

PAUL W. VOLLMAN and
PAULINE M. VOLLMAN, his wife,
and PAUL W. VOLLMAN, JR. and
BETTY A. VOLLMAN, his wife,
Plaintiffs

vs.

CHRISTOPHER W. BARTLETT
and NONNIE JO PEARSON,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
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:
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: NO. 00-00,630
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:
:
: NON-JURY TRIAL ADJUDICATION

Date: October 11, 2002

FINDINGS, CONCLUSIONS AND VERDICT

FINDINGS OF FACT

1. Plaintiffs are Paul W. Vollman and Pauline M. Vollman, adult individuals of 724 State Run Road, Montgomery, Lycoming County, Pennsylvania, hereinafter referred to sometimes as "Vollman, Sr.;" and Paul W. Vollman, Jr. and Betty A. Vollman, adult individuals of 691 Middle Road, Montgomery, Lycoming County, Pennsylvania, hereinafter referred to as "Vollman, Jr."

2. Defendants are Christopher W. Bartlett and Nonnie Jo Pearson, adult individuals of 681 Middle Road, Montgomery, Lycoming County, Pennsylvania.

3. Plaintiffs, Paul W. Vollman and Pauline M. Vollman own and have fee simple title to real property situate in Clinton Township, Lycoming County, Pennsylvania, known as Lycoming County Parcel Number 07-392-177, pursuant to the deed dated January 21, 1960, recorded in Lycoming County Deed Book 462 at Page 16, a copy of which is attached to the Complaint as Exhibit "A."

4. Plaintiffs, Paul W. Vollman, Jr. and Betty A. Vollman own and have fee simple title to real property situate in Clinton Township, Lycoming County, Pennsylvania, known as Lycoming County Parcel Number 07-392-177 A, pursuant to the deed dated November 24, 1993, recorded in Lycoming County Record Book 2172 at Page 45, a copy of which is attached to the Complaint as Exhibit "B."

5. Defendants own and have fee simple title to real property situate in Clinton Township, Lycoming County, Pennsylvania, known as Lycoming County Parcel Number 07-392-181 pursuant to the deed dated November 21, 1995, recorded in Lycoming County Record Book 2516 at Page 280, a copy of which is attached to the Complaint as Exhibit "C." Defendant Christopher Bartlett has lived on this property since at least 1972, when he was age 12.

6. The parcels of real property of the parties as described above are adjacent to each other.

7. The parcels of real property of Plaintiffs as referred to above do not border upon any public highway.

8. Plaintiffs have access to their parcels of real property from Township Road #423 (Middle Road) over and upon a private driveway, pursuant to an Order of Court dated January 19, 1999, indexed to #97-00,745, a copy of which is attached to the Complaint as Exhibit "D," in which Plaintiffs were granted a right-of-way easement over and upon the land of Frank E. Bennett and Janet P. Bennett. Pursuant to the Order of Court the easement and survey plat plan of the private was recorded in Lycoming County Record Book 3491 at Page 248 and Map Book 57 at Page 25. The easement is attached to the Complaint as Exhibit "E"

and a reduced sized copy of the survey plat plan is attached to the Complaint as Exhibit "F." The above Order and easement established thereby does not affect Defendant's property.

9. In an Order dated June 20, 2000, the Court, in the case of Bennett vs. Vollman, #97-00,745, as a result of a contempt petition filed by the Vollmans, (defendants in that action) further defined the right of the Vollmans concerning the use of a six-foot wide buffer zone depicted on Exhibit "F." Plaintiffs in this action seek to obtain the right to use a six-foot wide buffer zone to the west of the cartway, which would extend onto Defendants' property for varying distances of up to six feet. The Order of June 20th establishing the eastern buffer zone but does not include use of Defendants' property.

10. The deed dated January 21, 1993, by which Plaintiffs Vollman, Sr., conveyed 6.534 acres of real property to Plaintiffs Vollman, Jr., contains a specific and express grant of easement to use the private roadway. Since that date Plaintiffs Vollman, Jr. have used and continue to use the private roadway for access to their property.

11. The actual cartway and improved section of the private roadway is twelve feet (12') in width.

12. The cartway of the private road easement does not border but is adjacent to the eastern boundary of Defendants. Defendants' eastern boundary is a straight line extending northerly from Middle Road. The west line of the cartway is roughly parallel to Defendants' eastern boundary line but has three slight angle changes as it extends northerly from Middle Road. As a result, the western portion of the entrance apron and the western buffer zone of the easement as indicated on the survey plat plan (Exhibit F), is on the land of Defendants, to a varying extent of up to six feet along the easement's length.

