



**In the Circuit Court of Shelby County, Alabama**



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Shelby Cnty Judge of Probate, AL  
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**Bobby N. Bentley, et al.** )

**Plaintiffs,** )

**Vs.** )

**Civil Action No. CV 2014-901183**

**Anthony W. Jones, et al.** )

**Defendants.** )

**Order**

This action was filed on November 19, 2014. Plaintiffs made claims for Declaratory Judgment, Reformation and Trespass against Defendants. The claims arose out of the sale of property in Shelby County and the right of ingress and egress across the adjacent parcel of property. Defendant, Anthony Jones filed an answer making Counterclaims for Declaratory Judgment, Willful or Wanton Conduct, Breach of Warranty Deed and Trespass. Defendant, Regions Bank, does not take an adversarial position as its interest will be protected.

The Bentleys entered into a contract with Defendants, Anthony Jones and his then wife on Dec. 15, 2006, to sell real property in Shelby County. The following issues are before the Court.

**1. Real Party in Interest**

Defendant contends that Plaintiffs have no standing to proceed as the property was sold in 2014. This defense was not raised until trial on Oct. 18, 2015. Alabama Rules of Civil Procedure 25(c) provides, in part, "In case of any transfer of interest the action may be continued by or against the original party." Plaintiff contends there was no transfer. The Court finds that in the interest of justice this action may proceed without the transferee even if there had been a transfer.

**2. Statute of Limitations and Laches**

Defendant contends that the cause of action arose on August 3, 2007 and suit was not filed until November 19, 2014, which was more than 6 years after the cause of action arose. However, Defendant benefited from the permissive use of the driveway and has shown no prejudice. It has been held that laches is not applicable where defendant was not hurt by the delay. See *McKleroy v. Dishman*, 225 Ala. 131, 142 So. 41 (1932).

There is substantial evidence that the parties agreed that the sale of the property allowed an easement for 6 months for Mr. Jones to obtain access to Highway 145. It was a mistake to include in the deed an easement for ingress and egress caused by the copying of

information from the survey. Statute of limitations does not run until party's right of possession or title is questioned. Jones v. Bragg, 637 So.2d 1356 (1994). The Court finds that there was not a dispute that the deed conveyed an easement for ingress and egress until 2014. Therefore, the suit in 2014 was not barred by the Statute of Limitations.

3. Sales Contract in Violation of Law

Todd Connell, State Highway Department District Engineer, testified that Mr. Jones could obtain a state permit to access Highway 145. There was no evidence to the contrary.

4. Reformation

The Court finds that it was the intent of the parties to allow a period of 6 months for defendant to use the driveway and obtain permission to construct a driveway for access to Highway 145 and not to convey an easement for ingress and egress.

Defendant Jones's claims for Declaratory Judgment (Count I), Permanent Injunction (Count II), Willful and/or Wanton Conduct (Count III), and Breach of Warranty in Deed (Count IV) are denied.

The Court finds as follows. There was a mutual mistake of fact that the easement conveyed an easement for ingress and egress. Therefore, the Court finds that the claim for reformation should be granted. Plaintiffs' claims for Declaratory Judgment and Reformation are granted as to defendants, Anthony W. Jones and Regions Bank d/b/a Regions Mortgage. The claim for Trespass is denied.

It is ordered as follows:

1. On or about February 12, 2007, an easement from Robert and Diane Bentley to Anthony Jones and wife Debbie L. Jones was filed for record in the Probate Office of Shelby County, Alabama no. 20070212000064450 and on May 13, 2014 no. 20140513000144370. The easement contained a scrivener's error that there was an easement for ingress and egress lying 7.5 feet either side of a described line. The deed should have read: "an easement 15 feet wide and 7.5 feet either side of the described line for a water line easement for residential use."
2. It is hereby ordered that the easement shall be reformed to read "an easement 15 feet wide and 7.5 feet either side of the described line for a water line easement for residential use."
3. The Clerk of the Circuit Court of Shelby County, Alabama, shall furnish a certified copy of this decree to the Judge of Probate of Shelby County, Alabama, and have the same recorded in that office. Plaintiff shall pay the required filing fee.
4. Costs are taxed to Defendant, Anthony W. Jones.

Done this the 11 day of March, 2016.

Edward L. Ramsey

Circuit Judge

Certified a true and correct copy

Date: 5/23/16

Mary H. Harris  
Mary H. Harris, Circuit Clerk  
Shelby County, Alabama

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