

BONNER 23
FILED: 12-6-99
AT 10:20 AM
Clerk of District Court
The

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

LAWRENCE GUMENSKI and
JUDY M. GUMENSKI, husband and
wife,

Plaintiffs,

vs.

JAMES R. MCBRIDE and
KATHERINE MCBRIDE,
husband and wife,

Defendants.

CASE NO. CV 97-01746

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Plaintiffs are husband and wife and the owners of Lot 1-A of CAPE HORN ESTATES, County of Bonner, State of Idaho.

2. Defendants are husband and wife and are the owners of Lot 2-A of CAPE HORN ESTATES, County of Bonner, State of Idaho.

3. Lots 1-A and 2-A share a common boundary.

4. That on July 12, 1971, the original developers of CAPE HORN ESTATES caused to be filed in the office of the Bonner County Recorder under Recorder's number 134898, Book 43 of Miscellaneous page 609 the document entitled COVENANTS FOR CAPE HORN ESTATES DEVELOPMENT.

5. That paragraph 5 of said covenants provides the following language:

"Seven and one-half foot easements for access roads and utilities shall be reserved along each side of each lot line."

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

Cv97-1746(2)

6. The boundary line between the Plaintiffs and the Defendants' properties is as defined by the Meckel survey of February 24, 1994.

7. The Defendants have located utility services on their parcel within seven and one-half feet of the lot line between the properties.

8. The topography of the properties, and in particular the area within seven and one-half feet to each side of the common boundary, is steep and rocky.

9. The subsurface of the property owned by defendants consists of substantial, continuous rock.

10. That the use of each property is residential.

11. That the properties are on the shore of Lake Pend O'Reille.

12. Covenant 11 provides that all structures shall be set back not less than seven and one-half feet from the side lot line and set back not less than forty feet from the front and rear lot line unless sanitation criteria dictate otherwise, and substandard setback is approved by the Association trustees; that no fence or hedge higher than three feet will be allowed on the front line; and that no fence or hedge higher than six feet will be allowed along side or back lot lines.

13. Defendants have constructed a fence along the common boundary line between the adjacent properties of the parties hereto.

14. The fence precludes unrestricted use of the easement as set forth in the Covenants for Cape Horn Estates Development.

15. Plaintiffs have present access to their property.

16. Plaintiffs have frontage on a subdivision roadway.

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 2

Cv97-1746(2)

CONCLUSIONS OF LAW

The following analysis sets forth the conclusions of law of the Court in this matter. To the extent that any of the statements in this section constitute findings of fact not covered above, then such statements shall be incorporated into and considered as part of the findings of fact set forth in the above section.

The parties essentially agree that each has an easement for use of the 7 ½ feet of the other's property adjacent to the common property line. The parties agree that these are appurtenant easements, with the property of each party the dominant estate benefited by the 7 ½ foot easement imposed upon the adjacent property as the servient estate.

There is no real dispute between the parties that each party's right to use the easement must be for a purpose that is not inconsistent with the general use of the property by the owner of the servient estate. Both parties agree that the scope of the easement is limited to the purpose of access and for location of utilities, although Covenant 11 specifically permits the erection of a fence along the common property line.

Evidence establishes that Gumenski does have access to the residence located on his parcel. A subdivision road crosses the north end of the Gumenski parcel and then proceeds easterly on to the McBride parcel. At a point east of the common property line, a driveway departs from the subdivision road and crosses westerly to the common property line. This driveway then continues on to the Gumenski parcel and leads to the Gumenski residence.

McBrides stipulated to the existence of a prescriptive right to the Gumenskis to use the driveway in its existing location on the McBride parcel for purposes of accessing the Gumenski property.

The parties disputed whether McBride had at times past obstructed such access,

but McBride rendered any such dispute moot by virtue of the stipulation to the prescriptive easement in favor of the Gumenski parcel.

Gumenski testified that he had made attempts to build a road and had contacted two contractors with regard to the construction of a road down to the lake. However, no details or information of any kind was provided regarding the proposed roadway.

Jim Meckel testified on behalf of McBrides and testified essentially that it was not practical to build a road to access the Gumenski parcel within the 15 foot "easement corridor" created by the two adjoining 7 ½ foot easement strips.