13. Plaintiffs Vollman, Sr., since 1960 to the present, have used the private roadway consisting of the 12-foot wide cartway, described above, for truck and agricultural machine traffic to and from their property and Township Road 423 (Middle Road). Plaintiffs' use of the private road has been for residential, agricultural, timbering and business purposes. The private road has been used for vehicular traffic including, but not limited to, private automobiles and trucks, farm equipment and farm trucks, delivery trucks, tow trucks, vehicles with trailers, timber trucks and pedestrians. The trucks, including rescue and fire trucks, and agricultural equipment, also drove over and upon an entrance apron on the land of Defendants as indicated on Exhibit "F."

14. Plaintiffs Vollman, Sr., from 1960 to 1986, used the private roadway and the entrance apron for commercial and business purposes when a used car business was operated on the property, including a car lot and repair garage.

15. Plaintiffs, Vollman, Sr., during the winter seasons, since 1960 to the present, have used and continue to use the land that is six (6') feet to the west of the existing cartway as indicated on the private roadway survey plan, Exhibit "F," for the purpose of snow piling, when plowing the cartway.

16. Plaintiffs Vollman, Sr., from 1980 to 1997, during the seasons for the cultivating and harvesting of crops have used the existing cartway as indicated on the private road survey plan, Exhibit "F," for the moving of agricultural machinery to and from their properties and Township Road 423, Middle Road (testimony indicated this was a narrow public road). This machinery was owned and operated by Robert E. Moore, who has leased part of Vollman, Sr.'s land for farming purposes since 1980. This use did not extend over the land of

Defendants. Nor did this use infringe upon Defendants' property in any open, notorious nor hostile manner. The largest agricultural machinery using the cartway consisted of:

- 1) a 12-foot wide corn planter;
- 2) a 12-foot wide chisel plow; and
- 3) a 14-foot wide, 14-foot high combine.

These each used the cartway to enter and exit Vollman, Sr.'s property over the cartway, however, it was not clear if this occurred more than one time per year or if in each year for each piece of equipment.

Robert Moore stopped using this easement in 1997 for access to farming the Vollman properties. Thereafter, through this date he has used another means of access to the Vollman property. In 1997 Robert Moore increased the width of the machinery he was using due to shifting to a 6-row corn planter. Prior to 1997 the corn planter was 12' in width. After 1997 he started to use a corn planter that was "16' to 16-1/2' pushing 17' wide." He also started to use a new combine. The new combine is larger than the combine used prior thereto (14' wide and 14' high) and is too wide to use the easement from Little Road to the Vollman properties. There was no testimony as to the exact width of the new combine nor was there any testimony as to what size the combine could be reduced to for traveling over other roadways as opposed to being used in the field. Also, there was no testimony as to whether the wider corn planter and other equipment could be modified for purposes of traveling, either along this easement or public roads.

17. Plaintiffs' use of the cartway portion of the private roadway and entrance apron was openly visible, but their use of the land outside and to the west of the 12'-wide cartway was not openly visible.

18. Plaintiffs' use of the private roadway and entrance apron was not shared with others and was to the exclusion of others, except Defendants.

19. Plaintiffs do not have a written recordable grant of easement for the use of Defendants' property.

20. Defendants, since at least 1972, have permitted four trees to grow on their land in close proximity to or within the buffer zone west of the cartway.

21. A telephone pole was erected in 1993 in the buffer zone area east of the cartway, to reroute electric lines to Plaintiffs' property.

22. The four trees and pole are not depicted on Exhibit "F," however, based on the testimony and photographs, Plaintiffs' Exhibits 9-17, the Court finds that proceeding northerly from the centerline of Middle Road along the easement area toward Vollmans' properties the trees and poles are located and physically situated with attributes, as follows:

- a. A maple tree planted in 1972 by Defendant Chris Bartlett is 30' from Middle Road on Defendants' property, west of the cartway at least 3' (Plaintiffs' Exhibit 16; also 15, 17); there is no obstruction within the cartway nor eastern buffer zone opposite this tree; it does not interfere with any use of the easement that has been made by Plaintiffs.

