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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

WILLIAM H. HOLT, et al.,

Plaintiffs and Respondents,

v.

CLIVE PALETZ,

Defendant and Appellant.

2d Civil No. B235061
(Super. Ct. No. 56-2009-00357016)
(Ventura County)

William Holt and Emerson Stoops (respondents) each own real property situated along a private road off Yerba Buena Road, in the Malibu hills. Each respondent holds an easement to use the private road, most of which extends over real property owned by Clive Paletz (appellant) and others who are not parties to this action. Appellant installed an access gate, paved portions of the road, planted palm trees and other vegetation alongside it, and built rock retaining walls on either side of the road. These improvements have narrowed the available driving area so that one car can no longer pass another while driving on the road. After a nonjury trial on their causes of action for quiet title, nuisance, trespass, injunctive relief and declaratory relief, the trial court found in favor of respondents and ordered appellant to remove portions of the retaining wall and some of the palm trees. Appellant contends the trial court erred because the improvements do not unreasonably interfere with respondents' use of the easements. We affirm.

Facts

Appellant's property is about 1.63 acres and is roughly in the shape of an inverted triangle. Its northeastern tip meets Yerba Buena Road. Following the sides of the inverted triangle from Yerba Buena Road to the south and west are properties owned by three non-parties: Jennings, Lehman and Terando. Respondents' properties are to the northwest of appellant's. Each respondent can access his property only by means of the private road at issue here. Starting from Yerba Buena Road, the private road travels southwest, roughly following the sides of the inverted triangle along the lower perimeter of appellant's property. At the tip of the triangle, the road makes a sharp curve and travels to the north and to the west. It eventually reaches the northwestern tip of appellant's property and continues on to respondents' properties.

The "Holt Easement."

Respondent Holt's property is benefitted by a nonexclusive easement for ingress and egress granted by the prior owners of appellant's property and described in a deed that was recorded in 1999. Where appellant's property abuts the Lehman property, the easement is 40 feet wide and straddles the Paletz-Lehman property line. It narrows to 20 feet near the Paletz- Jennings property line. This portion of the easement is entirely on appellant's property. The Jennings were invited to sign the deed that conveyed the Holt Easement. They declined and have never executed a deed conveying an easement over their property to respondent Holt. They also have never attempted to block Holt's use of the roadway where it passes over their property.

The trial court found that the roadway as it currently exists follows generally the same path it has always taken. However, between Yerba Buena Road and the curve, the paved private road runs almost entirely on the Jennings property. Holt's easement does not extend to the Jennings property. If Jennings decided to block Holt's use of the roadway where it passes over the Jennings property, Holt would be unable to reach Yerba Buena Road. Because Holt's easement in this area travels over a hillside slope, he would have to perform costly grading and slope stabilization work to continue using his easement.

The "Stoops Easement."

The Stoops easement was created by a judgment in prior litigation between Stoops and several of his neighbors, including the prior owners of appellant's property. (*Sherwood v. Bell*, Super. Ct. Ventura County, 1985, No. 80988 [hereafter, the "Sherwood Judgment".]) The Sherwood Judgment grants Stoops an easement for ingress and egress that generally follows the Paletz-Lehman and Paletz-Jennings property lines. It provides that the easement will be "25 feet wide, plus any additional width to provide for necessary slope on cuts and/or fills to allow a full 25 foot road exclusive of such slopes"

Appellant's Improvements.

Appellant made a number of improvements to the private road after he bought his property in 1999. These include: installing a security gate; asphaltting the roadway; adding a drainage system, including two- to four-inch rocks placed along the asphalt surface; planting parallel rows of palm trees along the roadway; erecting a series of low rock walls, with overhanging vegetation, along either side of the roadway; and installing two large water tanks. One consequence of these improvements is that the roadway has narrowed considerably. Two vehicles can no longer pass side by side. In addition, the rock walls and plants have limited the sight distance along the curve in the road, making it difficult to see on-coming traffic. Respondents also complain the palm trees are a fire hazard and that the security gate is an inconvenience for them and their guests.

The Statement of Decision and Judgment.

Respondents asked the trial court to enter judgment quieting title to each easement and issuing a permanent injunction that compels appellant to remove the rock walls to the north and south of the roadway, the palm trees on either side of the roadway, the two- to four-inch inch rocks placed on either side of the roadway, the water tanks and the security gate.

