SOUTH CAROLINA COURT OF APPEALS

IN THE COURT OF APPEALS

SONYA M. FORD, RONALD FORD

CASE # 2014 CP-07-00426

Plaintiffs

v.

NOTICE OF CIVIL APPEAL

TAIWAN R. SCOTT

Defendant

PLEASE TAKE NOTICE that Sonya M. Ford and Ronald E. Ford hereby appeal to the South Carolina Court of Appeals, of decisions made by the State of South Carolina, County of Beaufort from the order of the Honorable Marvin H. Dukes, III Master in equity and Special Circuit Court Judge for Beaufort County, entered on October 3, 2014, and from removal any portion of vinyl fence said to be an easement.

There is an existing easement that has been used for 20+ years by ALL property owners or residents, including Mr. Scott, emergency vehicles, utility companies and all others. This easement is adjoined with properties of other family members and is used by residents living on both sides of the adjoining road. This road that adjoins, legally is an easement that has been acquired by use for20+ years; a prescriptive easement.

Mr. Scott claims there is a 30ft access easement through the side of my property, which is parallel to a 30+ft road that is already used . There are electrical post that service all

homes in the area, electrical wires, Mr.Scott has a part of a home in the "said" easement, waterlines and septic in this "said" easement. My deed, nor plat refers to the easement, Mr. Scott mentions. I contacted the Beaufort county register of deeds office, spoke with and emailed Ms. Mary J. Lamie, whom confirmed the only easements filed in the register of deeds office is that with The Town of Hilton Head and Palmetto Electric. I visited the register of deeds office on October 3,2014 after we appeared before the Honorable Marvin H. Dukes, III Master in equity and Special Circuit Court Judge for Beaufort County. I again spoke with Ms. Lamie, whom informed me that the paperwork used as a plat in court had not been filed in Beaufort County SC Register Of Deeds. We also searched for a written description, which has to be described in a deed for a legal easement on the property: there was no legal description filed in Beaufort County Register of Deeds for lot R510 010 000 006A. I've researched and find that there is no easement on my property. If there ever was an easement (that coulnt be fornd in the Beaufort County register of deeds) it is now estinguished because it hasn't been used for 20+ years. I've attached information on some of my findings.

I am seeking a fair and proper judgement, a new trial or reversal of the order. Therefore, I am requesting your reconsideration of this issue. If there is any additional information I can provide to you that would expedite this matter, please feel free to contact me. Thank you for your time and consideration in this important matter.

Respectfully,

Ronald Ford Sonya Ford

49 Oakview Rd
Hilton Head, SC 29926
843-338-0571

(843)338-6571

An easement is a right that someone may have to use land that they do not own in a certain way, or to prevent the owner of that land from using it in a certain way. Examples of common easements include rights of way and a right of light. They are usually created on a sale of part of land.

What are the requirements for an easement?

In order for an easement to be created, certain conditions must first be satisfied:

- there must be a 'dominant' and 'servient' piece of land, with the dominant land gaining the benefit of the easement and the servient land granting the burden of it;
- the dominant and servient pieces of land must be owned and occupied by different people; and
- the right must be capable of being granted by deed.

How are easements acquired?

Easements can generally be granted by one party to another, or reserved by one party for themselves. For example, a landowner could grant his neighbour the right to walk across his land in order for the neighbour to access his own property; or the landowner could reserve or retain for himself the rights of drainage over his neighbour's land. Easements may be acquired by statute; express grant or reservation; implied grant or reservation; or prescription.

1 Express easement is created if the grant or reservation is by deed. This normally occurs when a person sells part of his land but retains another part, necessitating the creation of a written easement to allow the original landowner or the buyer to properly enjoy their land, or to enable them to access their land. An express easement is automatically binding when the land is unregistered and does not require registration. When either or both the dominant and servient pieces of land are registered, the express easement will need to be registered against either the servient, or both titles.

2 Implied grant also arises when a landowner sells part of his land and

retains part. Sometimes legal easements may be impliedly granted to the buyer by law even though the parties have not expressly agreed to this right. This may occur in specific circumstances; for example, an easement of necessity will be granted if the easement is absolutely necessary for the enjoyment of the land sold, i.e. if the buyer of the land is completely landlocked and requires access over the seller's retained land.

3 An easement will only be impliedly reserved in favour of the seller of land if it is an easement of necessity (as above) or if it can be inferred from the circumstances that both parties must have intended that particular right to have been reserved.

4 Easements can be acquired by prescription if one party has used the other property or land in a continuous and open manner for a certain number of years. Usually claims for easements to be implied by prescription are made under the Prescription Act 1832, whereby the period of uninterrupted use must be at least 20 years.

Extinguishment of easements

Easements may be extinguished if:

- the dominant and servient pieces of land come under the ownership of the same person;
- the easement reaches a formal expiration date;
- the owner of the dominant piece of land expressly releases or terminates the easement by deed; or release is implied, e.g. if the dominant owner has not used the easement for more than 20 years.

EASEMENTS ACQUIRED BY USE OF PROPERTY

Someone can acquire an easement over another's land for a particular purpose if he uses the land hostilely, openly, and continuously for a set period of time. These terms are explained in "Requirements for Obtaining Land by Adverse Possession," above. The length of use required varies from state to state and is often the same--ten or twenty years--as that for adverse possession (acquiring ownership of land by occupying it). An easement acquired in this way is called a "prescriptive easement."

