

No. 65814-0-I

DIVISION I, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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DAVID ROSER, WASHINGTON MUTUAL BANK, TICOR TITLE,  
AND ALL OTHER PERSONS OR PARTIES UNKNOWN CLAIMING  
ANY RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE REAL  
ESTATE DESCRIBED IN THE COMPLAINT HEREIN,

*Respondents,*

v.

K. CAROLYN RAMAMURTI and CAROL E. RAMAMURTI,

*Appellants.*

2010 DEC 15 PM 2:43

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BRIEF OF RESPONDENT DAVID ROSER

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## I. INTRODUCTION

The underlying basis for this appeal is not, as Appellants contend, an unsettled question of law regarding implied easements. The basis of this appeal is Appellants Carolyn and Carol Ramamurtis' opposition to the proposed subdivision of Respondent David Roser's property. Whereas Mr. Roser's current house is located on the far side of his property, away from the Ramamurtis' house, a house on the new lot proposed by Mr. Roser would most likely be across the street and clearly visible from their home. As is clear from their numerous comments submitted to the City of Seattle opposing the subdivision, the Ramamurtis simply do not want another house near their property.

The Ramamurtis are therefore attempting to block Mr. Roser's otherwise legal subdivision through a frivolous quiet title action, arguing that this Court should extinguish Mr. Roser's legal access to Maplewood Drive, which would prevent the proposed subdivision from being approved. To support their argument, the Ramamurtis urge this Court to ignore prior precedent and establish a new legal rule whereby a parcel abutting a road platted through the same subdivision as the parcel does not have an implied easement over that road absent a showing of necessity. It is telling that not one single state, including Washington, has adopted this rule.

To support their cause, the Ramamurtis misconstrue the test set out by the Washington Supreme Court in *Capitol Hill Methodist Church of Seattle v. City of Seattle*, 52 Wn.2d 359, 324 P.2d 1113 (1958). The trial court's application of the proper legal rule, that a property abutting a roadway from the same plat *always* has an implied easement over that road, should be affirmed.

## II. RESTATEMENT OF ISSUES

Does a parcel abutting and encompassing a portion of a road platted through the same subdivision as that parcel have an implied easement over that road?

## III. RESTATEMENT OF CASE

### A. **Mr. Roser's Property Was Part of the Same Plat that Created Maplewood Place.**

The three properties at issue in this suit, those owned by Appellants Carol E. Ramamurti and K. Carolyn Ramamurti, and the parcel owned by Respondent David Roser, are all located within a subdivision recorded as Westwood by the Sound Addition in 1925. CP 122. The Westwood by the Sound subdivision established numerous lots and several public roads, including Maplewood Place. CP 122. Maplewood Place was vacated by King County in 1927. CP 198.

Mr. Roser's parcel was created through a subdivision of the Reserve No. 1 lot of the Westwood by the Sound subdivision. Seattle Short Subdivision No. 80-107 divided Reserve No. 1 into four parcels, Parcels A through D. CP 124-136. In 2003 Mr. Roser purchased Parcel B, located at 10405 – 47th Avenue Southwest (the "Roser Property"), and had resided there ever since. CP 77. The Roser Property is bounded by two roads: it abuts the public road 47th Avenue Southwest along its north side and on its southwesterly side it not only abuts and encompasses a portion of the Maplewood Place right-of-way. CP 78 (legal description stating that Roser Property includes "that portion of vacated Maplewood Place adjoining Westwood Reserve Number 1 as reverted to said premises by operation of law"). The residence on the Roser Property is currently accessed from 47th Avenue Southwest, but the lower portion of the property is accessed by Maplewood Place, and Maplewood Place has been used for access during prior improvements to the residence. CP 83 (picture showing primitive road from Maplewood Place to Mr. Roser's house). There are no restrictions on the use of Maplewood Place on either the initial Westwood by the Sound plat or the subsequent short plat of Reserve No. 1. CP 122-136.

