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St. James Village, Inc. v. Cunningham, 125 Nev. Adv. Op. No. 21 (June 25, 2009) (en banc)¹

PROPERTY LAW – EASEMENTS

Summary

Appeal from a district court’s order denying declaratory relief to a servient estate owner seeking authorization to unilaterally relocate an easement across its property.

Disposition/Outcome

Despite holding the standard for relocating an easement announced in *Swenson v. Stout Realty, Inc.*² is overbroad and thus adopting the Restatement (Third) of Property: Servitudes § 4.8 (2000) the Court affirmed denial of declaratory relief because even under the newly adopted standard, the facts of this case did not qualify for unilateral relocation of the easement.

Factual and Procedural History

Respondents Jennifer A. Cunningham, Craig Cunningham, James H. Saladin, and Thelma L. Saladin (hereinafter “the Cunninghams”) own land adjacent to 1,600 acres owned by Appellant St. James Village, Inc. (hereinafter “St. James”). In 1974, the Cunninghams’ predecessors in interest purchased an express easement over the land now owned by St. James to provide access to their adjacent property from a public road. The easement’s deed provides a metes and bounds description of the easement’s specific location. The deed does not, however, discuss any procedures or rights to relocate the easement. The Cunninghams’ predecessors recorded the easement deed in 1974 and the conveyance to the Cunninghams, which includes the metes and bounds description, was recorded in 1997.

St. James acquired the servient property and designed a master-planned gated community. The current easement crosses 14 lots in the planned development. St. James sought to curve the existing easement to allow development of the encumbered lots. St. James contacted the Cunninghams to gain their consent to the relocation but the Cunninghams refused.

Subsequently, St. James filed a declaratory action arguing that Nevada law governing relocation of easements is unsettled and thus the Court should adopt Restatement (Third) of Property: Servitudes § 4.8 (hereinafter “Section 4.8”), which allows unilateral relocation under some circumstances. The Cunninghams moved to dismiss arguing that the *Swenson* standard, requiring the other party’s consent before one party can relocate an easement, is controlling. The district court found that *Swenson* was controlling law in Nevada and denied St. James’ requested relief.³ St. James appealed.

¹ By Ian Houston

² 452 P.2d 972, 974 (Nev. 1969).

³ On appeal, the Court treated the district court’s order as one resolving a request for declaratory relief.

Discussion

Swenson is controlling

A statement is dictum when it is “unnecessary to a determination of the question involved.”⁴ In *Swenson*, the court held that the Swensons could not rely on their broker’s statement that an easement across the land they purchased could be relocated.⁵ The Court appeared to consider 1) whether the broker’s statement was false, and 2) whether the Swensons’ reliance on the statement was unreasonable.⁶

Prior to examining the reliance issue, the *Swenson* court determined the broker’s statement was legally false and stated, “It is a general rule of law that, in the absence of [a] statute to the contrary, the location of an easement once selected, cannot be changed by either the landowner or the easement owner without the other’s consent.”⁷

The Court in the instant case held *Swenson* was controlling because the *Swenson* court made a determination that the broker’s statement was false before determining whether the Swensons’ reliance on the statement was unreasonable. Because the *Swenson* court’s holding that the broker’s statement was false necessitated a determination of whether an easement could be relocated unilaterally, the standard is controlling.

Swenson is overbroad, thus Court adopted Section 4.8 for unilateral easement relocation cases

Despite determining that *Swenson* was controlling, the Court held a standard requiring both parties’ consent to relocate an easement in all circumstances is overbroad. The Court instead adopted the more flexible Section 4.8 standard. Section 4.8 states:

Except where the location and dimensions are determined by the instrument or circumstances surrounding creation of a servitude, they are determined as follows:

(1) The owner of the servient estate has the right within a reasonable time to specify a location that is reasonably suited to carry out the purpose of the servitude.

(2) The dimensions are those reasonably necessary for enjoyment of the servitude.

