

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KENNETH E. MYERS and ROSALIND A. MYERS, Plaintiffs	:	NO. 11 - 01,079
	:	
vs.	:	CIVIL ACTION - EQUITY
	:	
	:	
JEFFREY A. SNYDER and JONATHAN SNYDER, Defendants	:	Non-jury Trial

OPINION AND VERDICT

Before the Court is Plaintiffs’ request for equitable relief with respect to the use of a private road in Nippenose Township. Defendants have erected a barrier blocking access to the road at the boundary between their property and Plaintiffs’ property and Plaintiffs seek to have the court order that barrier be removed and Defendants prevented from further blocking the road. Defendants claim that by adverse possession they have eliminated Plaintiffs’ right to use the road as it crosses their land. A trial was conducted before the court sitting without a jury on June 29, 2012. At the conclusion of the trial, defense counsel asked for the opportunity to submit a memorandum on the issue of exclusivity. Such having been received, the matter is now ripe for decision and the Court enters the following:

FINDINGS OF FACT

1. Plaintiffs own real property located in Nippenose Township along Old Morgan Valley Road.
2. Defendant Jeffrey Snyder owns real property immediately to the east of Plaintiffs’ property, also along Old Morgan Valley Road. Defendant

Jonathan Snyder, Jeffrey Snyder's son, resides on the property owned by his Father.¹

3. Old Morgan Valley Road had at one time been a public road but was vacated by the township in the 1930's. The road was left open as a private road for the benefit and use of the property owners through and along whose land it traversed.

4. Defendants purchased their property in 1993 from Defendant Jeffrey Snyder's grandfather, Mervin Shaffer, who had purchased it in 1956.

5. Plaintiffs purchased their property in 1992 from Plaintiff Rosalind Myers' father, Robert Shemory, who had purchased it in 1964.

6. As of 1964, to prevent further vandalism, a chain had been placed across the road approximately 50 yards from its western junction with State Route 44,² and also across the road at some point at or near the eastern boundary of Defendants' property.

7. The chains were locked and all property owners along the road between the two chains were given keys.

8. In the late 60's the chains were replaced with cables.

9. In 1999, Defendants replaced the cable on the eastern edge of their property with a gate. The gate was locked and keys to that lock were given only to Defendants' close family members and PPL.

10. Defendants use a different road, Shaffers Private Road, to access their property.

¹ Although ownership of the property is in Defendant Jeffrey Snyder only, for convenience, the court may refer to "Defendants" when actually it may be only Defendant Jeffrey Snyder who is meant.

² Old Morgan Valley Road runs from State Route 44 on the western junction to State Route 654 on the eastern junction.

11. Plaintiffs use Old Morgan Valley Road from State Route 44 to access their property.
12. Defendants placed a barrier at the boundary line between their property and Plaintiffs' property in 2010.
13. Plaintiffs (one or both of them) and other family members have walked and/or driven on Old Morgan Valley Road across Defendants' property from 1964 until the barrier was erected in 2010, on a regular, if not frequent, basis.
14. Other witnesses have been using Old Morgan Valley Road across Defendants' property on a regular basis during this time period as well.
15. Defendants gave Plaintiffs permission to use the road across their property during hunting season one year.
16. Plaintiff Kenneth Myers has hunted on property to the north of Defendants' property (which is owned by Pennsylvania College of Technology) and has used Old Morgan Valley Road across Defendants' property to access the Penn College property. He did not have specific permission from Penn College to hunt on that land.

DISCUSSION

The standard to be applied by the court in determining whether Defendants have extinguished Plaintiffs' right to use Old Morgan Valley Road across their property is found in the recent (as far as property law is concerned) case of Estojak v. Mazsa, 562 A.2d 271, 274 (Pa. 1989)(citations omitted):

The standards for determining the acquisition of title to land by adverse possession and for determining whether an easement over property has been extinguished by adverse possession contain the

same basic elements – in each situation, the possession that will acquire title or extinguish an easement must be actual, continuous, adverse, visible, notorious and hostile possession of the land in question for the prescriptive period of twenty-one years. However, the focus of these standards is markedly different in the two situations, for conduct that is sufficient to acquire title to land may not be sufficient to extinguish someone else’s easement over (or use of) that land. To extinguish an easement over (or use of) the servient tenements, the servient tenement owner must demonstrate a visible, notorious and continuous adverse and hostile use of said land which is inconsistent with the use made and rights held by the easement holder, not merely possession which is inconsistent with another’s claim of title.