**B. Multiple Properties Along Maplewood Place Were Subdivided, Creating New Lots on Maplewood Place.**

Since Westwood by the Sound was originally platted, property owners along Maplewood Place have created numerous additional lots with access over Maplewood Place. Parcel A of the short subdivision mentioned *supra* was subsequently subdivided into two separate parcels through Seattle Short Subdivision No. 8707433. CP 137-144. The resulting two parcels abut both 47th Avenue Southwest and Maplewood Place. CP 142. Seattle Short Subdivision No. 81-230-0270 also created new lots with access over Maplewood Place. CP 145-152.

**C. Certain Property Owners Along Maplewood Place Granted Express Easements to Each Other.**

In the late 1950s and early 1960s, certain owners of the lots abutting Maplewood Place appear to have granted express easements to each other. CP 3. Those express easements purport to benefit and burden some, but not all, of the properties abutting Maplewood Place. The necessity of these cross-easements is not clear, but they are also irrelevant for the purposes of the Ramamurtis' quiet title action because Mr. Roser claims a right of access through an easement implied from plat rather than an express easement.

**D. The Ramamurtis Oppose Mr. Roser's Proposed Subdivision.**

Mr. Roser is now in the process of subdividing his property. He has applied to the City of Seattle for approval of a short subdivision that would create one additional parcel, but would not add to the number of parcels with access over Maplewood Place. CP 74. Whereas the current parcel has access from both 47th Avenue Southwest and Maplewood Place, the proposed subdivision would create one lot with access from Maplewood Place and one lot with access from 47th Avenue Southwest. CP 92. As of February 2010, Mr. Roser had expended \$92,038.29 for the design and permit review of the proposed short plat, and amount that has certainly risen since the Ramamurtis filed their quiet title action to stop the proposed subdivision. CP 74.

Appellants Carol E. Ramamurti and K. Carolyn Ramamurti also own properties abutting Maplewood Place. CP 2-3. First on December 2, and again on December 15, 2009 Appellants, through counsel, submitted comments to the City of Seattle opposing the proposed subdivision. CP 94-97, 99-102. The Ramamurtis' comments to the City allege that Mr. Roser does not have a legal right to access his property from Maplewood Place. *Id.*

**E. Trial Court Dismisses the Ramamurtis' Quiet Title Action Finding that Mr. Roser's Property has an Easement over Maplewood Place Implied from the Westwood by the Sound Plat.**

The Ramamurtis filed a quiet title action against Mr. Roser alleging that he lacked legal access over Maplewood Place, and Mr. Roser promptly moved for dismissal of the action on summary judgment. CP 1-21, 61-72. Judge Richard D. Eadie granted the motion and dismissed the Ramamurti's action, correctly finding that Mr. Roser's property is benefitted by an easement over Maplewood Place for purposes of ingress and egress. CP 239-241. The Ramamurtis filed this appeal thirty days later. CP 245-249.

**IV. ARGUMENT**

**A. Vacation of Maplewood Place Resulted in an Implied Easement Benefiting All Properties Appurtenant to the Vacated Right-of-Way.**

**1. Under the General Law of Easements Implied From Plat, a Parcel has an Implied Easement over Roads Within the Same Subdivision that Abut the Parcel.**

Washington recognizes three types of implied easements, those implied by prior use, those implied by necessity, and those implied from plat. The Ramamurtis' fail to recognize these three distinct types of implied easements, citing cases analyzing easements implied by necessity (Appellants' Opening Brief at 9, citing *Fossum Orchards v. Pugsley*, 77

Wn. App. 447, 892 P.2d 1095 (1995)) and easements implied by prior use (Appellants' Opening Brief at 13, citing *MacMeeking v. Low Income Housing Inst. Inc.*, 111 Wn. App. 188, 45 P.3d 570 (2002)). Mr. Roser claims, and the trial court found, an easement implied from plat, not necessity or prior use.

