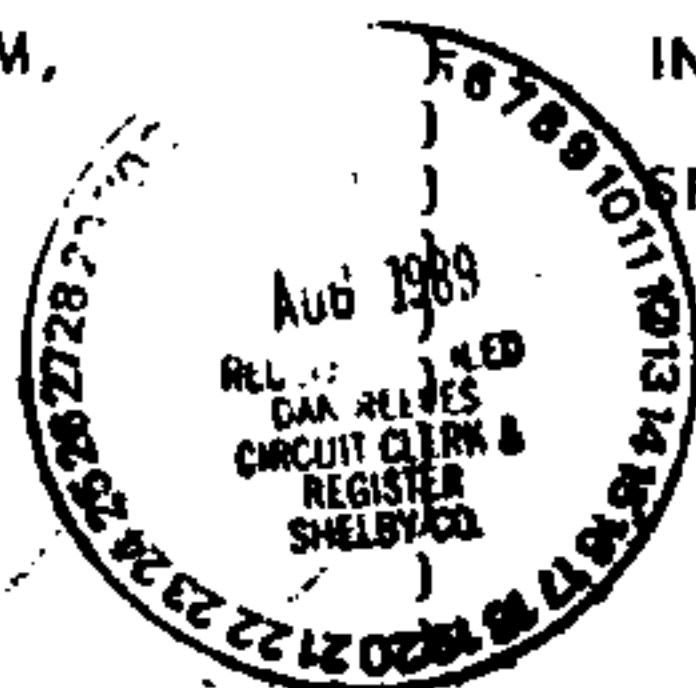


140

WALLACE EDWARD INGRAM,
TAMMY D. INGRAM and
DORIS PARKER,
PLAINTIFFS

VS

RICKEY LEE FOWLER and
RICKI M. FOWLER, et al.,
DEFENDANTS



IN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
CASE NUMBER CV-88-576

JUDGMENT

This matter came on to be heard on the 15th day of June, 1989, was submitted on the pleadings of record in this cause. Upon consideration thereof, together with ore tenus testimony, exhibits introduced into evidence and briefs by counsel, the Court makes the following Findings of Fact and Conclusions of Law and enters the following Judgment:

FINDINGS OF FACT

The Court finds as follows:

That one Shirley Spicer owned both the S 1/2 of the SW 1/4 of the SW 1/4 of the SW 1/4 of Section 12, Township 22 South, Range 4 West in Shelby County, Alabama (hereinafter referred to as S/2) and the SE 1/4 of the SW 1/4 of Section 12, Township 22 South, Range 4 West of Shelby County, Alabama (hereinafter referred to as SE 1/4) from March 19, 1982 until January 20, 1986 when the S/2 was lost by and through foreclosure proceedings.

That after the said foreclosure proceedings the said Shirley Spicer continued to own and live on the SE 1/4 and was permitted by the owner of the said S/2 to go across their property via a dirt road which is the subject easement of this cause (hereinafter referred to as dirt road). That State Highway 10 runs parallel to the said S/2 but not the said SE 1/4. That the only access to the said SE 1/4 from said State Highway is through the dirt road or through an easement located at the south boundary line of the said S/2 and SE 1/4 which has not been used as a roadway.

That the said Shirley Spicer conveyed the said SE 1/4 to a James M. Terrell and wife, Sharon Terrell on February 27, 1987, who subsequently split the said SE 1/4 into two plats, one being referred for purposes of this findings of fact as E/2 and the other the W/2. On April 19, 1988, the said E/2 was sold to the Plaintiffs,

Certified a true and complete copy

[Signature]
Clerk of Circuit Court

Wallace Edward Ingram and Tammy D. Ingram and the same date the said W/2 was sold to the Plaintiff, Doris Parker. That in March, 1987 while the said James M. Terrell and wife, Sharon Terrell owned the said SE 1/4, there existed a controversy concerning the ingress and egress over the dirt road with the Defendants.

CONCLUSIONS OF LAW

The Plaintiffs have failed to establish an easement over the claimed dirt road.

An easement is an incorporeal right imposed upon corporeal property by grant or agreement, express or implied, conferring a right on the owner thereof, a liberty, privilege or advantage in land without profit, existing distinct from the ownership of the soil. Louis Pizitz Dry Goods Co. v. Penney, 241 Ala. 602, 4 So.(2d) 167. Easements may be created several ways including adverse possession and necessity which are the main thrust of Plaintiffs' case.

There was no easement by adverse possession in this case. Before 1982 the tracts of land in this case were separate with a dirt road used to serve all parcels. In 1982 there became a merger of the parcels resulting in a termination of any easement, if it did exist. The cases of Louis Pizitz Dry Goods Co. V. Penney, 241 Ala. 602, 4 So.2d 167, and Stanley v. Barclay, 253 Ala. 650, 46 So.2d 210, enunciated the principle that the merger of the dominant and servient tenements caused a termination of an easement. The case of Roberts v. Monroe, 75 So.2d 492, 261 Ala. 569 stated that if the title in fee to dominant and servient estates is vested in one individual or owner, all rights are merged in the title in fee, terminating subordinate easements or right of user. This unity of title by Shirley Spicer destroyed any easement which a might have existed prior to 1986. Consequently, the adverse possession time, if any existed, would begin in 1986. However, this Court finds the elements of adverse possession missing.

There was no easement by necessity. As stated in Crawford v. Tucker, et al, 64 So.2d 411 (Supreme Court of Alabama, 1953) an easement by necessity is a factual issue and should the trier of fact determine there are other "...reasonably practical ways of ingress and egress...then no easement...may be implied." The Plaintiff must show that he has no reasonable adequate outlet. Southern Railway Company v. Hall, 267 Ala. 143, 100 So.2d 722. The Court finds Plaintiffs do have a

reasonably practical access to State Highway 10 through the south boundary line of the Plaintiff's property on an easement that has existed for over forty years and which is unimproved, although there will be a cost involved in constructing an adequate road for such access. However, the fact that a presently existing means of access is not as desirable to the landowner as another route would be is not the test for granting an easement by implication. Southern Railway v. Hall, cited above. The Court considered all the physical facts as to the location of the right of way and the damage resulting by reason thereof, including anticipated cost as set forth under the case of Romano v. Thrower, 74 So.2d 235.

In short, there is no easement by law established for the dirt road.

JUDGMENT

It is therefor ORDERED, ADJUDGED, and DECREED by the Court:

1. That Plaintiffs shall be allowed to use the dirt road over Defendants' land for a period of one year from the date of this Judgment to allow Plaintiffs to construct and establish at Plaintiffs' cost a roadway across the south line of Defendants' property on the easement as shown on that instrument recorded in book 148 page 322 in the Office of the Judge of Probate, Shelby County, Alabama.
2. That all other relief prayed for in Plaintiffs' complaint be and is hereby denied.
3. That the costs of Court accrued herein is taxed against the Plaintiffs.

DONE and ORDERED this 2ND day of August, 1989.

BOOK 251 PAGE 361

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

89 AUG 15 AM 11:01

Thomas A. Shivers Jr.
JUDGE OF PROBATE

D. Al Crowson
D. Al Crowson
Circuit Judge

RECORDING FEES
Plaintiff's Fee \$ 7.50
Index Fee 3.00
TOTAL 11.50