COMPARING PRESCRIPTIVE EASEMENTS AND ADVERSE POSSESSION

Depending on the circumstances and on state law, someone who uses another's property may eventually gain ownership of the property (by adverse possession) or gain the right to use part of the property for a particular purpose (prescriptive easement).

To gain ownership of someone else's land, a trespasser must occupy it hostilely, openly, exclusively and continuously for a certain period of time set by state law. Some states require that the trespasser also pay the property taxes on the land during the period.

The requirements are much the same for a prescriptive easement: For instance, if the trespasser abandons the use for several years and then goes back to it, the element of continuity is missing, and no easement will have been created. If a prescriptive easement is challenged in

court, and one of the elements is missing, there is no easement.

But there are also important differences. First, payment of property taxes is never necessary for a successful prescriptive easement claim. In states that require the payment of property taxes to obtain ownership by a trespasser, courts will grant the trespasser a prescriptive easement, but not ownership, when all requirements have been met except paying the taxes.

Also, to acquire a prescriptive easement a trespasser does not need to be the only one using the land. A trespasser can gain the easement when others are also using the property--even the owner. It follows that more than one person can acquire a prescriptive easement in the same portion of land.

Example: One of the most common ways in which several neighbors gain a prescriptive easement is by using a driveway or road on another's land for many years without being challenged by the owner. This was the result in a Washington state case when neighbors treated a driveway as their own for 40 years, finally expanding it into a road. When the owner tried to reclaim the area, the court ruled in favor of the neighbors--they had established a legal right to the road by prescriptive easement.(9)

Courts sometimes appear more willing to grant a prescriptive easement than actual ownership (through adverse possession) to a trespasser. The results are far less drastic

for the owner. The easement does not take away the ownership of the property; it only requires the owner to allow
the particular use of the property by somebody else.

ESTABLISHING A PRESCRIPTIVE EASEMENT

Typically, a prescriptive easement is created when someone uses land for access, such as a driveway or beach path or shortcut. But many times, a neighbor has simply begun using a part of the adjoining property. He may have farmed it or even have built on it. After the time requirement is met, the trespasser gains a legal right to use the property.

When the trespassing is done by the public, a public right to use property can be created. It is often called an "implied dedication" instead of a prescriptive easement. A public dedication is often created if an owner allows the city or county to make improvements or maintain a

portion of his land.(10) For example, the owner of beachfront property may let the county pave her private drive, which is used by many people for access to the beach. The public would then gain a right to use the drive.

When disputes over prescriptive easements find their way into court, judges vary on what kind of use of someone's property justifies creation of an easement. Some courts find that simply using a strip of land regularly for a shortcut is enough for a prescriptive easement. But some are very reluctant to grant rights on someone else's land and require the use to be substantial.

Example: In a lawsuit over a garage built partly on a neighbor's land in Indiana, a court gave the garage owner a prescriptive easement allowing him to use the three feet of garage on the neighbor's property. But [illegible] the grass and strip beside it, even though the trespasser had mowed it and treated it as his own for over forty years.(11) The building of a structure, in this case the garage, was a substantial enough use to create a prescriptive easement, but just mowing the strip of grass was not.

BLOCKING ACQUISITION OF A PRESCRIPTIVE EASEMENT

Methods of removing intruders from property are discussed above. But if you don't mind someone using part of your property, the simplest way to prevent a prescriptive easement is to grant the person permission to use the property.

Permission of the owner to use property cancels a trespasser's claim to a prescriptive easement. If your neighbor is parking his car on a small strip of your property and you give him permission to do so, he is no longer a trespasser, and he can't try to claim an easement by prescription. Giving permission to a current user also prevents neighbors who move in later from claiming they have inherited a prescriptive easement.

Sometimes, your permission can even be implied. For example, if you allow a neighbor to use your property because you are on friendly terms, your implied permission is called

"neighborly accommodation." This implied consent based on a friendly relationship is only between you and
that neighbor--not anyone else, including later owners.

For example, a new owner of property in Washington, D.C. went to court and tried to claim an easement across a neighbor's yard because the former owner had been allowed to cross the property. The court ruled that he had no right to use the property because the friendship between
the previous owner and the neighbor created a limited implied permission.(12)

Another court in Ohio found an implied permission from neighborly accommodation when the neighbor had used a private road for access for over 40 years. When the property was sold, the new owner had no right to the road.

Depending on implied permission, or even oral permission, however, is not a wise idea for protection in the future. You could still end up in court having to let a judge interpret your intentions.

The safest way to protect your property interest when you do give someone permission is to put the terms in writing. The sample agreement above can be used for easements. If several neighbors use a strip of your property, you should draw up an permission agreement for each one

to sign.

When the public is using a private strip, you can post signs granting permission. In some states, such as California, posting these signs at every entrance and at certain intervals protects the owner from claims of a prescriptive easement.(13)

Depending on posted signs alone for protection, however, is always risky. If possible, take a further step, putting your permission for the public in writing, taking it down to the courthouse and recording it (filing a copy) in the county land records. California has a statute providing for this procedure;(14) check at your local courthouse to see it's allowed in your area. Recording it makes the permission part of the public record and available for anyone to check.

RECEIVED
NOV 13 2014
SC Court of Appeals

Proof of Service

I certify that I have served the Notice of Appeal on Taiwan Scott by depositing a copy of it in the United States Mail, postage paid, on November 13, 2014, addressed to, Taiwan R. Scott, 5 Candydoll Bluff, Hilton Head Island, South Carolina 29928.

November 13, 2014

S Ford - Ronald Ford
Sonya M. Ford
49 Oakview Rd.
Hilton Head, SC 29926
(843) 338-6571