Under Washington's law regarding *easements implied from plat*, purchasers of lots within in subdivisions (and their successors in title) have private easements over some of the streets shown on the plat. *See* WILLIAM B. STOEBUCK, 17 WASH. PRAC. REAL ESTATE § 2.6 (2d ed.) ("American jurisdictions generally agree that an owner who purchases a lot in a subdivision acquires, to some extent, private easements over some of the streets shown on the plat."); *see also* JON W. BRUCE AND JAMES W. ELY, JR., THE LAW OF EASEMENTS AND LICENSES IN LAND, ¶4.05 (revised ed. 1995) ("When a developer conveys lots in a subdivision by reference to a plat, each grantee receives an implied easement over streets and other common areas delineated on the plat."). While such easements are generally redundant where the streets remain public, they become necessary to maintain access to lots within the subdivision where streets, having been dedicated to the public on the plat, are later vacated. *See, e.g., Brown v. Olmsted*, 49 Wn.2d 210, 299 P.2d 564 (1956) (lot owners within a plat retained private easements over vacated roads); *Howell v.*

*King County*, 16 Wn.2d 557, 134 P.2d 80 (1943) (same); and *Van Buren v. Trumbull*, 92 Wash. 691, 159 P. 891 (1916) (affirming trial court's dismissal of a quiet title action because lot owners retained private easements over vacated right-of-way). Upon vacation, lot owners can no longer rely upon their rights as members of the public to use the streets and are therefore required to fall back upon their private easement rights.

There is a discrepancy among the states as to the extent to which lot owners hold private easements over subdivision streets. *See generally* WILLIAM B. STOEBUCK, 17 WASH. PRAC., Real Estate § 2.6 (2d ed.). Some states adopt the broad "unity" view, which is that lot owners have easements of passage over all streets shown anywhere on the plat. *Id.* The intermediate "full-enjoyment" view held by some states is that a lot owner has a private easement of passage over those platted streets that are reasonably beneficial to the use of the lot. *Id.* Finally, under the narrow "necessary" rule, certain states hold that a lot owner is entitled to an easement only over those streets abutting his or her property, and such additional connecting streets as are necessary to connect those streets to the general system of public streets and roads. *Id.* Unlike easements implied by necessity, which, not surprisingly, require a showing of necessity, an owner of property abutting a road does not need to show necessity to justify a private easement implied from plat. None of the

three views held by the various states establish the rule proposed by the Ramamurtis: that a lot owner within a plat does not hold an implied easement over the streets abutting his or her property absent some form of additional justification.

In the present case, Maplewood Place was dedicated as public right-of-way when Westwood by the Sound was platted in 1925. CP 122. The plat itself created private easements over Maplewood Place benefitting those properties abutting the road. WILLIAM B. STOEBUCK, 17 WASH. PRAC. REAL ESTATE § 2.6 (2d ed.) While the private easements were unnecessary while the road remained open as public right-of-way, they became essential when Maplewood Place was vacated in 1927. When the residents of Westwood by the Sound could no longer rely on the public dedication of the road to secure access, they instead relied upon private easements implied from the plat itself.<sup>1</sup>

There may be a question as to whether lots *not* abutting Maplewood Place retained private easements over the road once it was vacated, but, as discussed in further detail below, there can be no question

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<sup>1</sup> While it appears that certain owners also granted express easements to each other in the late 1950s and early 1960s, these express easements were complimentary to, and/or redundant with, the existing easements implied from the original plat. The Ramamurtis' provide no legal support for the contention that these express easements somehow affect the implied easements of other parties.

that those lots abutting Maplewood Place retained a private easement of passage implied from the original Westwood by the Sound plat.

