

Hill v Wood

2009 NY Slip Op 32144(U)

September 21, 2009

Supreme Court, Steuben County

Docket Number: 89586

Judge: Marianne Furfure

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response, plaintiff argues that, even if the easement was abandoned, which she denies, defendants are prevented from denying her access to the easement because the easement was resurrected in 2002 when the defendants Robert R. and Rena M. Wood transferred the property to defendants Robert J. and Carolyn N. Wood by way of a deed which contained a reference to the allegedly abandoned easement, and by plaintiff's use of the easement. Defendant Mercury Aircraft, Inc. took no position on this motion.

Plaintiff's property, referred to as 8367 Vogt Road, consists of approximately 32 acres, including five contiguous parcels on which sit a house and out buildings. The property is landlocked, but is accessible to Vogt Road by using a right-of-way along Wine Street, also known as Vine Street. The property may also be accessed, at times, by a road identified as the Vertical Road or Dug Road. Plaintiff acquired title to this property on May 12, 1977, by warranty deed from Dexter L. Hill and Toni W. Hill, his wife, and Francis J. Frankina and Ann Frankina, his wife. The warranty deed for that portion of plaintiff's property which adjoins defendants' property, reserves to plaintiff a right-of-way along Wine Street which travels over defendants' property. Plaintiff has had an ownership interest in the property since 1972, when she and other family members purchased the property from Howard and Kremer Bates.

Defendants Robert J. Wood and Carolyn N. Wood acquired title to the parcel of land adjacent to plaintiffs on October 11, 2002, by warranty deed from

Robert R. Wood and Rena M. Wood, Robert J. Wood's parents. The language in this warranty deed gives defendants the right to use Wine Street "subject to all rights that any parties owning other lands adjoining said street(s) have therein" and states that grantees' right to the property is "subject to all rights of way and/or easements of record."

In October, 2003, defendant Robert J. Wood barricaded and blocked plaintiff's right-of-way over the Wine Street access point by installing a lock and chain at the entrance to the road. Defendants contend that plaintiff is no longer entitled to use the easement because plaintiff's predecessor-in-interest, Howard Bates, abandoned the easement. Defendants contend that Bates developed a new roadway onto the property, referred to as the "vertical road", and used this as his exclusive method of accessing his property and used the section of land subject to the easement for other purposes inconsistent with the easement. Defendants maintain that plaintiff's motion for summary judgment must be denied because they have raised a question of fact as to whether the easement was abandoned when Mr. Bates installed a septic tank, built a stone wall, erected a wire fence, and engaged in other acts inconsistent with using the easement as a method for accessing the property. Defendants also argue that plaintiff's claim of estoppel, or resurrection of the easement, was not timely pled and is otherwise without merit.

Defendants argue that plaintiff's claim of a resurrected easement was not raised in a timely manner and, therefore, plaintiff has waived her right to make that claim. Defendants contend that pursuant to CPLR 3018(b), plaintiff was required to affirmatively plead collateral estoppel in her complaint or in the original motion for summary judgment. This argument is without merit. Defendants' claim that the easement of record was abandoned was raised as an affirmative defense in their answer. The facts underlying plaintiff's legal argument, that defendants should be estopped from disputing the continued existence of the easement, were set forth in the original complaint. Paragraphs 10 and 13 of the complaint assert that the Wood family had recognized the plaintiff's usage of the easement and that the deeds throughout defendant's chain of title reflected the easement belonged to any parties owning other lands adjoining the street. Defendants admitted in their answer that the easement was in their chain of title. Therefore, there were no new issues of fact or matters likely to take defendants by surprise which required plaintiff to further plead her defense to defendants' affirmative defense of abandonment (CPLR 3018).

Turning to the merits of plaintiff's motion for summary judgment, the burden of proof is on the moving party to set forth sufficient evidence to demonstrate the absence of any material issue of fact (*JMD Holding Corp. v. Congress Financial Corp.*, 4 NY3d 373 [2005]; *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]). If the proponent fails to make this showing, summary judgment must be

denied regardless of the adequacy of the opposing papers (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). However, once this showing has been made, the burden then shifts to the opponent of the motion to come forward with evidence in admissible form to establish the existence of material issues of fact which require a trial (*Gonzalez v. 98 Mag Leasing Corporation*, 95 NY2d 124, 129 [2000]; *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]). In reviewing a motion for summary judgment, the evidence must be considered in the light most favorable to the opponent (*Ruzycki v. Baker*, 301 AD2d 48, 50 [4th Dept. 2002]).