This Court finds that while it would be technically possible to build a driveway within the easement corridor, such driveway would essentially be unusable, as it would be dysfunctional and unsafe.

Meckel testified, and such testimony was unrebutted, that the existing access to the Gumenski parcel was better than what would be possible to construct within the proposed easement corridor.

It was Gumenski's theory of the case that this Court should determine that Gumenski has a right to use the easement corridor for purposes of building a driveway for access to his parcel, anywhere throughout the length of the easement corridor, all the way to the lake, if Gumenski desired, without considering the issue as to whether an access road could be constructed as a practical matter.

It is the conclusion of this Court that it was the intent of the developer filing the plat creating the easement corridors to permit a property owner such use of the easement corridor for access to the property as was reasonably necessary. Such intent can be construed from the recording of a plat with straight lot lines imposed upon a rocky steep hillside leading down to the shores of Lake Pend O'Reille.

Although the covenants clearly define the boundaries of the area (the "easement corridor") within which an access road can be constructed, the covenants do not

definitely fix where an access road can be located. The "easement corridor" created by the covenants is known, but what portion of the easement corridor is reasonably necessary for construction of an access road is undefined. Certainly the covenants did not mean that an owner could construct driveways along the entire length of both sides of the lot, even though the driveways constructed could not be physically used due to topography and were unnecessary to provide access, since other access was available. Rather, the covenants provide that, if an owner requires a portion of the easement corridor in order to provide reasonable access to the owner's lot, then that owner has the right to build an access road (driveway) in that portion of the easement corridor reasonably necessary to accomplish that purpose.

In this respect, Gumenski's rights to the easement corridor are analogous to the situation where a conveyance establishes a right-of-way, but does not fix its precise location. In such instances, the grantee is entitled to a convenient, reasonable and accessible way within the limits of the grant. *Quinn v. Stone*, 75 Idaho 243, 270 P.2d 25 (1954). Such location must not unreasonably interfere with the rights of the servient owner. *Bethel v. Van Stone*, 120 Idaho 522 (Ct. App. 1991). In short, the extent to which the easement corridor in this case can be utilized by Gumenski for purposes of access to his cabin cannot be determined in a vacuum, without considering the reasonableness of the proposed driveway for purposes of providing access.


Gumenski has failed to establish how use of the easement corridor south of the point where the existing driveway crosses the common boundary line could be of any practical benefit. Whereas the right to construct a reasonably necessary access road no doubt exists, that right can be implemented only upon a showing that the facts and circumstances justify the exercise of the right. On that point, the plaintiff has failed to carry his burden of proof.

Although no specific plan for construction was submitted by Gumenski, the evidence does establish that Gumenski could utilize the easement corridor north of the existing driveway in some fashion to improve access to his existing driveway. Jim Meckel's testimony did not establish that it would be impractical to use the easement corridor north of the point where the existing driveway crosses the common boundary for purposes of improving driveway access.

CONCLUSION

Counsel for plaintiff may prepare the appropriate judgment declaring that Gumenski has demonstrated present need entitling him to use the easement corridor north of the existing driveway for purposes of an access road; and that Gumenski has the easement across the McBride parcel to which McBrides stipulated at trial.

DATED this 9 day of December, 1999.



CHARLES W. HOSACK
DISTRICT JUDGE

CERTIFICATE OF SERVICE:

I hereby certify that on this 6 day of December, 1999, a true and correct copy of the foregoing Findings of Fact and Conclusions of Law was sent via facsimile to the following parties:

Harold B. Smith
Harold B. Smith, Chartered
P.O. Box 2083
Coeur d'Alene, ID 83816
Fax: 208-664-8885 12-6-99 @ 10:25 AM BJE

Patrick E. Miller
Attorney at Law
816 Sherman Avenue
P. O. Box E
Coeur d'Alene, ID 83816-0328
Fax: 208-664-6338 12-6-99 @ 10:28 AM BJE

Howard K. Michaelsen
Attorney at Law
320 West Spofford Street
P.O. Box 5325
Spokane, WA 99205
Fax: 509-327-7512 12-6-99 @ 10:31 AM BJE

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

BY Barbara Sylos
Deputy Clerk Secty. to Judge Hosack

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 7

Cv97-1746(2)