**2. Appellants' Misconstrue the Test Established by *Capitol Hill*: Every Property that Abuts a Road from the Same Plat Retains an Implied Easement over that Road; Only Properties that Do Not Abut a Road Must Show Reasonable Necessity to Justify an Easement Implied from Plat.**

The Ramamurtis misconstrue *Capitol Hill Methodist Church of Seattle v. City of Seattle*, 52 Wn.2d 359, 324 P.2d 1113 (1958), to argue that property within a plat is entitled to an implied easement over a particular road only if that road (1) abuts the property *and* (2) is reasonably necessary for the owner to use the subject road to access the property. Appellants' Brief at 5. This rule essentially requires a showing of necessity for an owner to have an implied easement over an abutting road. But when read correctly, the actual rule established by *Capitol Hill* is that an owner has an implied easement over all abutting roads, and may also have additional easement rights over non-abutting roads reasonably necessary to access the property. A showing of necessity is required *only* when asserting an easement implied from plat over roads that do not abut the claimant's property.

In *Capitol Hill Methodist Church of Seattle v. City of Seattle*, the Washington Supreme Court was presented with the question of whether an

owner whose property *does not* abut a specific street can claim an implied easement based on reasonable necessity. The defendant property owner petitioned Seattle to vacate an alley between two lots owned by defendant; several property owners opposed the petition and sued for injunctive relief. *Capitol Hill*, 52 Wn.2d at 361. The plaintiffs' properties did not abut the alley to be vacated, so they instead argued entitlement to an implied easement based on necessity because the alley was the "most direct and convenient access to their respective properties." *Id.* at 364. On review, the Washington Supreme Court found that the plaintiffs were not entitled to an easement because (1) their properties did not abut the street in question, and (2) the street in question was not reasonably necessary for ingress and egress to their property. *Id.* at 369. Had the plaintiffs been able to establish either element (abutting or reasonably necessary for access) they would have been entitled to an implied easement. *Id.* As stated by the court:

In this case, such a rule cannot be applied for the reason that (1) the appellants are not abutting owners, and (2) as previously stated, the vacated street is not necessary for reasonable access to their property.

*Id.*

The Ramamurtis misconstrue the rule adopted by *Capitol Hill*, arguing that an owner must show that the subject street both abuts his or

her property *and* is reasonably necessary for access to the property. *See* Appellants' Brief at 5. Had both elements been required, as the Ramamurtis now contend, the Supreme Court in *Capitol Hill* would have ruled on the simple basis that the plaintiffs' lots did not abut the subject alley, which was clear from the pleadings. Instead it was necessary for the court to also examine whether it was reasonably necessary for plaintiffs' to access their properties through the vacated alley. *Id.* at 366-367. *Capitol Hill* establishes that a property owner has an implied easement over abutting streets *and* those additional streets as are reasonably necessary for access. The two elements are separate, nonexclusive bases for finding entitlement to an easement implied from plat.

The Ramamurtis also quote *Capitol Hill* out of context to support their position that an abutting owner must show necessity. Appellants' Response at 9. The section quoted by the Ramamurtis concerns whether plaintiffs have standing to challenge the municipality's decision to vacate a road. *Capitol Hill*, 52 Wn.2d at 365 (“[W]e must determine whether [plaintiffs] are in a position to question the vacation of the street by city council of Seattle.”). Whether plaintiffs are entitled to an easement implied from plat is analyzed in a later section. *Id.* at 368-69. In any event, a review of the *entire* quote shows that the court's decision would have been different had the plaintiffs' properties abutted the vacated street.

Owners who do not abut, such as respondents here, and whose access is not destroyed or substantially affected, have no vested rights which are substantially affected.

*Id.* at 365, quoting *Taft v. Washington Mutual Sav. Bank*, 127 Wn. 503, 221 P. 604, 606 (1923).

Despite the Ramamurtis' assertion to the contrary, the rule established by *Capitol Hill* is clear: a property abutting a road within a plat retains an implied easement over that plat. Only properties that do not abut the road must show reasonable necessity to justify an implied easement.

