

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

CHARLES E. KLINE and DIANE KLINE,	:	
Plaintiffs	:	NO. CV-21-831
	:	
vs.	:	
	:	
MELVIN L. HAUSER and KALA M. HAUSER,	:	CIVIL ACTION
Defendants	:	

OPINION

This matter is before the Court on an Emergency Petition for Preliminary Injunction filed by Plaintiffs on August 27, 2021 wherein they ask the Court to require Defendants to “remove any and all obstructions” from and preclude them “from placing any future obstructions” on a piece of property, which this action is centered around. An argument and factual hearing was held on August 31, 2021 at which time Plaintiffs appeared personally and were represented by Daryl Yount, Esquire and Defendants appeared personally and were represented by R. Thom Rosamilia, Esquire.

At the time of the hearing, Plaintiff, Charles Kline, testified regarding the following undisputed facts:

Plaintiffs and Defendants are neighbors. Mr. Kline purchased his property in 2007 and began living at the property in approximately 2014. Prior to 2014, he would visit every weekend. Defendants own the property adjacent to Plaintiffs’ property. In between Plaintiffs’ and Defendants’ residences is a triangular-shaped piece of land containing Plaintiffs’ mailbox, an electric poll, and shrubbery. Bordering this triangular-shaped piece of land is a gravel surface that connects the main road to Plaintiffs’ driveway near the Plaintiffs’ home. Plaintiffs refer to this gravel area as the “Turnabout.” *See Illustration A below.* There is a driveway

("Driveway") that goes directly in front of Plaintiffs' residence and borders one side of the triangle. *See Illustration A below.* The main road ("Road") goes past Plaintiffs' house toward the Defendants' residence and borders one of the other sides of the triangle. *See Illustration A below.* The boundary line between Plaintiffs' and Defendants' properties is directly in front of Plaintiffs' front porch. *See dotted line at Illustration A below.*

Immediately after Mr. Kline purchased his property until August 2021, he maintained and occupied the Turnabout by mowing it, plowing it, and caring for the shrubs. Additionally, he has utilized both the Driveway and Turnabout for access of his vehicles. About four or five years after he purchased the property, Mr. Kline learned from the prior owners of Defendants' property that the he did not own the Turnabout, Driveway, or the triangular-shaped piece of land.

On August 26, 2021, Defendants installed a "barricade" across the Turnabout, preventing Plaintiffs from accessing their property from the Turnabout as well as No Trespassing signs in the triangular-shaped piece of land. *See Illustrations A and B below.* Defendants have conceded that Plaintiffs' use of the Driveway is necessary for them to access their property and that they have not and do not intend to block Plaintiffs' use of the Driveway. The use of the Turnabout and the triangular-shaped piece of land are at issue.

