

A man conveyed a valid easement appurtenant across his ranch to a woman who owned the adjoining property, on which she operated a commercial farm. The easement was not recorded. Shortly before his death, the man devised his ranch to his son. The will made no mention of the woman's easement. The son, who lived out-of-state, never came to visit the ranch. The woman decided to expand the size of her crops and openly used the man's ranch to do so. She paid the taxes on the property and used the land exclusively for 20 years. However, she never used the easement during that time.

After facing some financial hardship, the son decided to sell the ranch. To prevent the sale, the woman filed and won a quiet-title suit confirming that she had acquired ownership of the ranch through adverse possession. The son felt guilty about losing his father's ranch, so he worked out a deal with the woman to repurchase the ranch.

After the sale, the woman resumed her use of the easement across the ranch that had been granted to her by the man. The son, already angry over having to repurchase the ranch, immediately objected to the woman entering his property. The woman has filed suit to enforce the easement.

The jurisdiction has a notice recording act.

Will the woman likely prevail?

- A. No, because she acquired title to the ranch through adverse possession.
- B. No, because the son was not provided proper notice of the easement.
- C. Yes, because an easement appurtenant automatically runs with the land.
- D. Yes, because failure to use an easement does not extinguish it.

Explanation:

The man granted the woman an **easement appurtenant*** across his ranch. An easement appurtenant is a nonpossessory right to use another's land (servient estate) that benefits the easement holder's land (dominant estate). This **type of easement** runs with the land, so it automatically transfers with the conveyance of the dominant or servient estate. But since easements are a real property interest, they are subject to the jurisdiction's recording act.

Under a **notice recording act** (as seen here), real property interests cannot be enforced against subsequent purchasers of a conflicting real property interest who lack **notice** of the prior interest. But since the son is not a purchaser for value (he was devised the ranch), he is not protected by the recording act. Therefore, the fact that he was not provided proper notice of the easement is of no consequence **(Choice B)**.

However, the woman's adverse possession of the ranch *is* of consequence. That is because, under the **merger doctrine**, an **easement** will **terminate** when the **dominant estate** (the farm) and the **servient estate** (the ranch) *merge* into the hands of a **single owner**. That is because a landowner cannot own an easement across his/her own land. Therefore, the easement was extinguished once the woman acquired title to both the farm and the ranch **(Choice C)**.

Once terminated, an easement cannot be revived by merely resevering the dominant and servient estates—a new easement must be created. Therefore, the woman's easement over the ranch was not revived when she sold the ranch to the son. And since no new easement was created, the woman likely will *not* prevail in her suit to enforce the easement.

*Easements are presumed to be appurtenant unless otherwise stated.

(Choice D) An easement can be terminated by abandonment if the easement holder acts in an affirmative way that shows a clear intent to relinquish the easement—mere nonuse of the easement is not enough. However, the woman will not prevail because the easement was terminated by merger.

Educational objective:

Under the merger doctrine, an easement terminates once the dominant and servient estates merge into the hands of a single owner.

References

Restatement (Third) of Property: Servitudes § 7.5 (Am. Law Inst. 2000) (termination of easement by merger).

Easement analysis