**3. Appellants' Provide No Support for Their Contention That a Property Abutting a Road Must Also Show Necessity to Justify an Easement Implied from a Plat.**

None of the cases relied upon by the Ramamurtis support their contention that a property abutting a road from the same plat must show necessity to establish an implied easement. In Washington's first case confirming an easement implied from plat, *Van Buren v. Trumbull*, a property owner asserted an implied easement over a street abutting his property, which was never opened and therefore vacated by statute. 92 Wn. 691, 692, 159 P. 891 (1916). The court looked solely at whether the owner's property abutted the street and did not consider whether access over the street was reasonably necessary:

The rights of parties *owning land abutting a vacated highway or street* are well stated . . . . '[T]hese

conveyances . . . created an easement in favor of the grantees of the *lots abutting thereon*[.]’

\* \* \*

‘If, by act of law, the public right, or easement in the highway, has ceased, there is no reason for saying that, as against the *grantor of the abutting land*, any right to the continuance of private easements has been lost to the grantee.’

*Id.* at 696 (emphasis added), quoting *Holloway v. Southmayd*, 139 N.Y. 390-404.

Later cases confirmed that necessity is not required to establish an easement implied from plat over an abutting road. In *Burkhard v. Bowen*, a property owner sued to quiet title to the portion of an alley over his property that had been vacated. 32 Wn.2d 613, 614, 203 P.2d 361 (1949). Presumably there was also a street in front of the house that also provided access. See Webster’s New Universal Unabridged Dictionary 39 (1994) (defining “alley” as “a narrow back street”). The court held that the plaintiff could not claim adverse possession over the defendants’ private easement over the alley, which was implied from the original plat. *Burkhard*, 32 Wn.2d at 624. The court did not investigate whether access over the alley was necessary, or whether alternate access was available, to conclude that defendants’ had a private easement that was immune from

adverse possession. *Id.* at 620. The court's holding was based upon the principle that:

[S]ince the dedicator of a plat could not defeat a grantee's right to an easement *in the street upon which his land abuts*, common grantees from him cannot, as among themselves, question the right of ingress and egress over the street as shown on the plat.

*Id.* at 623 (emphasis added), quoting *Van Buren*, 92 Wn. 691. It was sufficient for the court to find that the subject property abutted the alley to uphold the easement implied from plat.

The Ramamurtis' reliance on *Hellberg v. Coffin Sheep Co.*, 66 Wn.2d 664, 404 P.2d 770 (1965), and *Fossum Orchards v. Pugsley*, 77 Wn. App. 447, 892 P.2d 1095 (1995), is misplaced. Both decisions analyze the elements required to establish an easement implied by necessity, which are unity of title, subsequent separation, prior apparent and continuous quasi easement for the benefit of one part of the estate to the detriment of another, and a certain degree of necessity for the continuation of the easement. *See Fossum Orchards*, 77 Wn. App. at 451, citing *Hellberg*, 66 Wn.2d 664. It is not surprising that one of the elements necessary to establish an easement implied by necessity is, of course, necessity.

The Ramamurtis also rely on *MacMeeking v. Low Income Housing Inst. Inc.*, 111 Wn. App. 188, 45 P.3d 570 (2002), to assert that implied

easements are always disfavored under the law as derogations of written instruments. The Ramamurtis fail to inform the court that *MacMeeking* concerned easements implied from prior use. Appellants' Opening Brief at 13. There is no support for the contention that easements implied from plats are similarly disfavored.

The Ramamurtis have provided no authority, from Washington or any other state, establishing the rule they propose: that a property owner is not entitled to an implied easement over a vacated street that abuts his or her property absent a showing of necessity. On the other hand, numerous Washington cases confirm that a property owner is entitled to such an easement without discussing whether access was reasonably necessary. *See, e.g., Van Buren v. Trumbull*, 92 Wn. 691, 159 P. 891 (1916); *Burkhard v. Bowen*, 32 Wn.2d 613, 615, 203 P.2d 361 (1949). This Court should decline the Ramamurtis' invitation to adopt a new rule that no other state follows.