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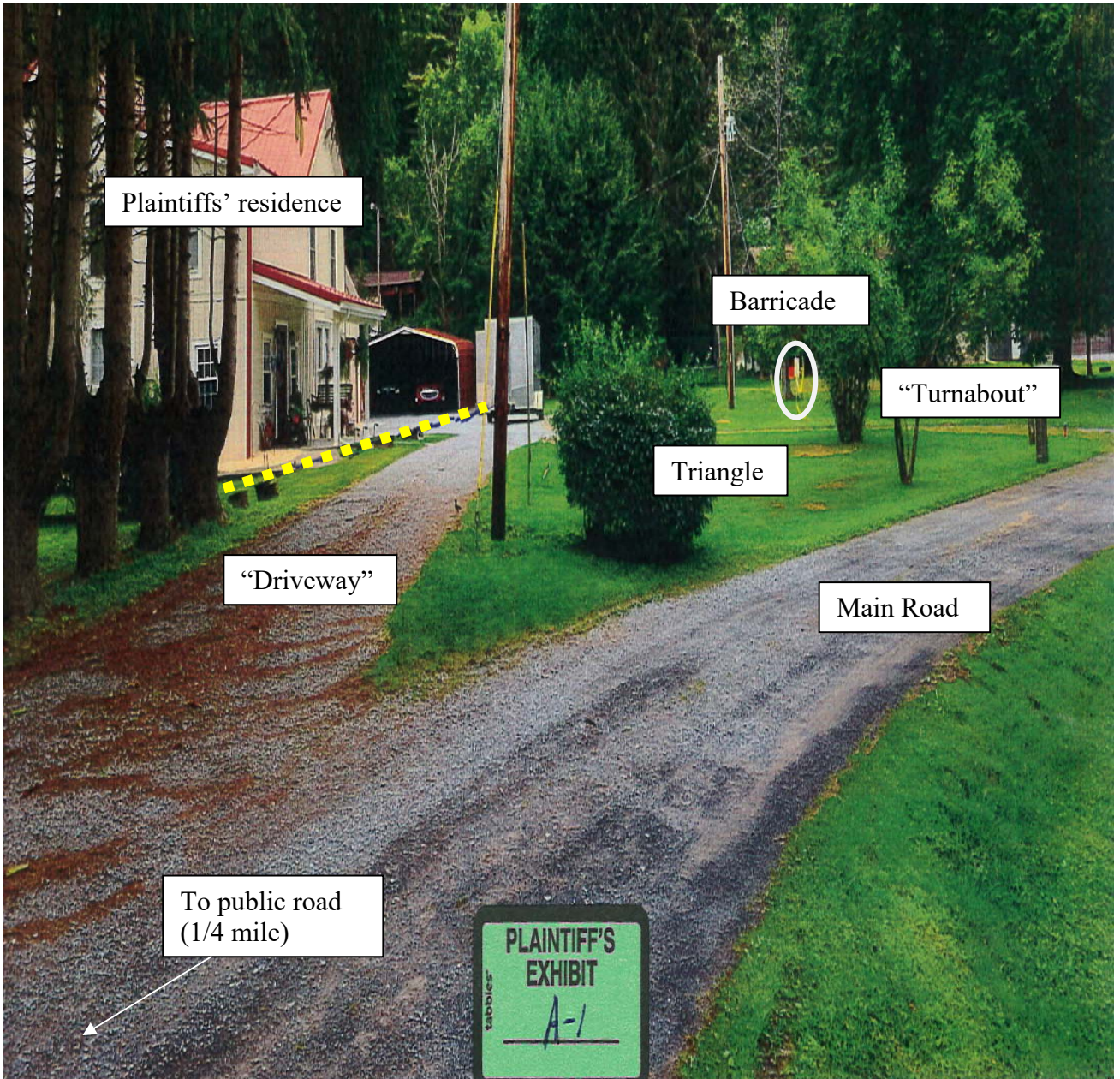


ILLUSTRATION A

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ILLUSTRATION B

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Plaintiffs argue that the Turnabout is necessary to operate their lawn care business and to allow emergency and other larger vehicles such as ambulance, police, and mail to access their property. Vehicles such as these are unable to turn around using only the Driveway and, if they are unable to turn around, they will have to back down the quarter mile road to reach the intersecting public road. Following Plaintiffs' testimony, Counsel for Defendant made an oral Motion to Dismiss, which, for the reasons set forth below, was granted.

It is well-settled in Pennsylvania that in order to obtain a preliminary injunction a petitioner must establish all of the following elements:

- (1) relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages;
- (2) greater injury will occur from refusing to grant the injunction than from granting it;
- (3) the injunction will restore the parties to their status quo as it existed before the alleged wrongful conduct;
- (4) the petitioner is likely to prevail on the merits;
- (5) the injunction is reasonably suited to abate the offending activity; and
- (6) the public interest will not be harmed if the injunction is granted.

Brayman Const. Corp. v. Com., Dep't of Transp., 13 A.3d 925, 935 (Pa. 2011) (internal citations omitted).

