

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FRANCES L. BARNARD,
Plaintiff

v.

GEORGE and MARILYN BIDLESPACHER;
GREGORY and KAREN BROWN; and
WILLIAM and BRENDA ULRICH,
Defendants

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: **No. 07-00,733**
: **CIVIL ACTION**
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OPINION AND ORDER

Before this Honorable Court is Frances L. Barnard's (Plaintiff) request for a Permanent Injunction, enjoining George and Marilyn Bidlespacher (Defendants) from blocking a right-of-way to Plaintiff's property. On May 17, 2007, this Court granted the Plaintiff's April 23, 2007 request for a Preliminary Injunction. On October 19, 2007, a hearing was held on Plaintiff's Request for a Permanent Injunction as to Defendant Bidlespacher only, as the remaining Defendants were not present. Following the hearing, this Court ordered Counsel for the Plaintiff and Defendant Bidlespacher to submit to the Court a brief on the relevant issues. Although the Plaintiff pleaded an alternative count in her Second Amended Complaint for private condemnation, the Court restricts its discussion to the Plaintiff's count for a Permanent Injunction against Defendant Bidlespacher.

Background

At issue is Plaintiff's right to utilize a lane and right-of-way to Plaintiff's property from Trout Run Mountain Road that crosses or adjoins Defendants' right-of-way. Plaintiff owns three contiguous parcels of land in Gamble Township, Lycoming County. Plaintiff purchased the first of her three parcels, Tax Parcel No. 14-349-111, in 1964. This parcel contains a seasonal home.

Since 1964, Plaintiff has accessed her property by way of an unpaved private road (hereinafter referred to as “Bidlespacher Road”), which begins on a public road known as Trout Run Mountain Road and crosses through each of the Defendants’ properties. Subsequent to purchasing Tax Parcel No. 14-349-111, Plaintiff purchased Tax Parcel No. 14-269-113, which contains an express easement over Harbot Road. Harbot Road extends west from Plaintiff’s property and leads to a public road known as Ringler Road.

Plaintiff is seeking a Permanent Injunction under the easement by implication theory as to the portion of Bidlespacher Road that crosses Defendant Bidlespacher’s property. At the time of Plaintiff’s purchase in 1964, the parcel was landlocked except for Bidlespacher Road, which was used regularly by the previous owner and the tracts owned by Plaintiff and Defendant Bidlespachers have a common Grantor. While neither of the tracts owned by Defendants Brown and Ulrich have a Grantor in common with the Plaintiff’s property, Plaintiff alleges that since her purchase in October 1964, she has forever openly, notoriously, consistently, adversely and not by permission, used this road, for at least 21 years. Thus, the Plaintiff claims her use of the portion of Bidlespacher Road which crosses Defendant Ulrich’s and Defendant Brown’s property entitles her to a Permanent Injunction under the easement by prescription theory.

In opposition, Defendant Bidlespacher alleges that Plaintiff is not entitled to a Permanent Injunction under either the easement by implication theory or the easement by prescription theory. First, Defendant Bidlespacher argues that Plaintiff cannot establish the necessity for an easement over Bidlespacher Road, since the Plaintiff’s property can also be accessed by Harbot Road, over which the Plaintiff enjoys an express easement. Second, Defendant Bidlespacher argues that the Plaintiff is not entitled to an easement by prescription as a portion of the

Bidlespacher Road exists in unenclosed woodland and Defendant Bidlespacher has every year since 1969, blocked the road for the month of February.

Discussion

Plaintiff has failed to establish an easement by implication over Defendants' property. According to the Pennsylvania Supreme Court, "[a]n easement by implication arises after it is clear that a particular division of property was created by a common grantor and, without specifying that an easement over one of the estates was granted, by implication the use of the parcel would not be possible without the existence of the easement." Kao v. Haldeman, 556 Pa. 279, 282 (1999) (quoting Sentz v. Crabbs, 630 A.2d 894, 895 (1993)). Further, "an easement by necessity is extinguished when the necessity from which it resulted ceases to exist." Phillippi v. Knotter, 748 A.2d 757, 762 (Pa. Super. Ct. 2000) (quoting Possessky v. Diem, 655 A.2d 1004, 1010 (Pa. Super. 1995)). Plaintiff can establish an easement by implication upon purchase of Tax Parcel No. 14-269-111; however, the Plaintiff's subsequent purchase of Tax Parcel No. 14-269-113, provides access to Plaintiff's property via the express easement over Harbot Road. Therefore, as the Plaintiff has access to her property through Harbot Road, the necessity of using Bidlespacher road ceases.

Further, Plaintiff has failed to establish an easement by prescription over Defendant Brown's and Defendant Ulrich's properties. Under Pennsylvania law, "to acquire an easement by prescription, the exercise of possession must be adverse, open, notorious and uninterrupted for a period of at least twenty-one years." Lewkowicz v. Blumish, 442 Pa. 369, 371 (1971). Further, 68 P.S. § 411 provides in relevant part that: "[n]o right of way shall be hereafter acquired by user, where such way passes through uninclosed woodland . . ." The Pennsylvania Superior Court has determined that even if part of the road is over an open field, if any part of it continues

into woodland, as a whole, the easement by prescription is defeated. Humberston v. Humbert, 406 A.2d 31, 32 (Pa. Super. Ct. 1979) (citing Trexler v. Lutz, 118 A.2d 210 (1955)). It is undisputed that a portion of Bidlespacher Road exists in unenclosed woodland. Plaintiff's husband testified that the portion of Bidlespacher Road which crosses Defendant Ulrich's property is located in woodland, and that the wooded area of the road is accurately depicted in Plaintiff's Exhibit 12. Additionally, a survey prepared by Larson Design Group, introduced as Defendants' Exhibit 2, describes a portion of Bidlespacher Road that crosses the Brown property as an "Ex. Woods Road".¹ Since a portion of Bidlespacher Road continues into woodland, the easement by prescription is defeated. Therefore, Plaintiff cannot establish an easement by prescription over Defendant Brown's and Defendant Ulrich's properties.

ORDER

AND NOW, this _____ day of December 2007, the Court hereby DENIES Petitioner's request for a Permanent Injunction. Defendants request for reasonable Attorneys fees from the bond posted by Plaintiff will be considered upon filing of itemized bills. Moreover, upon receipt of said statement, the Court will award reasonable attorneys fees, and release said bond.

By the Court,

Nancy L. Butts, Judge

xc: Marc S. Drier, Esq.
Kristine L. Waltz, Esq.
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)

¹ Short for Existing Woods Road.