The court also noted that:

“[T]here must be shown, by word or act, an express repudiation of the interests acquired by others, and an intention to set up a hostile claim.” . . . The repudiation of the rights of other persons in a right-of-way must be manifested by words or acts which are inconsistent with or infringe upon the other persons’ right to pass across the land whenever the necessity to do so arises No particular conduct is required, but the obstructing conduct must be inconsistent with one’s right to use and enjoy the easement.

Id. at 275 (quoting Stozenski v. Borough of Forty Fort, 317 A.2d 602, 605 (Pa. 1974)). In Estojak, the court found that the easement had not been extinguished by adverse possession because “*appellees did nothing* to restrict access over East Union Street or to indicate to the world that they repudiated the private rights of easement held by the landowners in the Minsi Trail Farm Plan.” Id. at 276 (emphasis in original).

In the instant case, although Defendants *have* done something to restrict access over Old Morgan Valley Road, i.e., erecting the barrier at the boundary line between their property and Plaintiffs’ property, they did not do that until

2010, and thus far less than twenty-one years have passed. The chains, later cables, that were placed more than twenty-one years ago were not placed there to repudiate the private rights of the landowners along the road as all landowners were given keys. Further, it is clear they did not restrict access since many people continued to use the road in spite of them. While the gate placed by Defendants in 1999 may have restricted access because others were not given a key to its lock, that gate has also been there less than twenty-one years. Therefore, Defendants have not demonstrated “a visible, notorious and continuous adverse and hostile use of said land which is inconsistent with the use made and rights held by the easement holder”. Id. at 274.

Defendants contend nevertheless that Plaintiffs may not seek relief from this court because they come to the court with “unclean hands”. While it is generally true that a party seeking equitable relief must come before the court with “clean hands”, Mudd v. Nosker Lumber, Inc., 662 A.2d 660 (Pa. Super. 1995), that principle is to be applied when the wrongdoing directly relates to the matter in controversy and affects the relationship between the parties. In re Francis Edward McGillick Foundation, 594 A.2d 322 (Pa. Super. 1991), *affirmed in part and reversed in part (on other grounds)* by 642 A.2d 467 (Pa. 1994). In the instant case, Defendants contend Plaintiffs’ hands are “unclean” because Plaintiff Kenneth Myers has hunted on the property of Penn College without their specific permission to do so and may use the road to access their property in the future. This circumstance does not, in the court’s opinion, preclude Plaintiffs from seeking equitable relief before this court. Even if hunting on private property without the permission of the property owner constitutes “wrongdoing”, the court cannot find that such directly relates to the matter in controversy and

affects the relationship between the parties. Any “wrongdoing” on Plaintiff’s part is an issue between him and Penn College, not Defendants.

Accordingly, the Court draws the following:

CONCLUSIONS OF LAW

1. The right of Plaintiffs to use Old Morgan Valley Road to cross Defendants’ property has not been extinguished by adverse possession.
2. Plaintiffs are not precluded by the doctrine of “unclean hands” from seeking equitable relief from the court.

VERDICT

AND NOW, this 9th day of July 2012, for the foregoing reasons, the Court finds in favor of Plaintiffs and against Defendants. It is ordered as follows:

1. Within thirty (30) days of this date, Defendants shall remove the blockage they placed on Old Morgan Valley Road at the common boundary line between their property and Plaintiffs’ property.
2. Defendants are ordered to cease and desist from any further attempts to block Plaintiffs’ access to the road.
3. Also within thirty (30) days of this date, Defendants shall provide Plaintiffs with a key to the gate they placed across the road at the eastern edge of their property. If Defendants change the lock at any time in the future, they must

provide Plaintiffs with a key within five (5) days of that change.

4. Defendants may not remove any culvert pipe from the road if by doing so they would diminish the quality of the road.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson