely ran out of their residence and threatened legal action against anyone who stopped in the easement area; and
- Ms. Massey had started to take medication as a result of the conduct of the Cooks and feared for her safety.

[29] The judge then rejected a significant number of allegations of private nuisance advanced by the Masseys against the Cooks. The evidence adduced by the Masseys was either poorly developed, did not establish the required level of interference or pointed to conduct that was within the Cooks' legal rights: paras. 60–61.

[30] The judge awarded the Masseys \$5,000 in damages: para. 80.

[31] The Cooks take issue with the judge's factual findings and submit his damage award was excessive. However, they identify no palpable and overriding errors. For the most part, the Cooks dispute the intent behind or the frequency, duration and impact of certain events. They point to alternative findings the judge could have made but did not.

[32] The judge's key findings were grounded in the evidence, and his award of damages involved an exercise of discretion. Given the very modest award, it is clear the judge did not consider the Cooks' interference with the Masseys' use and enjoyment of their property to be especially significant.

[33] On appeal, this Court is not in a position to reweigh the evidence, tinker with the judge's factual findings or replace the judge's exercise of discretion with our own.

Did the judge err in his handling of the Cooks' fence encroaching on the Masseys' property?

[34] It was undisputed at trial—and on appeal—that the Cooks' fence slightly encroaches on the Masseys' property. The Cooks were prepared to replace the fence and on appeal suggested they could simply remove its top railing to cure the encroachment. In either case, they would have to enter the Masseys' property – something the Masseys are unwilling to allow: at paras. 69–70.

[35] In the circumstances, the judge adopted the approach taken in *Abel v. Harlton*, 2024 BCSC 1072. He granted an easement in favour of the Cooks for the life of the fence and awarded compensation to the Masseys. Relying on the award made in *Abel*, the Masseys sought a \$5,000 award. The Cooks submitted that

amount would be “profoundly excessive and disproportionate”. The judge agreed with the Cooks and awarded the Masseys \$1,500: at paras. 72–73, 81.

[36] In these circumstances, there is no basis for this Court to interfere with the judge’s discretionary and very modest award.

Did the judge err by ignoring aspects of the Cooks’ claim?

[37] The Cooks submit the judge erred by ignoring three aspects of their claim: (1) venting from the Masseys’ home that is directed onto their property; (2) roof runoff that discharges onto their property; and (3) the Masseys’ failure to remediate the easement.

[38] Regarding the venting and roof runoff issues, the Cooks are correct that the judge did not address these issues. But I see no fault in that.

[39] The Cooks did not advance a claim about venting in their Amended Notice of Civil Claim, in their direct testimony or in their closing submissions. The venting issue was only raised by the Cooks to explain why they put up caution tape and large cardboard signs indicating there was “toxic gas” coming from the Massey residence. The judge sided with the Cooks on the issue finding the tape and signs did not amount to nuisance.

[40] Unlike the venting issue, the Cooks’ Amended Notice of Civil Claim contains a specific pleading that on January 3, 2022, a construction worker using a snowblower, blew snow off the Masseys’ roof and onto the Cooks’ roof as well as onto the Cooks themselves. However, the Cooks adduced no evidence and made no closing submission about this incident or any other involving discharge from the Masseys’ roof.

[41] Finally, the judge found the easement area requires remediation. He noted the Masseys would like to pave their driveway and remediate the easement area “but are concerned about problems with the Cooks”. The judge found there was no evidence about what the remediation work would cost, how long it would take or who would do the work. The judge characterized the Masseys’ concerns as “reasonable,

but speculative”: at paras. 63–64. It appears to me the judge reasonably concluded he had insufficient evidence to craft a remedy and reasonably considered it sufficient to identify the Masseys’ unfulfilled obligation to remediate the easement.

Conclusion and Disposition

[42] In this most unfortunate dispute between neighbours, the outcome largely turned on the judge’s interpretation of the easement. In light of that interpretation, the judge generally sided with the Masseys in concluding the Masseys and their contractors abided by the terms of the easement while the Cooks’ behaviour was unreasonable. Even if the judge had accepted some of the Cooks’ evidence about brief and harmless incursions onto their property, the outcome would not have been materially different.

[43] For all of these reasons, I would dismiss the appeal.

“The Honourable Chief Justice Marchand”

I AGREE:

“The Honourable Mr. Justice Butler”

I AGREE:

“The Honourable Justice Warren”