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Pauline Shields

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DECISION AND ORDER

Title of Document

Grantees address and mail tax statement:



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Case No. CV-1152001

Dept. No. 1

FILED

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CLERK OF COURT
C. Logan

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF LINCOLN

LUIS RAMALLO

Plaintiff,

-vs-

PAULINE SHIELDS; BRUCE
SHIELDS; JOHN DOES I-X, Inclusive

Defendants.

DECISION AND ORDER

PROCEDURAL HISTORY

On November 29, 2001, Luis Ramallo ("Plaintiff") filed a Complaint against Pauline and Bruce Shields ("Defendants"). On February 25, 2002, Defendants filed their Answer and Counterclaim. On March 19, 2002, Plaintiff filed an Answer to Counterclaim. On August 26, 2002, the Parties filed a Joint Case Conference Report. On April 3, 2003, Plaintiff filed a Stipulation and Order to extend discovery for an additional 120 days. On March 31, 2004, Plaintiff filed a Motion for Order Setting Trial Date. On April 2, 2004, the Court filed an Order Setting Hearing on Motion for Order

1 Setting Trial for April 30, 2004. On April 8, 2004, Defendants filed a Non-Opposition to
2 Motion for Order Setting Trial Date for Certain Dates. On April 16, 2004, Plaintiff filed a
3 Request to Vacate Setting Trial Hearing. On April 21, 2004, the Court Ordered a Civil
4 Bench Trial for September 14, 2004 and filed an Order for Pre-Trial Statements and
5 Motion Deadline. On June 8, 2004, Plaintiff filed a Stipulation to Extend Discovery
6 Period and Order. On July 9, 2004, Defendants filed a Motion for Leave of Court to
7 Amend Answer and Counterclaim to Add Affirmative Defense and Cause of Action. On
8 July 9, 2004, Defendants filed a Notice of Motion for a Hearing on the Motion to Amend
9 Answer and Counterclaim to Add Affirmative Defense and Cause of Action. On August
10 25, 2004, the Court issued an Order Granting Motion for Leave to Amend Answer and
11 Counterclaim. On August 25, 2004, Defendants filed an Amended Answer and
12 Counterclaim. On September 7, 2004, both parties filed Pre-Trial Statements. Trial
13 was held on September 14-15, 2004. Present was Plaintiff, Louis Ramallo, represented
14 by Waldo DeCastraverde and Defendants Pauline and Bruce Shields, represented by
15 Gary D. Fairman. The Court heard testimony and the matter is now ready for decision.
16
17 The Court finds that no further briefing is necessary.
18

19 FACTUAL BACKGROUND

20 This case involves a dispute over an unimproved access road ("access
21 road") between Nevada State Highway 318 and Defendants' real property which
22 crosses over a portion of real property owned by Plaintiff. Plaintiff alleges that he has
23 the right to possess his property and to prevent Defendants from using the access road.
24 Plaintiff commenced this action seeking to prevent Defendants using the road and to
25 recover damages for destruction of "No-Trespassing" signs and two fences that Plaintiff
26

1 erected to prevent Defendants from entering his land. Plaintiff's Complaint alleges
2 three causes of action: (1) Trespass - Defendants trespassed on his property through
3 the use of the access road; (2) Malicious Destruction of Property - Defendants caused
4 malicious destruction of Plaintiff's property by removing Plaintiff's "No-Trespassing"
5 signs, a wooden fence and a rented fence; and (3) Intentional Infliction of Emotional
6 Distress - Defendants' conduct caused him severe emotional distress. At trial, Plaintiff
7 abandoned claim 3.
8

9 Defendants admit that they removed Plaintiff's fence from the access road
10 but claim they have an easement by implication.

11 DISCUSSION

12 An easement is a right to use the land of another and may be created by
13 express agreement, by prescription, or by implication.¹ An easement by implication is
14 created if there is (1) Unity of title and subsequent separation by a grant of the
15 dominant tenement; (2) Apparent and continuous use; and (3) The easement is
16 necessary to the proper or reasonable enjoyment of the dominant tenement.²
17

18 Based on all the evidence presented, the Court finds the following facts:

- 19 • There is no recorded document referring to the access road.
20 • In 1976, Crystal Springs Development owned a single parcel of land which
21 encompasses Plaintiff's and Defendants' current parcels.
22 • Mr. Doug Miller purchased the whole parcel of land in 1977 from Crystal Springs
23 Development Company.
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25 ¹ Boyd v. McDonald, 81 Nev. 642, 647, 408 P.2d 717, 720 (1965).

