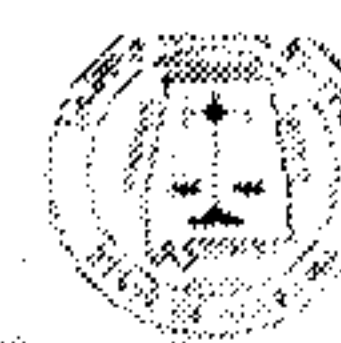




IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

HERMAN BRYANT JUSTICE,

Plaintiff,

v.

JOHN PAUL DOUGLAS; SUSAN
RENA DOUGLAS; and UNA FAYE
DOUGLAS;

Defendants.

CASE NO. CV-08-900331



20091013000385730 1/4 \$21.00
Shelby Cnty Judge of Probate, AL
10/13/2009 08:41:36 AM FILED/CERT

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Herman Bryant Justice and Defendants John Paul Douglas, Susan Rena Douglas, and Una Faye Douglas having filed opposing motions for summary judgment, and both sides having filed responses to the others' motions, the Court proceeded to hear arguments on the motions and responses. Having considered the motions and responses, the affidavits and exhibits filed in support thereof, and the arguments of counsel, the Court finds that there is no genuine issue as to any material fact and that the Plaintiff is entitled to a judgment as a matter of law. The Court specifically finds as follows:

1. Plaintiff Justice owns real estate in Shelby County, Alabama, marked on the attached Exhibit A as "Justice" and described as follows:

NW¼ of the SW¼ of Section 27, Township 18 South, Range 2 East, and the E½ of the NE ¼ of the SE ¼ of Section 28, Township 18 South, Range 2 East

2. Defendants John Paul Douglas and Susan Rena Douglas own real estate in Shelby County, Alabama, marked on the attached Exhibit A as "J. Douglas" and described as follows:

That part of the SW¼ of the SW¼ of Section 27, Township 18 South, Range 2 East and that part of the NW¼ of the NW¼ of Section 34, Township 18 South, Range 2 East **lying west of a gravel road running in a northerly direction**

3. Defendant Una Faye Douglas owns real estate in Shelby County, Alabama, including

that marked on the attached Exhibit A as "U. Douglas" and described as follows:

SW¼ of the SW¼ of Section 27, Township 18 South, Range 2 East and the NW¼ of the NW¼ of Section 34, Township 18 South, Range 2 East, less and except 24 acres to Thomas Lea Douglas

The John Paul Douglas and Susan Rena Douglas property and the Una Faye Douglas property will collectively be referred to as the "Douglas property." The northern boundary line of the Douglas property adjoins the southern boundary line of the Justice property.

4. The Justice property and the Douglas property were once part of a larger tract of land owned in its entirety by J. H. Wilder. On May 14, 1928, J. H. Wilder conveyed the Justice property to I. C. Justice. On that date, there was an existing road in use (hereafter referred to as the "Road") leading northerly from the Calcis-Martintown public road (now known as Shelby County Highway No. 57) through the portion of the J. H. Wilder property which later became the Douglas property as shown on the attached Exhibit A.

5. The Road was in open, visible, and continuous use and was reasonably necessary to the Justice property in 1928 when it was severed from the J. H. Wilder property, as it was at that time the only access available to the Justice property from a public road.

6. The evidence does not establish that Justice has any other legally enforceable access.

7. The Road, except for some minor alterations, is in the same location as it existed in 1928.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Plaintiff's summary judgment motion is granted as follows:

1. Plaintiff, having shown prior unity of title of his property and the Douglas property, and that use of the Road was open, visible, continuous and reasonably necessary to the Justice

property at the time of severance of title, is entitled to an easement by implication 20 feet in width over the Road as it crosses the Douglas property. The Road shall be more or less along the route shown on Exhibit A and may be subject to minor alterations by Defendants of any gates and/or road location, but such alteration shall not materially affect Plaintiff's use.

2. The easement is appurtenant to and benefits the Justice property only.

3. The easement is available for all uses necessary to the full reasonable enjoyment of any normal and lawful use of the Justice property, present and future, that does not unreasonably burden the Douglas property. These uses of the easement include, but are not limited to, ingress, egress and utilities. The use shall not include subdividing or other development, or commercial, industrial or institutional use of the road that is related to any such use of the Justice property, provided however, this shall not preclude removing timber from the Justice property.

