

75356-8

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No. 75356-8-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

ROBERT PERASSO and KATRINA PERASSO, husband and wife

Appellant,

v.

DOUGLAS F. TURNER,

Respondent.

BRIEF OF APPELLANTS

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION ONE

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I. INTRODUCTION

This case involves property owners seeking a driveway access easement to avoid being landlocked. The formal easement for the driveway was lost over time as a result of unintended transfer consequences.

This appeal is about whether or not the trial court's ruling that Appellants failed to meet their burden of proof in establishing the existence of an implied easement by reservation was error.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in concluding the degree of necessity for the easement did not exist to create an easement.
2. The trial court erred in concluding that Appellants did not satisfy their burden of proof in establishing the existence of an implied easement by reservation.

III. STATEMENT OF THE CASE

This dispute arose in 2015 after Respondent DOUGLAS TURNER ("TURNER") challenged the right of Appellants ROBERT and KATRINA PERASSO ("PERASSOS") to access their property over a long term driveway.

Property History

The properties involved in this dispute are located east of Everett in the Cavalero Hill area. The PERASSO family owned or previously owned the lots in question for decades. (RP P8:4)

Easement History

An early deed formally created the 15 foot driveway easement through TURNER'S lot as the sole access to PERASSOS' lot.

Later transfers resulted in PERASSOS' lot and TURNER'S lot both owned by the same person creating a merger and loss of the formal easement. The easement was not formally re-established in subsequent sales.

Driveway History

The lots owned by PERASSOS and MORENO have been historically accessed by the 15 foot driveway which runs along the west side of the TURNER property from the County road. It has been used for driveway access by PERASSOS and their predecessors in ownership for decades. It has been and remains PERASSOS only legal access off the County road. (RP P2:8) (RP P20:4-21)

PERASSOS lot is undeveloped. Use of the driveway has been consistent with the nature of the property. It has been and remains very visible. (RP P28:1) (RP P29:14)

Adjacent Road Development

In the late 1990s, a residential short plat development resulted in the construction of 78th Street which is a private road and runs adjacent and parallel to the 15 foot driveway. 78th Street does not formally serve the PERASSOS' lot. PERASSOS, who do not reside on their lot, have requested access but were denied permanent use of the private road. (RP P12:9)

Driveway Description

The driveway has been a natural surface created by decades of traffic and use. (RP P16:21)

In 2015, PERASSOS improved the driveway surface with gravel. This led to a later confrontation with TURNER challenging existence of the driveway easement. (RP P18:7)

IV. ARGUMENT

A. PERASSOS are Entitled to an Easement by Implication

PERASSOS are entitled to a 15 foot driveway easement by implication based on past ownership and long term use.

Easements by implication arise by intent of the parties, which is shown by facts and circumstances surrounding the conveyance. Woodward v. Lopez, 174 Wash.App. 460, 300 P.3 417 (2013). Roberts v. Smith, 41 Wash.App. 861, 707 P.2d 143 (1985).

An easement by implication arises when the following elements have been met:

- The property has been held in unified title.
- Open and notorious servitude has been impressed upon one part of the property in favor of another.
- A division of the property terminated the servitude.
- The easement has been in use prior to the division of the property.
- The easement is reasonably necessary for the fair enjoyment of the benefited property.

Evich v. Kovaceich, 33 Wn.2d 151, 156, 204 P.2d 839

(1949)

All the elements required to establish an easement by implication in favor of PERASSOS exist in this case:

- DARLINE PERASSO held unified title to both parcels.
- The driveway across the TURNER property was the only access for years and was used in an open and notorious manner.
- Unity of title was dissolved when DARLINE PERASSO sold the TURNER lot in 2006.
- The use of the driveway was and remains reasonably necessary for the fair enjoyment of the PERASSO lot.

PERASSOS are entitled to an easement by implication re-establishing the 15 foot driveway.

B. Absolute Necessity Not Required

Absolute necessity is not required for the creation of an implied easement. Evich v. Kovaceich, 33 Wn.2d 151, 156, 204 P.2d 839 (1949).

The test of necessity is whether the party claiming the right can, at reasonable cost, on his own estate and without trespassing on his neighbors, create a substitute. Bays v. Haven, 55 Wash.App. 324, 329, 777 P.2d 562 (1989). Woodward v. Lopez, 174 Wash.App. 460, 300 P.3 417 (2013). Although prior use is a circumstance contributing to the implication of easement, if the land cannot be used without the easement without disproportionate expense, an easement may be implied on the basis of necessity alone. Woodward v. Lopez, 174 Wash.App. 460, 300 P.3 417 (2013). Fossum Orchards v. Pugsley, 77 Wash.App. 447, 451, 892 P.2d 1095 (1995).

Alternate access is not available. PERASSOS' requests for access to 78th Street have been rejected and that access does not exist. PERASSOS' lot is landlocked.

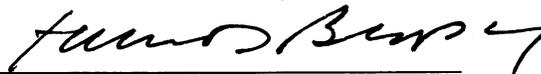
The formal re-establishment of the 15 foot driveway easement across the TURNER lot is necessary for access by PERASSOS to the county road and to avoid being landlocked.

V. CONCLUSION

PERASSOS respectfully request this court to reverse the trial court awarding Appellants a driveway easement across Respondent's property without which Appellants' property remains landlocked.

Respectfully submitted this 31st day of October, 2016.

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DECLARATION OF SERVICE

I certify that on October 31, 2016, I caused a of the copy of the foregoing BRIEF OF APPELLANTS, to be hand delivered by ABC Legal Messenger Service and by email to the attorney for the Respondent, at the following address:

Thom Graafstra
WEED, GRAAFSTRA & ASSOCIATES, INC. P.S.
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I declare under penalty of perjury under the laws of State of Washington, that the foregoing is true and correct.

Dated this 31st day of October, 2016 at Everett, Washington.

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