

MAY 26 1995

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

A. J. SWINEY and
MARTHA J. SWINEY,
Plaintiffs,

vs.

JIM GAINES,
Defendant.



Civil Action No. CV-92-113

FINAL JUDGMENT

THIS CAUSE coming on to be heard on March 15, 1995 and April 6, 1995 was submitted for a final judgment upon the Plaintiffs' Complaint, Defendant's Answer together with Counterclaim, and Plaintiffs' Answer to Defendant's Counterclaim. Upon consideration thereof, together with ore tenus testimony and the Court's view of the property in controversy, the Court is of the opinion that the following partial findings of fact and order should be entered. The Court finds inter alia:

That the Defendant, Gaines, is the owner of a tract of land south of the parcel owned by the Plaintiffs, Swineys. That there is, and also was in 1971, an old unpaved dirt road which goes across the Plaintiffs' property, running parallel to a section line, i.e., Section 4, Township 18, Range 1 East, and that the said road also crosses the section line onto an adjoining property owner's land.

That in 1971, E. R. Bowdain and wife, Ophelia Bowdain, gave a twenty-five foot easement to the Defendant and his wife stating, "It is intended that this right-of-way shall be over the old unimproved dirt road now existing...for the purpose of ingress and egress..." Said easement was not recorded until December, 1987.

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That the Court finds the easement language to be ambiguous as the unpaved dirt road is approximately twelve feet wide, less than half of the width of the entire easement. Further, the said unpaved dirt road crosses over onto the adjoining property owner's land. After considering the testimony of the original grantor, Bowdain and considering the Defendant's testimony, the Court finds that Bowdain granted the twenty-five foot easement to the Defendant for the purpose of having Shelby County widen and improve said unpaved dirt road and construct a bridge over Shoal Creek for the benefit of the community. Further, the Court finds that as Bowdain was unable to grant an easement over an adjoining landowner's property, the twenty-five foot easement shall run along and parallel to the west line of the Plaintiffs' property. See, Birmingham Realty Co. v. Birmingham Belt R. Co., 35 So.2d 503 (Ala. 1948) wherein the Court held that when a conveyance of a right-of-way is not described or defined by metes and bounds, the grantee is entitled to a convenient, reasonable and accessible way, depending upon the condition of the place and purpose for which it was intended. Furthermore, the Court held that the location must be reasonable with respect to the rights of the grantor as well as the grantee.

That from 1978 until 1988, three conveyances of said parcel were made. In each conveyance, the right-of-way was mentioned although not specifically described, except in the Plaintiffs' deed wherein said right-of-way is described as being twenty-five feet.

That although said easement was not recorded until 1987, and was never specifically described in the various conveyances between

1978 and 1988, the Court is of the opinion that the Plaintiffs had sufficient notice that said easement existed. More particularly, the Plaintiffs had actual notice of the easement as same was recorded in 1987. Further, the deed recorded by the Plaintiffs described said easement as being twenty-five feet. See, Jefferson County v. Mosley, 226 So.2d 652 (Ala. 1969) wherein the Court held that a reasonably prudent man who obtained a deed with an exception would have made an inquiry as to why such exception was included. Further, the Plaintiffs had constructive notice of said easement by the mere existence and use of the dirt road by the Defendant and others. See, Jefferson County v. Mosley, supra, wherein the Court held that at the time of the securing of the deed between the parties, the existence of the road in question was open and notorious and its presence was sufficient to put the Plaintiff on inquiry.

That in 1991, a dispute arose between the parties in which the Defendant cut a pine tree and attempted to bulldoze the area within the easement in an effort to widen the road. The Plaintiffs sought injunctive relief to estop the Defendant's actions.

The Court is of the opinion that the Defendant was granted a twenty-five foot easement and that the Plaintiffs were on notice of same. However, the Court is of the opinion, after reviewing the exhibits and considering the testimony, that within the said twenty-five foot easement, the Defendant was granted a right-of-way over the unpaved dirt road for the purposes of ingress and egress only. That the intent of the original grantor and the purpose of the full twenty-five feet was to afford the Defendant the

opportunity to have Shelby County widen and improve said unpaved dirt road and construct a bridge over Shoal Creek for the benefit of the entire community. Therefore, the Court is of the opinion that the Defendant should only use that portion of the easement which is reasonably necessary for his ingress and egress, more particularly, the unpaved dirt road, in exercising his enjoyment of the easement. That the remainder of the twenty-five feet was not intended by the original grantor to be disturbed by the Defendant for the purposes of, such as but not limited to, the removal of trees, the widening of the road, etc. Rather, the easement was granted to the Defendant for the purpose of his bringing in the County to make such improvements.

Therefore, it is ORDERED, ADJUDGED, and DECREED as follows:

1. That the Defendant was granted and is the owner of a twenty-five foot easement across the property of the Plaintiffs, more particularly described as running along and parallel to the west line of the Plaintiffs' property for the sole purpose of having Shelby County improve said unpaved dirt road and construct a bridge over Shoal Creek.