26 ² Id.

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- In 1978, Mr. Miller constructed an access road from his property to Nevada State Highway 318.
- Although Mr. Miller never lived on the property, his relatives lived in a mobile home on the property. Mr. Miller used the driveway to read the power meters on the property for the local power company. Mr. Miller testified that he intended that the driveway be a permanent access road to the property. His relatives continuously used the road to access their home.
- In 1980, Mr. Miller divided the land into two (2) parcels, selling the portion now owned by Plaintiff to Mr. Jay Wright. Mr. Miller did not include an easement in the deed because he did not consider it an issue.
- Mr. Miller and his relatives continued to use the road to access State Highway 318, crossing Wright's property. No objections were made by Wright about the continued use of the access road.
- Between 1989 and 1992, the mobile home on the property was vacant, but Mr. Miller continued to use the access road to read the meters on the property.
- In 1992, Mr. Miller sold the remaining parcel to Mr. and Mrs. Allan Chamberlain.
- The Chamberlains continued to use the access road from the property to Nevada State Highway 318.
- In November 1998, the Chamberlains subdivided their property into two (2) parcels.
- In August 1999, Defendants purchased fifteen acres from the Chamberlains. The parcel purchased by Defendants included the land on which Mr. Miller's relatives lived in the mobile home.

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- Prior to the purchase Defendants visited the property with a real estate agent and each time they entered the property via the access road. A trailer and wooden storage shed existed on the property at that time. On their third visit, they left the property via an old mine road located on the property. The real estate agent told Defendants that the access road was the intended access to Nevada State Highway 318 from the property.
- The access road consists of a gravel driveway with an asphalt apron at the end accessing Nevada Highway Route 318. Defendants erected a mailbox at the end of the driveway approximately three weeks after they moved in.
- Defendants continually used the road to Nevada State Highway 318 to access their property. Mr. Wright never objected to their use of the access road, and when Mr. Wright would visit Defendants, he used the access road.
- On July 12, 2001, Plaintiff purchased the parcel owned by the Wrights. Plaintiff visited the property with the Wrights before he purchased it. He also visited the property approximately four times without the Wrights prior to the sale.
- The Wrights made no representations to Plaintiff concerning the access road.
- In August, 2001, Plaintiff visited Defendants to inform them of his plans to open a gas station on his parcel. Plaintiff said that the business would not interfere with Defendants' access. Defendants told Plaintiff they opposed a gas station, and Plaintiff then decided to deny Defendants the use of the access road.
- Plaintiff sent Defendants a letter on September 2, 2001, requesting that Defendants stop trespassing on his property. Defendants did not respond to the letter.

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- Plaintiff next attached a "No Trespassing" sign to a wooden barricade and placed it on the access road. Defendants were able to drive around the barricade.
- On October 3, 2001, Plaintiff sent Defendants another letter concerning their use of his property to access Highway 318. Defendants did not respond.
- On October 23, 2001, Plaintiff sent a third letter to Defendants in reference to the access road.
- Plaintiff then erected a twelve foot wooden fence across the access road to prevent Defendants from using the access road. Defendants were effectively barricaded on their property.
- Ten days later, on or about November 7, 2001, Defendants removed the wooden fence. Defendants needed to leave their property for a doctors appointment.
- Plaintiff then erected a rented cyclone fence around his entire property.
- Three days later, Defendants removed two panels of the fence in order to leave their property via the access road to Nevada State Highway 318. The fencing was ultimately returned to the rental company.
- Defendants provided a copy of the invoice for the Rented Fence dated December 1, 2001. The fence was rented from American Freight Lease for a total cost of \$4,070.50.
- In an effort to create another access to their land Defendants applied for a temporary access permit with NDOT in order to access Nevada State Highway 375.
- Defendants received a Temporary Encroachment Permit from NDOT to Nevada State Highway 375 until the issue concerning the access road to Nevada State

1 Highway 318 could be resolved.

- 2 • Defendants received an oral bid from Granite Construction to erect a permanent
3 access road between Defendants' property and Highway 375 in the amount of
4 \$39,000.

5 Based on the foregoing, the Court finds Defendants have an easement by
6 implication in the access road between their property and State Highway 318. First,
7 there was unity of title and a subsequent separation by a grant of the dominant
8 tenement. Unity of title existed when Mr. Miller purchased the entire parcel of land from
9 Crystal Springs Development Company in 1977. Mr. Miller then constructed the access
10 road in 1978 while he still owned the entire parcel. There was subsequent separation
11 of the dominant tenement when Mr. Miller sold the servient estate to Mr. Wright in 1980.
12 Therefore, the first prong is satisfied.

13
14 Next, there has been apparent and continuous use since the easement
15 was created in 1978. Initially Mr. Miller built and used the access road to get to and
16 from his property. His relatives then used the access road to get to Highway 318.
17 During this time, Mr. Miller also used the access road to read the meter for the Alamo
18 Power Company. Mr. Miller testified that it was his intent for the driveway to be the
19 permanent access to Highway 318. The Chamberlains continued to use to access road
20 and Defendants used the road until they received a temporary permit from NDOT to
21 access Highway 375. There was no evidence that the Wrights ever complained about the
22 use of the access road across their property and Plaintiff saw that the road was in use
23 when he purchased the land from the Wrights. Because Mr. Miller, the Chamberlains
24 and Defendants all continually used the access road to Highway 318 the Court finds
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there has been continuous and apparent use of the road and the second requirement is satisfied.

Finally, the easement is necessary to the proper or reasonable enjoyment of the dominant tenement by Defendants. The Nevada Supreme Court has held "there is a wide variance to the degree of necessity required" with the majority of courts only requiring reasonable necessity.³ The Court noted that the key factor is "intent."⁴ In Boyd, testimony regarding the original intent of the grantor was not available and therefore the Court looked to the reasonable expectations of an individual when purchasing the property. In this case, Mr. Miller, the grantor, testified specifically that he intended the driveway to be a permanent access and that he intended it to be continually used as such. Further, Defendants' testified that they accessed the property via the driveway when they first visited the property and that the real estate agent told them that the driveway was the access road to the property. Based on the original grantor's intent for the driveway to be permanent and Defendant's expectations concerning the use of the driveway as the access to their property, the Court finds that the easement is necessary for the proper or reasonable enjoyment of the dominant tenement. The fact that Defendants could construct an access road to Highway 375 for \$39,000.00 does not affect the Court's finding of necessity. The intent of the grantor is controlling in this case.

Based on the foregoing, the Court finds that an easement by implication exists.

³ Boyd, 81 Nev. at 648.

⁴ Id.

1 Because Defendants have the right to use the access road and Plaintiff
2 does not have the right to block the access, Plaintiff's claims for trespass and
3 destruction of property are dismissed. Defendants are entitled to a judgment granting
4 an easement for the access road and the entry of an injunction permanently enjoining
5 Plaintiff from interfering with their use of the access road.

6 Good cause appearing,

7
8 IT IS HEREBY ORDERED that Judgment is ordered in favor of
9 Defendants on their claim of easement by implication.

10 IT IS HEREBY FURTHER ORDERED that Defendants shall promptly
11 cause a survey to be made, at their own expense, to define the reasonable boundary of
12 the easement with said survey to be recorded.

13 IT IS HEREBY FURTHER ORDERED that Plaintiff is permanently
14 enjoined from interfering with Defendants use of the access road.

15 DATED this 18 day of November, 2004.

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20 DISTRICT JUDGE

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23 This document to which this certificate is attached is a full, true and correct
24 copy of the original, on file and record in the County Clerks Office, Pioche
25 Nevada.

26 In witness whereof, I have hereunto set my hand and affixed the Seal of the
Seventh Judicial District Court in and for the County of Lincoln, State of
Nevada, this 26th day of July 2006

27
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29 _____
30 Clerk


31 _____
32 Deputy Clerk

BOOK 219 PAGE 385