STATE OF VERMONT
ORANGE COUNTY SS.

ORANGE SUPERIOR COURT
DOCKET NO. S98-940eC

Filed
July 5, 1994
Orange Superior Court
Mary Miles Teachout
Presiding Judge

JOHN HART and *
KAREN HART *
*
v. *
*
ROGER BARRETT, SR. and *
ROGER BARRETT, JR. *

Decision and Order

This matter came before the court for decision based on the parties' Stipulation as to Facts and stipulated Exhibits A, B, C, D, & E. The Plaintiffs were represented by Pamela Stafford, Esq. The Defendants were represented by David H. Gregg, Jr. The facts are as set forth in the parties' Stipulation as to Facts and in the five exhibits. The parties stipulated that this is a declaratory judgment action in which the relief requested is that the court declare the respective rights and interests of the parties with respect to an easement on Plaintiffs' land for the benefit of the Defendants. The conclusions below are based on the facts as set forth in the Stipulation and Exhibits.

"The character of an easement depends on the intent of the parties, as drawn from the language of the deed, the circumstances existing at the time of execution, and the object and purpose to be accomplished by the easement." Barrett v. Kunz, 158 Vt. 15 (1992). At the time this easement was created in 1988, McCabe was subdividing farmland according to a subdivision survey he had had prepared for that purpose. Exhibit D shows the layout of the various subdivision parcels as well as courses and distances, town roads, utility lines, Town Highway 21 shown as an "Old town road (not actively used)", and

Randolph Planning Commission information. Plaintiffs, and Defendants' predecessor in title Guerrera, purchased parcels labeled H-3, H-4, H-7, and H-5, and received deeds in which the property descriptions were based on the subdivision survey. McCabe's reservation of the easement specifically referred to vehicular and pedestrian access, `and the installation of utility services' for the benefit of Parcel H-5. Town Highway #21 is shown on the survey with the same dimensions as all other town roads, which are normally three rods wide. An easement along T.H. #21 was reserved to provide vehicular, pedestrian and utility line access to service a parcel consisting of 33 acres on which there were no buildings. The subdivision clearly laid out lots intended for future development, and made appropriate planning arrangements for future roadway and utility access. The respective interests of the parties in the easement are to be understood and defined within this context.

Thus, when the Harts accepted their deed, they stood in the same position as a person who buys a lot in a new subdivision where there is a right of way to an undeveloped plot of land that is shown on a subdivision plan but a road is as yet unconstructed: they were obliged as a matter of law to use their property in a manner consistent with the right of the holder of the easement to use the easement for access to a lot in a newly created subdivision. When they subsequently destroyed the old farmhouse and built a new house closer to the right of way of old T.H. #21, and when they moved the location of the traveled portion of old T.H. #21 from the westerly side of the rock wall and garden to the easterly side of it, and when they created a septic system with a line that passes from their house under the right of way of old T.H. #21 to a septic tank and leach field located easterly of the right of way, and when they regraded

portions of the right of way to create a swale and located lawn, a parking area, and a fence setting off the parking area within the right of way of old T.H. #21, they are deemed to have done so with knowledge that they were not entitled to abridge the rights of the easement holders, and that the rights of the easement holders to use the easement for its intended purposes is superior to their claim to the enjoyment of the amenities they created on their property for their own benefit. Crabbe v. Veve Asociates, 150 Vt. 53 (1988).

The Defendants, as holders of the easement providing access to their 33 acre parcel along the location of T.H. #21, are "entitled to a convenient, reasonable, and accessible way, having regard to the interest and convenience of the owner of the land as well as their own." Patch v. Baird, 140 Vt. 60 (1981). They are entitled to make use of the easement for its intended purpose, i.e., providing normal travel and utility line access to a parcel of land of 33 acres ripe for development. Thus, they are not limited to using the right of way for farm purposes, and are entitled to improve it to specifications reasonable under current common standards of construction to service a 33 acre parcel for purposes consistent with permitted uses under Town zoning and other pertinent land use regulations. In other words, they may not construct a superhighway to a 33 acre parcel, but if a "14 foot wide, 8 inch deep gravel base road with cut and fill as needed, with a 6 foot minimum grassed apron to be graded to meet existing contours" is the type of road appropriate to service the number of structures that may reasonably be projected to be constructed on a 33 acre parcel in that location in Randolph, then Defendants may construct a road to meet such specifications. Nonetheless, they may not do so in complete disregard of the Plaintiffs' use of their land consistent with this purpose. For example, the Defendants may only use as much