The trial court found that a rock wall to the north of the roadway had been constructed "nearly entirely within the Stoops easement." A small portion of a rock wall

to the south of the roadway, near the security gate controller, was also within the Stoops easement area. The judgment provided, "[Appellant] shall remove the portion of the rock walls on the north side of the roadway falling within the Stoops Easement area." For the same reason, the trial court required appellant to remove the portion of the wall near the security gate controller. Appellant was not required to remove portions of the rock walls that fall outside the Stoops Easement area. The judgment allows Stoops to prune, or requires appellant to prune vegetation growing on or overhanging the rock walls.

The trial court found that any encroachment caused by palm trees planted to the north of roadway "is *de minimus* and does not adversely impact [Stoops'] use of the access route. Stoops is not entitled to a judgment compelling the removal of these palm trees." It found that three palm trees planted to the south of the roadway encroached on the easement area and "appreciably impact the utility of the easement, as that is an area where the existing road is narrow and sight lines are diminished" The trial court ordered appellant to remove those three trees as well as a fourth tree that "notably encroaches into the Stoops Easement[.]" across from a parking area.

The trial court further found that the two- to four-inch rocks placed on either side of the roadway in certain locations "do not unreasonably interfere with the use of the roadway for access purposes." Stoops was not entitled to their removal. It made a similar finding with regard to the water tanks and the security gate at Yerba Buena Road.

With regard to the Holt Easement, the trial court found that a rock wall to the north of the roadway, between the curve and Yerba Buena Road, encroached on the easement and had to be removed. Other portions of the rock wall either did not encroach or did not unreasonably impair Holt's exercise of his easement rights. These portions of the wall were entitled to remain. Palm trees planted to the north of the roadway, between the curve and Yerba Buena Road, the trial court found, "present the same impediment to Holt's use of the Holt Easement as does the rock wall. [Appellant] shall remove those palm trees" Palm trees planted to the south of the roadway, however, were outside the Holt Easement area. Those trees were not required to be removed. The

small rocks lining either side of the roadway also did not unreasonably interfere with the use of the roadway for access purposes. Appellant was not required to remove them.

The trial court found that the security gate was not an unreasonable obstruction and did not need to be removed. It further found, however, that "the northern most of two gate 'pillars' [built on either side of the gate] lies squarely within the Holt Easement area. . . . Hence, the northern gate pillar, along with the gate control and electrical panel . . . block Holt's use of the Holt Easement for access purposes. Therefore, while Holt may not object to the existence of a gate (or controller, etc.), Holt is within his rights to require the northern pillar and the other gate fixtures be relocated outside the Holt Easement area."

Discussion

Appellant contends the trial court erred in requiring him to remove any of the improvements to the roadway because it made no finding that the improvements unreasonably interfered with use of the Stoops Easement or that any current circumstance threatened Holt's ability to use the road as it travels over the Jennings property. Neither contention has merit.

"An easement is a restricted right to specific, limited, definable use or activity upon another's property, which right must be *less* than the right of ownership." (*Mesnick v. Caton* (1986) 183 Cal.App.3d 1248, 1261.) The property that is benefitted by an easement is the "dominant" tenement or estate; the property that is burdened by an easement is the "servient" tenement or estate. (Civ. Code, § 803.) We construe a deed or other instrument conveying an easement using the same rules that apply to the construction of deeds generally. (*Wilsons v. Abrams* (1969) 1 Cal.App.3d 1030.)

"[T]raditional rules of property law forbid overburdening an easement or servitude and unreasonable conduct in exercising rights under either. '[T]he owner of a dominant tenement must use his easement and rights in such a way as to impose as slight a burden as possible on the servient tenement.' (*Barker v. Pierce* (1950) 100 Cal.App.2d 224, 226.)" (*Locklin v. City of LaFayette* (1994) 7 Cal.4th 327, 356, fn. 17.) At the same time, the owner of the servient estate retains "[e]very incident of ownership

not inconsistent with the easement and the enjoyment of the same [¶] The owner of the servient estate may make continued use of the area the easement covers so long as the use does not 'interfere unreasonably' with the easement's purpose." (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 702-703.) Whether a particular improvement or use unreasonably interferes with an easement is a question of fact. We review the trial court's findings for substantial evidence. (*Pacific Gas & Elec. Co. v. Hacienda Mobile Home Park* (1975) 45 Cal.App.3d 519, 528.)

An easement for roadway use "grants a right of ingress and egress and a right of unobstructed passage to the holder of the easement. . . . When the easement is 'nonexclusive' the common users 'have to accommodate each other.'" (*Applegate v. Ota* (1983) 146 Cal.App.3d 702, 712.) An obstruction which unreasonably interferes with the use of a roadway easement can be ordered removed 'for the protection and preservation' of the easement. (*Id.* at pp. 712-713.)" (*Scruby v. Vintage Grapevine, Inc.*, *supra*, 37 Cal.App.4th at p. 703.)

