

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DEAN CARSON WILLIAMSPORT, LLC : NO. 07-00402
 :
 v. : CIVIL ACTION - LAW
 :
 TERRA FIRMA DEVELOPMENT, LLC :
 And TOWNSHIP OF LOYALSOCK :

OPINION

This Order comes as a result of Defendant’s Motion for Summary Judgment and Plaintiff’s Cross Motion for Summary Judgment. Defendant argues that Summary Judgment is appropriate because Defendant has either been granted the specific right to use a portion of Plaintiff’s property for ingress and egress or in the alternative has acquired such right by prescription. Plaintiff argues that Summary Judgment in their favor is appropriate because the deed grant allows for Defendant’s use of Plaintiff’s property for ingress and egress and does not grant full longitudinal access to the easement.

Summary Judgment may be properly granted “...when the uncontroverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. Rauch v. Mike-Mayer, 783 A.2d 815, 821 (Pa. Super. 2001). The movant bears the burden of proving that there are no genuine issues of material fact. Id. In determining a motion for summary judgment, the court must examine the record “in the light most favorable to the non-moving party, accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.” Godlewski v. Pars Mfg. Co., 597 A.2d 106, 107 (Pa. Super. 1991). Summary judgment may be properly entered if

the evidentiary record “either (1) shows that the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense.” Rauch at 823-24.

The case law provided by the parties with regard to the expressed deed grant is limited. The Court accepts as true that an easement may be created by an express grant. Amerikohl Mining Co. Inc., v. Peoples Natural Gas Co., 860 A.2d 547, 550 (Pa. Super. 2004). The rights conveyed by an express easement are determined solely by the unambiguous terms of the deed. Joiner v. Sw. Central Rural Elec. Coop. Corp., 786 A.2d 349, 352 (Pa. Commw. 2001). If the terms of the grant are plain and unambiguous, they control. Id.

Plaintiff wishes to construct a fence along side the easement in question, allowing for ingress and egress to the easement only at the northeastern most corner of Defendant’s property. Furthermore, Plaintiff wishes to construct a fence *across* Eck Circle, thereby effectively limiting Defendant’s access solely to the northern section of Eck Circle, with access to it available only by way of the northeastern corner of Defendant’s property. The deed grant specifically states:

ALSO the right of the Grantee, its successors and assigns, to use in common with Frank E. Eck, his heirs, executors, administrators and assigns, a right of way which lies to the east of the above-described property, which is known as Eck Circle, for the purposes of ingress and egress to and from the above-described land.

As the Court stated above, if the terms of the grant are plain and unambiguous, they control. It is clear to the Court that the right of way in question is Eck Circle. Granting access to only a portion of Eck Circle would not fulfill the express terms of the grant. Defendant must have complete and total access to Eck Circle as well as its termini. The owner of a servient

estate may erect fences along the sides of a way, but not across the way so as to obstruct it entirely. Dyba v. Borowitz, 7 A.2d 500 (Pa. Super. 1939); *See* Edwards v. Julian, 159 A.2d 547 (Pa. Super. 1960); Cherry v. Harrison, 55 Pa. D.&C. 230 (1971); Snyder v. Oswalt, 34 Pa. D.&C.3d 320 (1984). An owner of land may make any use of his land that does not interfere substantially with a created easement. Edwards, *supra*; Cherry, *supra*; Snyder, *supra*. The express terms of the grant as well as the case law make clear that Plaintiff may not construct a fence *across* the easement or at either end of the termini.

Plaintiff further argues that the deed grant does not give Defendant longitudinal access to the easement. Plaintiff cites to the Court in Dyba for the proposition that a grant of an easement for ingress and egress does not grant full longitudinal access. In Dyba the Court specifically stated, “In this commonwealth the rule always has been that the owner of land who grants a right of way over it conveys nothing but the right of passage and reserves all incidents of ownership not granted.” Id. at 501; Edwards, *supra*; Cherry, *supra*; Snyder, *supra*. The Dyba case mandates the conclusion that longitudinal access does not follow an easement. *See also*, Edwards, *supra*; Cherry, *supra*; Snyder, *supra*. As was stated before, an owner of land may make any use of his land that does not interfere substantially with a created easement. Therefore, Plaintiff has the right to construct a fence along the easement so long as it does not impede Defendant’s access to the entire length and termini of Eck Circle in the absence of prescriptive rights. Defendant’s prescriptive rights, if any, to longitudinal access involve factual issues that must be resolved at trial.

ORDER

AND NOW, this ___ day of July, 2009, it is hereby ORDERED and DIRECTED that Defendant's Motion for Summary Judgment is GRANTED in part and DENIED in part. Summary Judgment in favor of the Defendant is GRANTED as to the construction of a fence across the easement in question, known as Eck Circle. Defendant is prohibited from constructing a fence that runs across the easement. Summary Judgment is GRANTED as to the issue of Defendant's specific right to use that portion of the Plaza Parcel lying directly east of its eastern boundary and along the entire eastern frontage of the Terra Firma parcel, known as Eck Circle, for ingress and egress. Plaintiff shall not obstruct Defendant's complete and total access to the easement known as Eck Circle. Defendant's Summary Judgment is DENIED as to longitudinal access and the Court defers ruling until the time of trial as to the issue of whether Defendant has established a prescriptive easement over longitudinal access to the easement.

Furthermore, it is hereby ORDERED and DIRECTED that Plaintiff's Cross Motion for Summary Judgment is GRANTED in part and DENIED in part. Summary Judgment is GRANTED as to the construing of the language of the deed to only grant such passage to Defendant as is sufficient to provide ingress and egress of motor vehicles to and from East Third Street by way of Eck Circle to the Terra Firma parcel as well as ingress and egress to and from Second Street by way of Eck Circle to the Terra Firma parcel. Plaintiff's Summary Judgment is DENIED and the Court defers ruling until trial on the issue of prescriptive easement, Plaintiff's right to construct a fence along Eck Circle as well as the issue of enjoinder of Defendant's use of the Plaza Parcel parking lot.

BY THE COURT,

Judge Richard A. Gray

cc: Daniel Mathers, Esquire
Charles Greevy, III, Esquire
N. Randal Sees, Esquire
Gary Weber, Esquire