(3) Unless expressly denied by the terms of an easement, as defined in §1.2, the owner of the servient estate is entitled to make reasonable changes in the location or dimensions of an easement, at the servient owner’s expense, to permit normal use or development of the servient estate, but only if the changes do not

- (a) significantly lessen the utility of the easement,
- (b) increase the burdens on the owner of the easement in its use and enjoyment, or
- (c) frustrate the purpose for which the easement was created.

⁴ Stanley v. Levy & Zentner Co., 112 P.2d 1047, 1054 (Nev. 1941).

⁵ *Swenson*, 452 P.2d at 974 (broker sued the Swensons for commission on the sale of their property and the Swensons countersued for damages resulting from broker’s legally incorrect statement regarding relocation of an easement in an unrelated transaction).

⁶ *Id.* at 974.

⁷ *Id.* at 974.

The Court weighed Section 4.8's purpose, to "permit development of the servient estate to the extent it can be accomplished without unduly interfering with the legitimate interests of the easement holder"⁸ against concerns of increased litigation over the reasonableness of the servient estate holder's proposed relocation, the creation of uncertainty in the property rights of dominant estate owners and the risk that dominant estate owners would lose the benefit of their bargains.

Ultimately, the Court determined that under the appropriate circumstances, the public policy furthered by Section 4.8 outweighs the risk of increased litigation and Section 4.8's reasonableness requirements guarantee the rights of dominant estate owners will not be undermined. As such, dominant estate owners will not lose the benefit of their bargains.

Even under Section 4.8, St. James is not entitled to relief

The Cunninghams argued that the introductory language of Section 4.8 excepted their easement from susceptibility to unilateral relocation because the deed contains a metes and bounds description of the easement. The Court agreed, holding that the language prefacing Section 4.8 unambiguously states that its provisions apply, "[e]xcept where the location and dimensions [of the easement] are determined by the instrument or circumstances surrounding creation of a servitude."⁹ In so holding, the Court rejected St. James' argument that such an interpretation would render language in Subsection 4.8(3) a nullity. The Court reasoned that Subsection 4.8(3) has no bearing on the introductory language but instead is an additional limitation to Section 4.8's applicability.

Accordingly, the Court concluded that because the deed contained an express metes and bounds description of the easement, the provisions of Section 4.8 do not apply and St. James is not authorized to relocate the easement without the Cunninghams' consent.

Conclusion

Court concluded that because the *Swenson* Court's holding necessitated a determination of whether an easement could be relocated unilaterally, *Swenson* is controlling, and not dictum. However, the Court further held the *Swenson* standard is overbroad because it requires, in all circumstances, that both parties consent to the easement relocation. Thus, the Court adopted the more flexible Restatement (Third) of Torts: Servitudes § 4.8 for deciding unilateral easement relocation cases. Based on a plain reading of the introductory language to Section 4.8, the Court concluded that Section 4.8's provisions allowing unilateral easement relocation do not apply when the creating instrument defines the easement through specific reference to its location or dimensions. The easement deed in this case contained an express metes and bounds description and as such the Court affirmed the district court's dismissal of St. James' complaint.¹⁰

⁸ Section 4.8 cmt. f (2000) (benefits of allowing some flexibility include: 1) increasing the value of the servient estate without diminishing the value of the dominant estate; 2) encouraging the use of easements; 3) lowering the price of easements by reducing the risk that the servient estate will be unduly restricted from developing the estate in the future; and 3) providing a fair trade-off to the servient estate for its vulnerability to increased use of the easement with technological advances and development of the dominant estate).

⁹ Section 4.8.

¹⁰ The Court acknowledged that the district court dismissed St. James' complaint based on the overbroad *Swenson* standard but cited *Hotel Riviera, Inc. v. Torres*, 632 P.2d 1155, 1158 (1981) as holding that, "[i]f a decision below is correct, it will not be disturbed on appeal even though the lower court relied upon wrong reasons."