

FILED

DEC 27 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 314120

IN THE COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

LEONARD N. BROWNING, a single person and
BARBARA L. DRAKE, a single person

Appellants,

v.

DOTY FAMILY TRUST, FOREST C. DOTY and LIL DOTY, husband
and wife, and the marital community composed thereof;
CHARLES C. AMBURGEY, SR. and SANDRA R. AMBURGEY,
husband and wife, and the marital community composed
thereof, STEVE GREENE, a married man, SUSAN BEAMER
GREENE, a married woman, CHERITH FAMILY TRUST, and
JAMES GIBSON and SYLVIA GIBSON, husband and wife and
the marital community composed thereof,

Respondents.

REPLY BRIEF OF APPELLANT BARBARA L. DRAKE

ERIC R. SHUMAKER
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BARBARA L. DRAKE

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ARGUMENT

Appellant Barbara Drake's appeal issue is basic and straightforward. The trial court failed to rule on the issue of easement by necessity. The trial court's decision in this case resulted in her 95 acre parcel of land being landlocked.

Appellant Drake requests that the trial court be ordered to establish an easement by necessity for her and subsequent purchasers, pursuant to RCW 8.24.

Alternatively, Barbara Drake requests that she be allowed to file another lawsuit to establish an easement by necessity without being barred by the doctrine of res judicata.

1. PLEA FOR EASEMENT BY NECESSITY WAS ACKNOWLEDGED BY DEFENDANTS' COUNSEL.

The Amended Complaint for Damages and Declaratory Judgment stated:

"Plaintiff Leonard N. Browning has an easement by necessity along the portion of Skookum Meadows Drive traversing Lots 23 and 24-DT, 25-CT, and 26-G/B owned by the Doty Family Trust, the

Cherith Trust, and Defendants Greene and Beemer.”

CP 49, page 10, Section 3.33.

At the presentment hearing, attorney Neil Humphries acknowledged that he believed the original pleadings talked about a way of necessity:

“MR. HUMPHRIES: I think in Mr. Browning’s original pleadings that they filed, they did talk about a way of necessity – - ”

RP 876, lines 4-6.

Therefore, after trial, both plaintiffs and defendants believed that a “way of necessity” had been requested. The trial court didn’t grant or deny a way of necessity to the farm property.

2. APPELLANTS HAVE TEMPORARY ACCESS TO THE SUBJECT PROPERTY, BUT NO LONG TERM ACCESS.

This lawsuit was commenced by the plaintiffs in an attempt to confirm their right to access the subject property. Currently, the plaintiffs have a limited access to the property over Lots 20 and 21. RP 449.

That access is personal, and not transferrable to future purchasers.

"Well, because of an agreement we made, here, with Mr. Monk, that he will give us a 40-foot easement, here, to Lot 21, and he will allow us to access the farm, as long as we own it. And once we sell the farm that permission to go through 20 expires. Or if we sell Lot 21, you can no longer go through 20 to the farm."

RP 449, Lines 6-11.

By denying their implied easement claims, and failing to address the easement by necessity issue, Barbara Drake is left without long term, viable access to her real property. Her current limited access is not transferrable to the next purchaser.

CONCLUSION

It is clear from the Amended Complaint that the plaintiffs sought a confirmation of their right to access the Farm by any legal means, including easement by necessity. The trial court left the subject property landlocked, and didn't make a ruling on the issue of easement by necessity.

This case should be remanded to the trial court to address the issue of easement by necessity, and to select the most viable route. Alternatively, Barbara Drake should be allowed to file a new lawsuit for a private way of necessity.

December 27, 2013

Respectfully submitted,



ERIC R. SHUMAKER WSBA #22231
Attorney for Appellant
BARBARA L. DRAKE

DECLARATION OF SERVICE

I, Eric R. Shumaker, declare as follows:

I am a resident of the City and County of Spokane, Washington. I am over the age of eighteen years and not a party to the within cause; my business address is 113 E. Baldwin Avenue, Spokane, Washington, 99207. On December 27, 2013, I mailed, by U.S. Mail, 1st class, postage prepaid, a true and correct copy of the

REPLY BRIEF OF APPELLANT BARBARA L. DRAKE

to the interested parties in this action as follows:

1. Neil Humphries, Attorney of record for Doty Family Trust, Forest C. Doty and Lil Doty, 421 W. Riverside Avenue, Ste. 1555, Spokane, WA 99201-0402.
2. Steve & Susan Greene, 7501 S. Greenes Ferry Rd., Coeur d'Alene, ID 83814
3. James & Sylvia Gibson, Cherith Family Trust, P.O. Box 2208, Priest River, ID 83856
4. Michael McLaughlin, Attorney of record for Charles C. Amburgey, Sr. and Sandra R. Amburgey, 312 S. Washington Ave., Newport, WA 99156
5. Leonard N. Browning, pro se plaintiff, P.O. Box 9 Priest River, ID 83856

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 27th day of December, 2013, at
Spokane, Washington.



ERIC R. SHUMAKER WSBA #22231
Attorney for Appellant Barbara
L. Drake