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Summary of Brooks v. Bonnet, 124 Nev. Adv. Op. No. 36

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Brooks v. Bonnet
124 Nev. Adv. Op. No. 36
June 5, 2008¹

Summary

This case is an appeal from district court determination that Brooks had no right to an easement across Bonnet's land.

Disposition/Outcome

Affirmed.

Factual and Procedural Outcome:

The parcel involved in the dispute was originally part of a larger parcel of land. The deed to the larger parcel of land was recorded in 1952 and contained a grant to the City of Reno for an easement for a public road. The two smaller pieces of land, parcels 4 and 5, contained grants of easements almost identical to the easement granted to Reno in the 1952 deed.

Brooks purchased parcel 5 and applied for a permit to build a driveway over the land allotted for an easement. The permit stated that the driveway was to benefit parcel 4 and 5. Subsequently, the Bonnet's, owners of parcel 4, built a fence that blocked Brooks' access.

The Bonnet's were successful in an application for abandonment of the roadway easement and a revocation of Brooks' easement for the driveway.

Brooks filed suit for a declaration the he had either an express or an implied easement. The district court found that Brooks had neither an express or implied easement.

Discussion

Express Easement

An express easement may be created by written deed and is limited by the terms of the deed and intent of the parties. An express easement may only be extinguished by consent, prescription, abandonment, or merger. The Court concluded that the 1952 deed granted easement right only to the City of Reno to build a public road and did not grant any easement rights to Brooks.

¹ By Tyler Ure

Easement By Necessity

Brooks claimed that he has an implied easement by necessity over Parcel 4 because (1) there was prior common ownership of Parcels 4 and 5, and (2) an easement was necessary at the time of severance. A showing of reasonable necessity does not mean absolute necessity, but must be something more than mere inconvenience. The court determined that necessity means necessity at the time the easement was created *and* present necessity. Brooks had access to two public roads and therefore the driveway over Bonnet's land was not reasonably necessary.

Implied Easement

The court denied to expand the doctrine of abutting landowner rights to include creation of a private easement after a public highway is abandoned from the mere fact that it abuts a landowner's land. The Court based its decision on NRS § 278.480 which says that when a city in Nevada abandons an easement, the land reverts back to the property owner only if the property owner had originally dedicated the easement.

Further, under NRS § 408.523(3) an abandoned easement for a public highway is simply destroyed. Finally, the court concluded an abutting landowner only has an easement if that easement arises by necessity.

When the City of Reno abandoned its easement, rights to the land on parcel 4 reverted to the Bonnets, not the Brooks.

Conclusion

Brooks did not have an express easement because the deed that created the easement granted rights to the City of Reno, not Brooks. Brooks had no easement by necessity because he had access to two other public roadways. There was no implied easement because the easement extinguished after the City of Reno abandoned the easement and the property rights on parcel 4 reverted back to the Bonnets.