2. That the Defendant was and is granted a right-of-way over the unpaved dirt road within said twenty-five foot easement for the sole purposes of ingress and egress to his real property.

3. That the Plaintiffs are enjoined from interfering with the Defendant's ingress and egress of said unpaved dirt road.

4. That the Defendant shall be enjoined from altering that portion of the easement beyond the unpaved dirt road by acts, such as but not limited to, the removal of trees, the widening of the

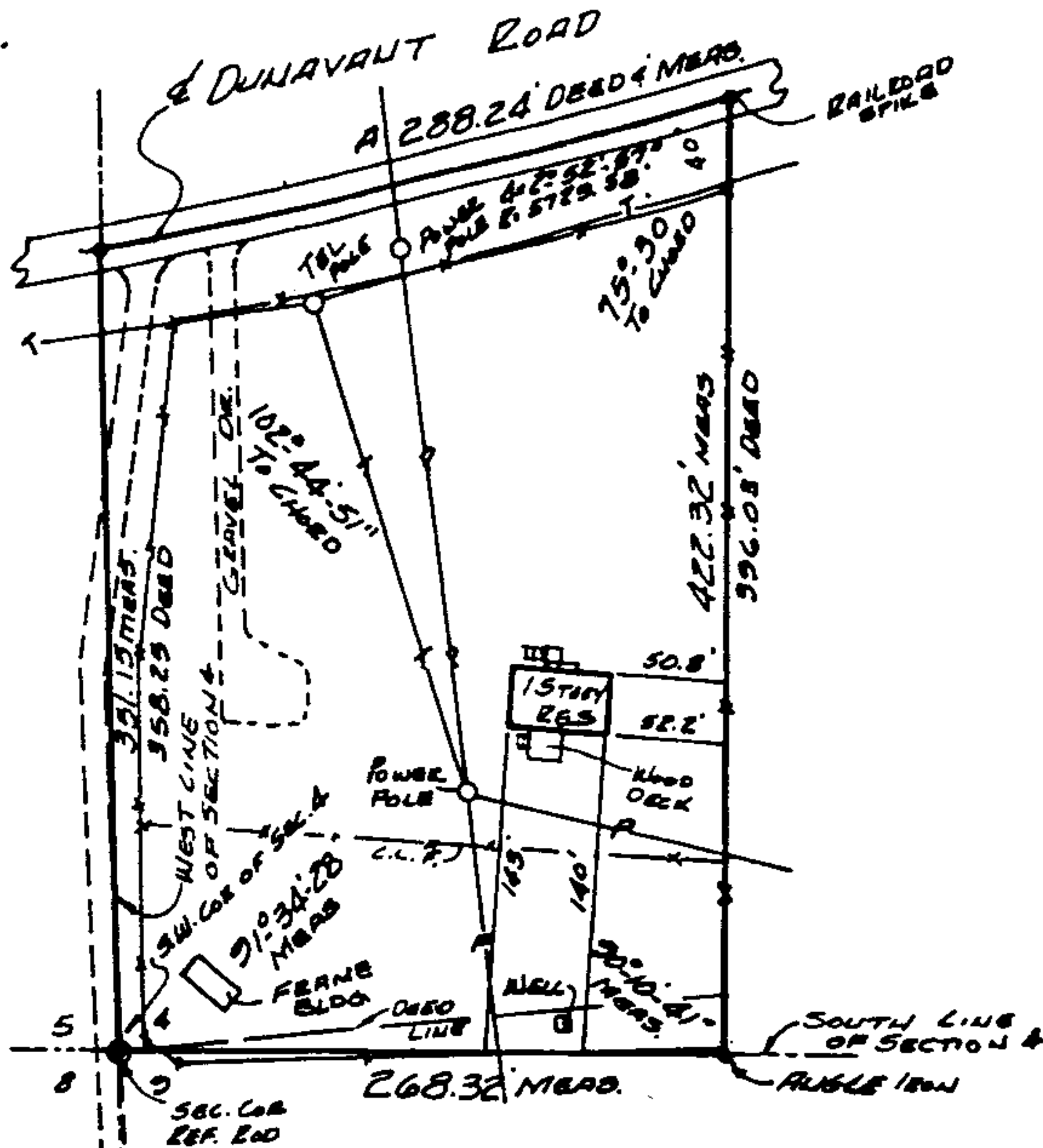
road, etc. That the authority to make such alterations and improvements lies with Shelby County.

5. That the parties are enjoined from harassing, annoying or otherwise interfering with the other's possession, use and enjoyment of the real property made basis of this cause.

6. That the costs of court are hereby taxed as paid.

DONE and ORDERED on this the 25th day of May, 1995.