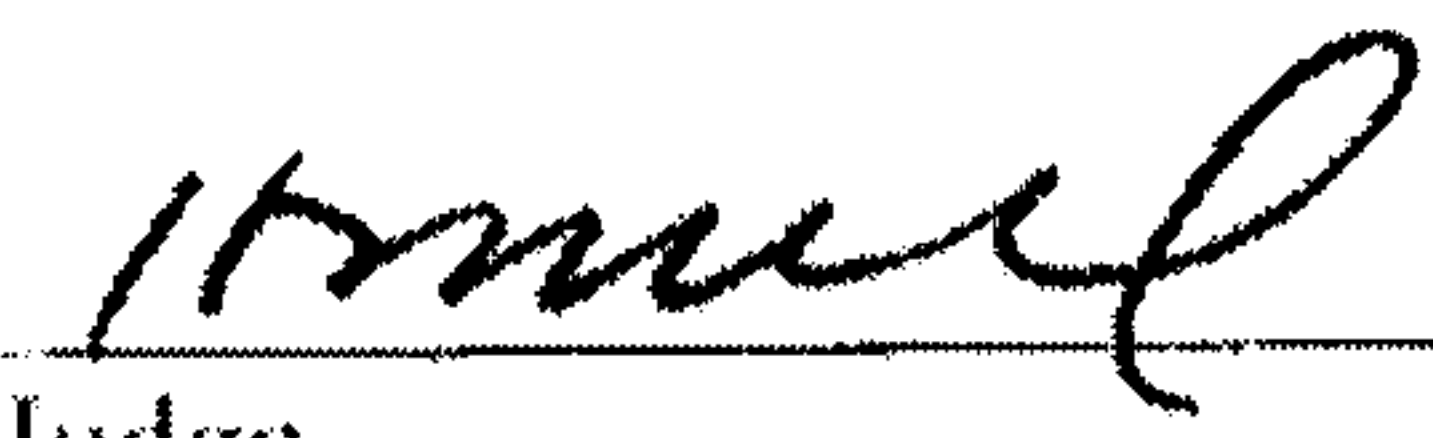
4. Defendants may maintain gates at the points where their fences cross the easement. If Defendants wish to lock the gates, keys must be provided to Justice. If any lock is to be changed, a new key must be provided to Justice prior to locking the replacement lock.

5. A certified copy of this order shall be recorded in the real property records in the Probate Office of Shelby County, Alabama.

6. All other relief, including Defendants' motion for summary judgment, is denied.

7. Costs of this action are taxed as paid.

This the 8th day of Oct, 2009.