It is Plaintiffs' burden to prove all of the above elements. As Defendants' primary argument is that Plaintiffs have failed to prove that relief is necessary to

prevent immediate and irreparable harm and that they are likely to prevail on the merits, the Court will begin its analysis with elements one and four.

Beginning with the first element, Plaintiffs must prove that access to the Turnabout area is necessary to prevent immediate and irreparable harm. In order to do this, they must “present ‘concrete evidence’ demonstrating ‘actual proof of irreparable harm.’” *Greenmoor, Inc. v. Burchick Const. Co.*, 908 A.2d 310, 314 (Pa. Super. 2006) (internal citation omitted). Their claim cannot be based solely on speculation. *Id.*

Again, Plaintiffs argue that they need access to this area in order to back vehicles and trailers into their property and to allow emergency vehicles to access their property. Otherwise, they will need to back down a quarter mile to the nearest public road. However, as Mr. Kline testified, after the barricade went up, at least once he was able to turn around his vehicle using the Driveway, although it was “inconvenient.” With access to the Driveway, the Plaintiffs are still able to get to their property. Additionally, it appears from the photographs introduced by the Plaintiffs that they have a substantial stone lot and shed that could be used for turning around a vehicle. For these reasons, the Court finds that Plaintiffs will not suffer irreparable and irreversible harm without access to the Turnabout.

Even assuming, *arguendo*, that Plaintiffs would suffer irreparable harm, they have failed to prove that they are likely to succeed on the merits of this case, as least when considering all of the evidence presented at the time of this hearing. Plaintiffs claim that they will prevail in this action by adverse possession or easement by necessity. One of the six (6) elements of adverse possession is

that person claiming the easement must prove use of the property for twenty-one (21) years. *Dunlap v. Larkin*, 493 A.2d 750, 756 (Pa. Super. 1985).

Mr. Kline testified that the first time he ever stepped foot on the property was 2006, the year prior to purchasing it. At best, Mr. Kline would have possessed the property for only 15 years. The prior owners of Plaintiffs' property were not present to testify regarding their occupation of the land. Further, Mr. Kline testified that the property was vacant for at least a year before he bought it and the area in the triangular-shaped piece of land and Turnabout were overgrown. Therefore, the evidence did not support that the triangular-shaped piece of land and the Turnabout had been used by the Plaintiffs or their predecessors in title for a period of twenty-one years.

In order to prove an easement by necessity, Plaintiff must show, among other things, that the easement is of strict necessity. *Youst v. Keck's Food Serv., Inc.*, 94 A.3d 1057, 1075 (Pa. Super. 2014). "An easement by necessity never exists as a mere matter of convenience . . . [and] is extinguished when the necessity from which it resulted ceases to exist." *Id.* As discussed above, Plaintiffs have failed to prove that access to the Turnabout is a necessity. In fact, Mr. Kline even stated that it was "inconvenient" to turn around his vehicle, but not impossible. Additionally, the ability to turn around a vehicle and/or trailer without having to make a three-point turn is not a necessity in and of itself. Therefore, no strict necessity exists.

As the Court has determined that Plaintiffs have not proved that they will suffer irreparable harm or that they are likely to prevail on the merits of their case, it need not address the remaining elements. For the reasons set forth

above, the Court finds that Plaintiffs have not proved a clear right to the triangular-shaped piece of land or the Turnabout by adverse possession or easement by necessity. Therefore, Defendants' oral Motion to Dismiss is granted and Plaintiffs' Petition denied.

The Court notes that if Defendants would attempt to block Plaintiffs' access to the Driveway, it is conceivable that a preliminary injunction could be entered on the basis of necessity, as Plaintiffs' would have no way to access their property without it.

ORDER

AND NOW this 9th day of **September, 2021**, upon consideration of Plaintiffs' Emergency Petition for Preliminary Injunction and for the reasons set forth above, Defendants' oral Motion to Dismiss is **GRANTED** and Plaintiffs' Motion **DENIED**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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