width as is necessary for such a road (rather than the full width of a 3 rod wide swath through the Plaintiffs' property), and the 6 foot grassed apron should be constructed consistent with the landscaping of the Plaintiffs. Similarly, Defendants are obliged to blend their road construction to the extent practically feasible with the character of the Plaintiffs' driveway. Since the Plaintiffs' barn is and always has been on the opposite side of old T.H. #21 from the house, Plaintiffs are entitled to have Defendants construct their roadway in a manner that respects the interrelationship between the barn and the house.

As to the location of the road, which is at issue since the Plaintiffs moved the roadbed from one side of the rock wall and garden to the other, the Defendants' needs are sufficiently met, and the purpose of the easement served, as long as the roadbed is located at any point within the 3 rod wide right of way, and the relocated roadbed does not create any unsafe or costly conditions for the Defendants. As a general principle, the Plaintiffs' designation of the roadbed along the easterly side of the right of way and east of the rock wall and garden is a minor relocation and is therefore a reasonable adjustment in the designation of the area for the Defendants' roadbed. Nonetheless, if the relocation means that there is insufficient room for appropriate snowplowing and snow removal, or there is some other practical consequence that imposes increased cost or dangerous conditions on Defendants' use of the easement, then Defendants are entitled to have Plaintiffs return the roadbed to its previous location or pay for the increased costs imposed on Defendants as a result. For example, if Defendants' road construction costs are increased because of the swale and grading done by Plaintiffs near their parking area, then Plaintiffs shall be responsible for the portion of

Defendants' road construction costs attributable to that change made by Plaintiffs in the roadbed.

Since both the Plaintiffs and Defendants will be using a common portion of the right of way, the parties shall share the costs of maintenance, repairs and snow removal on the shared use portion in proportion, as nearly as possible, to their relative use, having due reference to the respective frequency of use of the parties and the burden that the number and weight of their respective vehicles puts on the shared portion of the road. The Defendants alone are responsible for maintenance, repairs and snow removal on the portion of the road that is used only for their benefit.

Whether or not the Plaintiffs' gate interferes unreasonably with the Defendants' right of passage depends on the Defendants' use of their property from time to time. As long as the land is vacant and Defendants only go to their property occasionally, the locked gate (with provisions for keys to the Defendants) is not an unreasonable interference with Defendants' use of their right of way. If Defendants construct a primary residence on their land, then locking and unlocking a gate every time they go to and from home would constitute an unreasonable interference with Defendants' use of their own property and right of access to it. In that eventuality, Plaintiffs would have to make other arrangements to secure their dwelling that did not interfere with Defendants' reasonable use of their own access right.

Summary Declaration of Rights

1. Defendants are entitled to construct a road along their right of way across Plaintiffs' land.

2. In laying out the road, Defendants are obliged to use as the centerline of such road the centerline of the relocated roadbed within the

right of way of former T.H. #21, except that if the use of such relocated centerline imposes increased costs or dangerous conditions, Defendants are entitled to use the location of the original roadbed or require Plaintiffs to pay the increased costs occasioned by the Plaintiffs having relocated the roadbed.

3. Defendants are entitled to construct a 14 foot wide, 8 inch deep gravel base road with cut and fill as needed, with a 6 foot minimum graded and grassed apron, if a road with such specifications is reasonable and appropriate under current standards of construction to service the types of land use permitted on Defendants land by all applicable land use regulations.

4. Defendants shall construct the road in such a manner as to blend its contours with the Plaintiffs' use of contiguous land, and so as to create the least possible impact in separating Plaintiffs' use of their house from their use of their barn.

5. Plaintiffs shall bear any extra costs imposed on Defendants in carrying out their road construction as a result of the Plaintiffs having located their sewer line, septic system and leach field under the right of way, created a swale, parking area and fence, and relocated the roadbed from the west side of the rock wall and garden to the east side of the rock wall and garden.

6. Both parties are entitled to make reasonable use of their interests in and to the easement area consistent with the intended purpose of the easement and the principles described herein.

Dated at Chelsea, Vermont this 5th day of July, 1994.

Mary Miles Teachout

Mary Miles Teachout
Superior Judge