- b. A second maple tree planted in 1972 by Defendant Chris Bartlett is located approximately 69' north of the first maple tree (Plaintiffs' Exhibits 13, 15, 16, 17); it is also on Defendants' property about 3' west of the cartway and 1' west of the buffer zone; the electric pole placed in 1993 stands opposite this tree; there is a distance of 17' between the tree and the electric pole; this tree does not interfere with any use Plaintiffs have made of the cartway; the placement of the electric pole limits the width of machinery at this section of the cartway to 17' or less.
- c. A walnut tree has grown since approximately 1980, at a point about 70-75' north of the second maple tree (Plaintiffs' Exhibits 15, also 12 and 14); it is on Defendants' property about 3' west of the cartway; there is no obstruction in the cartway nor eastern buffer zone opposite this tree; the trees lower branches, before being trimmed, may have touched vehicles and machinery using the cartway but otherwise it has not interfered with any use of the easement by Plaintiffs.
- d. A poplar tree has grown on Defendants' property since about 1990 at a point within 10-15' of the north end of the easement (Plaintiffs Exhibits #12, 14 and 17); it is approximately 5' west of the cartway; there is no obstruction in the cartway nor eastern

buffer zone opposite this tree; it has not interfered with Plaintiffs' use of the easement.

23. Plaintiffs stopped using a sickle bar mower to cut the vegetation within the buffer zone in approximately 1985. The mowing conducted by Plaintiffs prior thereto did not extend to such a width west of the cartway as would have touched the four trees referenced above and/or Plaintiffs mowed around those trees.

24. The four trees do not interfere with Plaintiffs' use of the 12'-wide cartway. Defendants object to Plaintiffs' proposed removal of the trees from the claimed buffer zone area.

25. The widest machine proposed by Plaintiffs to use the easement would be Robert Moore's new combine or corn planter, of a width pushing 17'. Plaintiffs' 12'-wide easement and 6'-wide eastern buffer zone would accommodate all proposed uses by Plaintiffs, except perhaps where the electric pole serving Plaintiffs' property since 1993 is located.

26. Plaintiffs' use of the easement west of the 12' cartway has been with the consent of Defendants and Defendants' predecessors. Defendants gave this consent in a neighborly fashion so that Plaintiffs could easily make use of their easement.

27. Plaintiffs' use of the private roadway apron also was with the permission of Defendants or Defendants' predecessors in title. This use of the apron involved minimal intrusion upon Defendants' property and as depicted in the photographs would have constituted use of Defendants' property as exhibited on Plaintiffs' Exhibit 6 running in a curve to the right from the southwest corner of the apron depicted as being the centerline of Township Route 423

at a set magnetic nail to a point 21.50' northerly of said centerline where the property line of Defendants intersects the western line of the cartway.

28. Plaintiffs' use of the private roadway apron and buffer zone area west of the cartway has not been hostile or continuous for 21 years.

29. To the extent Defendants' trees interfere with Plaintiffs' use of the cartway by their overhanging limbs Defendants have consented to Plaintiffs' trimming of the branches that are within the height necessary for vehicles to pass over the driveway. This consent was giving of neighborly permission for the cutting of necessary branches in order that vehicles and machinery passing along the easement would not be touched or impeded by the branches.

CONCLUSIONS OF LAW

1. Plaintiffs have not exercised open, notorious, continuous and hostile use of any easement over Defendants property for 21 years and, therefore, have not acquired a prescriptive easement thereto.

2. To the extent that Plaintiffs' use of their easement extended beyond the western line of the 12'-wide cartway onto Defendants' property it was only hostile and otherwise adverse for a period of time from 1980 to 1997 when it was used by the tenant farmer, Robert Moore, for the occasional moving of farm machinery along the easement right-of-way; such would have constituted an adverse use for overhang purposes of an area up to two feet west of the cartway.

3. Plaintiffs have not met their burden regarding any easement that would necessitate the cutting of trees on Defendants' property.

4. Plaintiffs are not entitled to an expansion of their easement rights onto Defendants' property so as to entitle them to any use of Defendants' land west of the cartway.

5. Plaintiffs' use of the entrance apron and buffer zone area west of the 12'-wide cartway, as described above, has not been continuous, openly visible, notorious, hostile and adverse for a period in excess of twenty-one (21) years.

6. To the extent Plaintiffs used the entrance apron or Plaintiffs' equipment overhung Defendants' property as it traversed the cartway, or the plowing of snow resulted in plowed snow being piled on Defendants' property and the trimming of some branches from Defendants' walnut tree overhanging the cartway, were not done in hostility to Defendants and their predecessors. Rather such uses were exercised by Plaintiffs in the spirit of neighborly indulgence and accommodation on the part of Defendants.

VERDICT

The Court finds in favor of Defendants and against Plaintiffs on all claims. Plaintiffs do not have any easement over the lands of Defendants.

BY THE COURT:

William S. Kieser, Judge

cc: Scott T. Williams, Esquire
J. Howard Langdon, Esquire
Judges
Christian J. Kalas, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)