An easement cannot be created by recording the encumbrance in the dominant estate's chain of title, even if the owners of the servient estate have actual notice of the easement (*Simone v. Heidelberg*, 9 NY3d 177, 181 [2007]). However, a landowner is bound, if the easement is found in the servient estate's chain of title (*Witter v. Taggart*, 78 NY2d 234, 238; *Prego v. Gutches*, 61 AD3d 1394 [4th Dept. 2009]). An easement by deed runs with the land and, once created, can only be extinguished by abandonment, conveyance, condemnation, or adverse possession (*Corrarino v. Byrnes*, 43 AD3d 421, 423 [2nd Dept. 2007]). "Once an easement is extinguished, it is gone forever, as a general rule, and the servient estate is necessarily relieved of the burden" (*Puchalski v. Wedemeyer*, 185 AD2d563 [3rd Dept. 1992]). However, an extinguished easement may be resurrected in a subsequent conveyance, if language used in the subsequent conveyance clearly evinces an intent to recreate the easement in the servient

estate's chain of title (*Simone v. Heidelberg*, 9 NY3d 177, 181 [2007]; *Seebaugh v. Borruso*, 220 AD2d 573, 574 [2nd Dept. 1995]; *Riccio v. DeMarco*, 188 AD2d 847, 849 [3rd Dept. 1992]; *Sansbury v. Johnson*, 134 NYS 130, 132 [Monroe County, 1911]).

In this case, the 2002 warranty deed that transferred the servient estate from Robert R. Wood and Rena M. Wood to Robert J. Wood and Carolyn N. Wood stated that the conveyance between grantor and grantee was "subject to all rights of way and/or easements of record." Throughout the chain of title to the present defendants, the right-of-way allowing access over defendants' property via the Wine Street easement has been reserved to all parties owning lands adjoining the former Wine Street. Plaintiff's deed contains language reserving a right-of-way through Wine Street. These easements are a matter of record.

Even if plaintiff's predecessor-in-interest had abandoned the easement, as defendants claim he did, the easement was resurrected by inclusion of the easement in the defendants' 2002 warranty deed. Although defendants dispute plaintiff's allegations that the right of way was in continuous use since plaintiff's predecessors in interest acquired title in 1972, defendants conceded that by 2000 the right of way had been opened up and was in use since that time. Defendant, Robert J. Wood, also acknowledged that his father took no action when the area where the old bridge had washed out was filled in and access reestablished. Although defendant argues that his father did not give permission to plaintiff to

clear the area around the right of way, defendant's father subsequently signed the deed by which defendants acquired their interest and in which the easement was expressly referenced. Even taking the facts in the light most favorable to defendants, who are in privity with the grantor of the servient estate, they are bound by his reaffirmation of the easement's existence. This was sufficient to reestablish the easement, if it had been earlier abandoned (*Simone v. Heidelberg*, 9 NY3d 177, 181; *Riccio v. DeMarco*, 188 AD2d 847, 848-849 [3rd Dept. 1992]).

Defendants' arguments that plaintiff cannot claim an estoppel because she has not shown a change in position nor that she was in privity with the parties to the deed are without merit. Plaintiff has not asserted a claim of easement by estoppel, as defendants contend. An easement by estoppel occurs when a land owner makes specific representations to another person which leads that person to believe that he or she has a permanent, alienable interest in real property, and as a result of that representation, that person makes permanent or valuable improvements on the land (*Philips International Holding Corp. v. WBM 295 Madison Owner, LLC*, (2008 WL 2855987 [New York County, 2008]; *Olin v. Kingsbury*, 181 App Div 348, 354 [1st Dept. 1918]). In this case, the easement at issue is not based on oral or written representations made by one party to another outside of the deed, but rather on the language of the various deeds affecting the relevant parcels of land owned by the parties. Therefore, the easement at issue is an easement by deed, rather than an easement by estoppel, and the cases

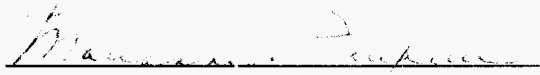
cited by defendants regarding easement by estoppel are inapplicable. The other cases cited by defendants do not apply to the circumstances established here, where plaintiff and defendants have deeds which specifically reference the easement in question.

Therefore, based on the above, plaintiff's motion for summary judgment is granted. Defendants are permanently enjoined from interfering with plaintiff's right to access her property over the Wine Street easement as described in the parties' respective deeds, and defendants must remove any and all obstructions blocking the right of way.

Plaintiff's attorney to submit judgment.

Dated: September 21, 2009.

ENTER:



Hon. Marianne Furfure
Acting Supreme Court Justice