Appellant contends the trial court erred because it required the removal of certain improvements without also finding that the improvements unreasonably interfered with use of the Stoops Easement. The contention is without merit because the trial court expressly found, "The obstructions or objects unreasonably interfere with each plaintiff's use of their respective easement and also cause plaintiffs' great or irreparable injury to their respective easement rights The court has carefully weighed and balanced the equities among the parties and determined the harm to each of the plaintiffs is outweighed by any cost or harm to defendant or any other third party in each such instance."

These findings are supported by substantial evidence. As the trial court found, the Stoops Easement was created by the Sherwood Judgment, itself the product of litigation between Stoops and the prior owners of appellant's property, among others. The Sherwood Judgment unambiguously grants to Stoops "an easement of ingress and egress for road purposes over [appellant's property and adjoining properties] being a strip of land 25 feet wide, plus any additional width to provide for necessary slope on cuts

and/or fills to allow a full 25 foot road exclusive of such slopes, lying 12.50 feet on each side of the following described center line . . . [,]" of the private road as it then existed

It is undisputed that improvements constructed by appellant encroach on the "full 25 foot road" granted to Stoops in the Sherwood Judgment. At no point is the current paved road 25 feet wide. Retaining walls and palm trees installed by appellant encroach on the 25-foot wide strip granted to Stoops, considerably narrowing the roadway and making it more dangerous. "[W]hen the width of an easement is definitely fixed by the grant or reservation creating the same, its use may be interpreted as commensurate with the entire width thereof." (*Scrubby v. Vintage Grapevine, Inc.*, *supra*, 37 Cal.App.4th at p. 704.) The trial court correctly ordered appellant to remove the encroaching improvements because they prevent Stoops from using the entire width of the easement for road purposes, as provided in the Sherwood Judgment.

Similarly, the trial court's findings with regard to the Holt Easement are supported by substantial evidence. The trial court found that a rock wall and palm trees to the north of the private road, between the curve and Yerba Buena Road, encroached on the Holt Easement and had to be removed. In this area, the private road crosses onto the Jennings property. The Holt Easement, by contrast, runs to the north of the roadway, across a steep hillside slope. Holt has no easement across the Jennings property. Appellant's rock wall and palm trees prevent him from accessing the portion of appellant's property that is covered by the Holt Easement. Should the Jennings attempt to prevent Holt from crossing their property, he would have no access to either the easement area or his own property.

Appellant contends the trial court erred because the order directing removal of the wall and trees in this location is based only on speculation that the Jennings will attempt to prevent Holt from crossing their property. Because they have never done so, appellant contends the trial court's finding that the rock wall and palm trees are an unreasonable intrusion on the Holt Easement is not supported by substantial evidence.

We are not persuaded. There was evidence that the rock wall prevents Holt from accessing any portion of his easement between Yerba Buena Road and the curve in

the private road. This rock wall is not theoretical or speculative. Even if Jennings never attempts to block Holt's use of the private road, the rock wall has narrowed the roadway and made its use more dangerous. Holt testified that, before the wall was constructed, the road was two- to three- feet wider. He used the extra width to pull over when he encountered an oncoming car, allowing the other driver to pass. This is no longer possible.

As the court noted in *Scrubby v. Vintage Grapevine Inc.*, *supra*, when an easement for roadway purposes is nonexclusive, "the common users 'have to accommodate each other.' (*Applegate v. Ota* (1983) 146 Cal.App.3d 702, 712 [194 Cal.Rptr. 3311.]) An obstruction which unreasonably interferes with the use of a roadway easement can be ordered removed 'for the protection and preservation' of the easement. (*Id.* at pp. 712-713.)" (*Scrubby v. Vintae Grapevine Inc.*, *supra*, 37 Cal.App.4th at p. 703.) Substantial evidence demonstrated that, far from accommodating Holt, appellant's rock wall and palm trees totally obstruct Holt's access to the area of the Holt Easement and make his use of the existing roadway more dangerous. As a consequence, the trial court properly ordered them removed.

Conclusion

The judgment is affirmed. Respondents shall recover their costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Mark S. Borrell, Judge
Superior Court County of Ventura

Jeffrey D. Jennings; Jennings & Associates, for Appellant.

Ferguson Case Orr Paterson; Joseph L. Strohman, Jr., for Respondents.