D. Al Crowson
Circuit Court Judge



N
Scale 1"=100'

STATE OF ALABAMA
SHELBY COUNTY

I, Bobby J. Spigner, a Registered Land Surveyor, do hereby certify that the foregoing is a true and correct map or plat of my survey of a part of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 4, Township 18 South, Range 1 East and being more particularly described as follows:

Begin at the Southwest Corner of Section 4, Township 18 South, Range 1 East; thence run North along the West line of said Section 4 a distance of 351.15 feet (358.25 feet deeded) to a point on the centerline of Dunavant Road, said road being in a curve to the left having a Central Angle of 29°52'15.7" and a Radius of 5729.58 feet; thence turn right and run Northeasterly along the Arc of said curve 288.24 feet; thence turn right 104°30' from the Chord of said curve and run Southerly 422.32 feet to the South line of said Section 4; thence turn right 89°49'19" and run West along the South line of said Section 268.32 feet to the point of beginning. Less and Except that part lying in the right-of-way of Dunavant road and also the right-of-way of a unpaved road along the West line of said property.

I further certify that the residence now erected on said property is within the lines of same and that there are no rights-of-ways, easements or encroachments over or across said property visible to me or known to exist except as shown on my survey this the 21st day of June, 1984.

This is to certify that I have consulted the Federal Insurance Flood Hazard Map and found that the above described lot is not located in a special flood hazard area.

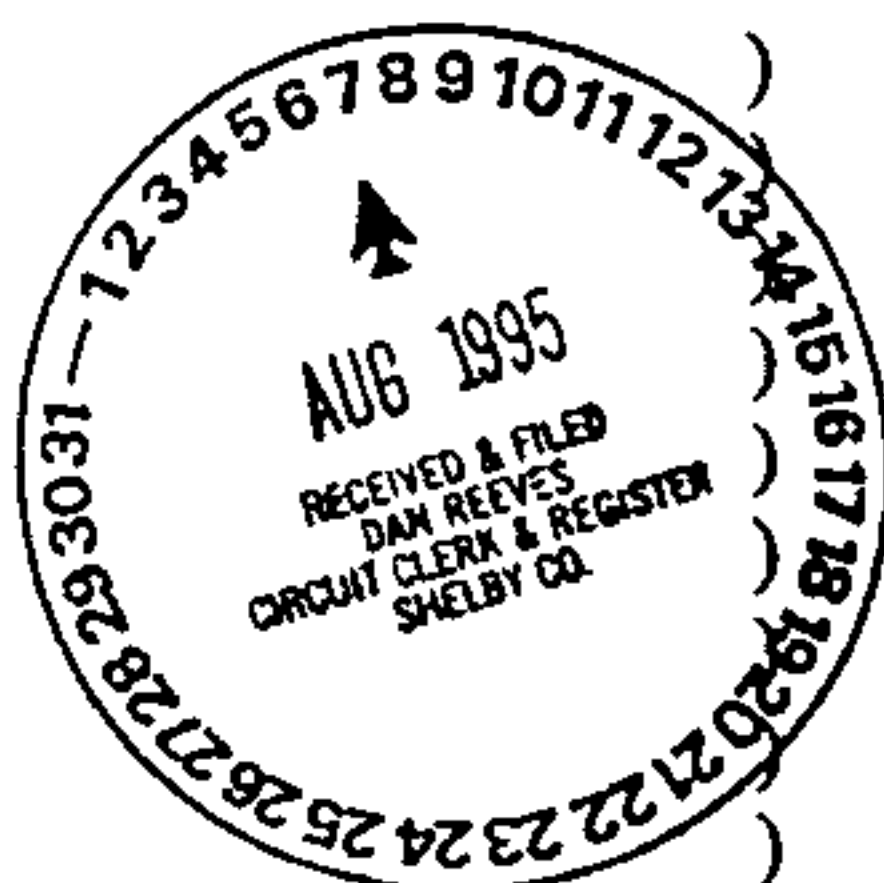
Bobby J. Spigner
Bobby J. Spigner Reg. # 859
B. D. & ASSOC. INC.
P. O. BOX 209
ADAMSVILLE AL. 35005
674-8503

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AMENDMENT TO FINAL JUDGMENT

THIS CAUSE coming on before the Court on the Defendant's Motion to Amend Judgment or for Relief from Judgment and the Court having heard argument from counsel and reconsidering its earlier partial findings of fact and order is of the opinion the following amendment to the Final Judgment should be entered.

It is **ORDERED, ADJUDGED and DECREED** by the Court that the last sentence of Paragraph Four of its Final Judgment, dated May 25, 1995, shall be and is hereby modified to read as follows:

4. That the authority to make such alterations and improvements lies with Shelby County, either to be done by Shelby County or to be done by another person(s) or entity according to and in compliance with reasonable engineering plans approved by Shelby County or according to appropriate authority granted by Shelby County pursuant to a dedication plat, subdivision map or other instrument and only after reasonable notice is given to the adjoining landowners.

DONE and ORDERED on this the 7th day of August, 1995.


D. J. McGowan
Circuit Court Judge

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