Circuit Judge

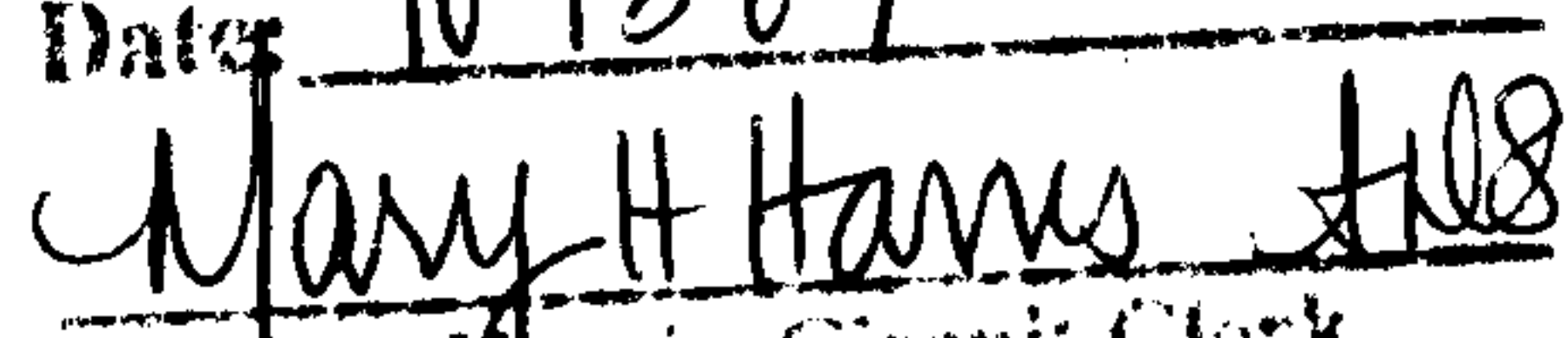
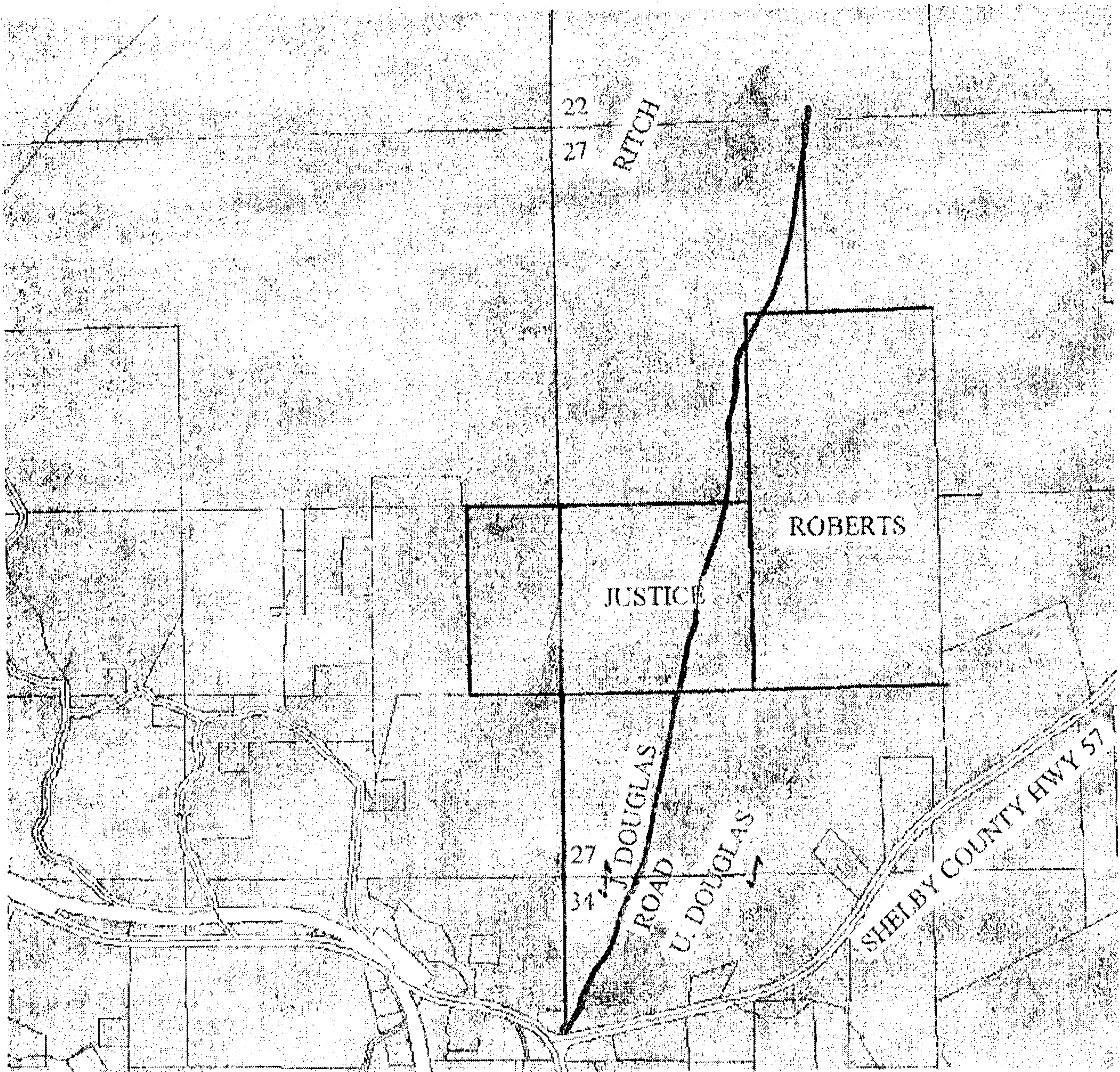
Certified a true and correct copy
Date 10-13-09

Mary H. Harris, Circuit Clerk
Shelby County, Alabama

EXHIBIT A



20091013000385730 4/4 \$21.00
Shelby Cnty Judge of Probate, AL
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