**B. The Proposed Subdivision Will Not Impermissibly Enlarge the Scope of Mr. Roser's Existing Easement.**

This Court should further decline the Ramamurtis' invitation to speculate as to whether Mr. Roser's proposed subdivision would overburden Maplewood Place. The proposed subdivision is still under review with the City of Seattle, and the proper venue for addressing

concerns regarding additional traffic on Maplewood Place is through the on-going permitting process. Should the City eventually decide to approve the proposed subdivision, and concurrently decide that it will not lead to excessive traffic on Maplewood Place, that decision would be open to appeal by the Ramamurtis. This appeal is simply not the proper venue for addressing their concerns regarding additional traffic on Maplewood Place.

That being said, there is no genuine issue of fact as to whether the proposed subdivision would, if approved enlarge the scope of Mr. Roser's existing easement. Assuming Mr. Roser does in fact have a private easement for ingress and egress over Maplewood Place, the subdivision, if it were ever approved, would not result in any additional lots with access over the road.

As a preliminary matter, the prior owners of the Roser property have historically used Maplewood Place to access the property. CP 83 (picture showing primitive road from Maplewood Place to Mr. Roser's house). The only evidence to the contrary is Ms. Ramamurti's self-serving declaration that she does not recall Mr. Roser or the prior owners accessing the Roser Property from Maplewood Place. *See* Appellants' Opening Brief at 5-6, citing Ms. Ramamurti's declaration.

Furthermore, Mr. Roser's proposed subdivision does not expand the scope of his current easement. Unlike prior subdivisions within Westwood by the Sound, which added additional lots with access over Maplewood Place, Mr. Roser's proposed subdivision is not dividing his right to use the easement amongst multiple parcels. *Compare* CP 137-145 (Seattle Short Subdivision No. 870744-3, creating two lots with access to both Maplewood Place and 47th Avenue Southwest) *with* CP 92 (proposed subdivision resulting in no additional lots abutting Maplewood Place). Mr. Roser's proposed subdivision would divide his property into two lots, one that uses the property's access from Maplewood Place, and one that uses the property's access from 47th Avenue Southwest. CP 92. There is no actual evidence supporting the Ramamurtis' claim that the proposed subdivision will lead to excess traffic on Maplewood Place, only the declaration of Ms. Ramamurti herself declaring that the subdivision will enlarge Mr. Roser's existing legal use of Maplewood Place. Appellants' Opening Brief at 16.

#### **V. ATTORNEYS' FEES AND COSTS**

Appellant's argument contention that a property abutting a road within the same plat does not have an implied easement over that road is precluded by well-established and binding precedent. Respondent therefore requests attorneys' fees and costs be awarded under RAP 18.1

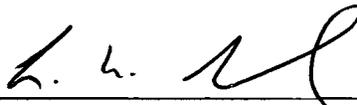
and 18.9. *Andrus v. State, Dept. of Transp.* (2005) 128 Wn. App. 895, 900-901, 117 P.3d 1152, *review denied* 157 Wn.2d 1005, 136 P.3d 759 (2005) (arguments precluded by well-established precedent considered frivolous under RAP 18.9(a)).

## VI. CONCLUSION

For the foregoing reasons, Respondent David Roser asks that the trial court's decision dismissing Appellants' action be affirmed.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of December, 2010.

CARNEY BADLEY SPELLMAN, P.S.

By   
Leonard W. Juhnke, WSBA #39793  
Of Attorneys for Respondent David Roser

CERTIFICATE OF SERVICE

The undersigned hereby certifies:

1. I am over the age of 18 years and am not a party to the within cause.

2. I am employed by the law firm of Carney Badley Spellman, P.S. My business and mailing address is 701 Fifth Avenue, Suite 3600, Seattle, WA 98104.

3. On December 15, 2010, I caused to be delivered in the manner indicated a true and correct copy of the foregoing document on the following:

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- U.S. Mail, postage prepaid
- Messenger
- Other \_\_\_\_\_

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 15th day of December, 2010.

  
\_\_\_\_\_  
Caroline Mundy, Legal Assistant