

EVELYN RUTH SPRAITZAR,
PLAINTIFF

VS

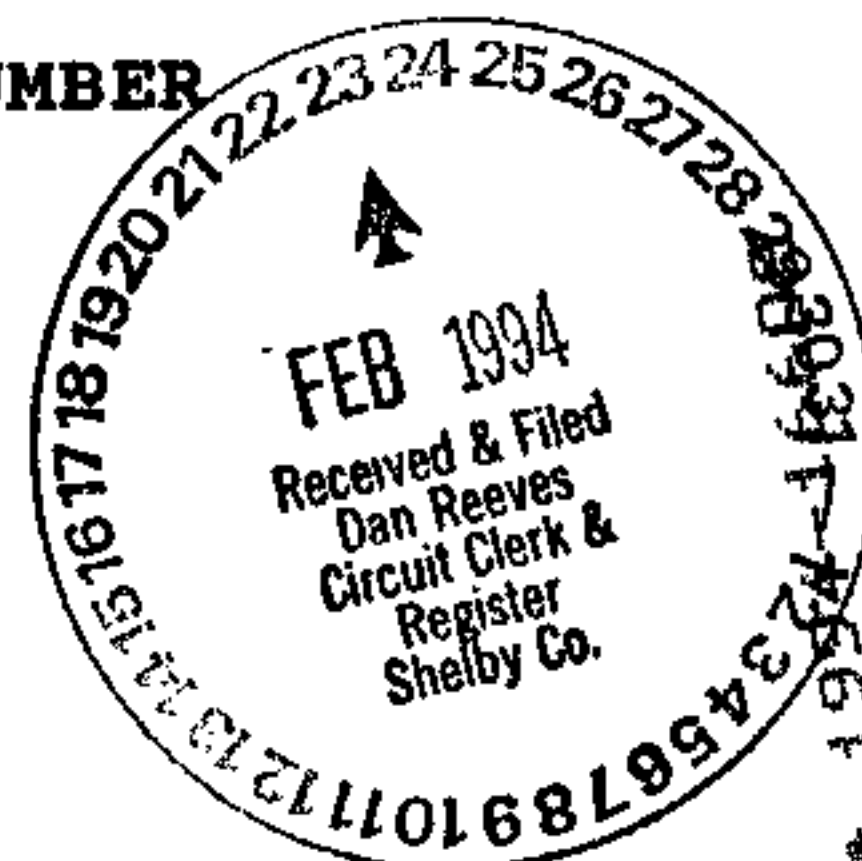
EDWIN C. MILES, ET AL.,
DEFENDANTS

IN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA

CIVIL ACTION NUMBER

CV-92-853

ORDER



THIS CAUSE came on before the Court for a final adjudication upon the pleadings on record in said cause, the gist of which concerns a property boundary dispute and whether or not an easement exists. Testimony was taken in Court on December 20, 1993 and December 21, 1993. Thereafter, with consent of the parties and with their respective counsel present, the Court viewed the area in dispute. Upon consideration of said pleadings, exhibits admitted into evidence, argument of counsel, ore tenus testimony and the Court's view of said property, the Court finds the following facts and enters the following order.

The Court finds as follows:

1. That the Plaintiff, Evelyn Ruth Spraitzar, a 73 year old woman, is the owner of the following real estate located in Shelby County, Alabama: The NW 1/4 of the NW 1/4 of Section 35, Township 19 South, Range 1 West, with the exception of a railroad right of way or property existing on or across Plaintiff's said property.

2. The said railroad right of way spoken to in Paragraph 1 hereof extends completely across Plaintiff's said property effectively dividing said property into two tracts, one being approximately 11.5 acres North of the said railroad right of way,

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and the other approximately 26 acres South of the railroad right of way.

3. Plaintiff acquired said property from her parents, S.W. Blackerby and Carrie Blackerby by way of warranty deed on August 24, 1959.

4. Plaintiff's parents who were her predecessors in title to said property moved on said property in 1938.

5. Plaintiff and/or Plaintiff's parents have continuously owned said property since 1938, and they, as well as Plaintiff's siblings and other persons, have traveled from Highway 39 or the area of Highway 39 over and across Defendant's properties to get to the said property north of said railroad right of way.

6. That the area travelled over Defendant's properties spoken of in Paragraph 5 hereof is shown on Plaintiff's Exhibit #47, which is a survey by one John Parks (Ala. Reg. No. 12579) dated December 27, 1991 and a copy thereof is attached hereto and made a part hereof by reference as though fully set out in this order.

7. That said area described in Paragraphs 5 and 6 hereof developed by law into an easement acquired by prescription by continuous, uninterrupted traveling for over 20 years, said area being instead of thirty (30) feet wide is fifteen (15) feet wide and begins with the centerline shown on said Exhibit #47 and extends seven and one-half (7-1/2) feet on each side.

8. Other than the prescriptive easement acquired by usage, none of the parties have established by clear and convincing evidence that any property has been acquired by adverse possession.

9. That the survey of John Parks, Ala. Reg. No. 12579, dated

December 20, 1991 which was Plaintiff's Exhibit #45 is a true and correct survey of the boundary lines of the Defendants and the Plaintiff, said survey also being attached hereto and made a part hereof by reference as though fully set out herein.

Accordingly, it is ORDERED, ADJUDGED and DECREED by the Court as follows:

A. That the Plaintiff has an easement over and across Defendants' properties as shown by Plaintiff's said Exhibit #47 beginning with the centerline as shown on the "existing entrance road" and extending 7 1/2 feet on each side of said centerline.

B. That the property line of Plaintiff's property separating Plaintiff's property from that of the Defendant is that shown on said Exhibit #45.

C. That all other relief prayed for is DENIED.

D. That the costs of Court are hereby taxed as paid.

E. That as the aforesaid Exhibits are large and cumbersome and the Court does not have any way of making copies thereof, no copies of said exhibits shall be furnished to the parties with this order unless the party desiring same shall pay a charge therefor (estimated at \$10.00 per copy).

DONE and ORDERED this 23rd day of February, 1994.

Certified a true and complete copy

Dan R. Russo
Clerk of Circuit Court

D. Al Crowson
D. Al Crowson
Circuit Judge

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