

2008

# Oak Lane Homeowners v. Dennis L. Griffin : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Stephen Quesenberry, Jessica Griffin Anderson; Hill, Johnson & Schmutz; attorneys for appellant. Shawn D. Turner; Larson, Turner, Dalby & Ethington; attorneys for appellee.

---

## Recommended Citation

Reply Brief, *Oak Lane Homeowners v. Dennis L. Griffin*, No. 20080084 (Utah Court of Appeals, 2008).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/696](https://digitalcommons.law.byu.edu/byu_ca3/696)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

IN THE UTAH COURT OF APPEALS

---

OAK LANE HOMEOWNERS  
ASSOCIATION,

Plaintiff/Appellant,

vs.

DENNIS L. GRIFFIN and RENAE  
GRIFFIN,

Defendants/Appellees.

**REPLY BRIEF OF APPELLANT**

Case No. 20080084

District Court Case No. 030405130

---

Appeal from the Fourth Judicial District Court, Utah County, State of Utah  
The Honorable Fred D. Howard

SHAWN D. TURNER (5813)  
**LARSON, TURNER, DALBY & ETHINGTON**  
1218 West South Jordan Parkway, #B  
P.O. Box 95921  
South Jordan, Utah 84095  
Telephone (801) 446-6464  
Facsimile (801) 254-0303  
*Attorneys for Defendants/Appellees*

STEPHEN QUESENBERRY (8073)  
JESSICA GRIFFIN ANDERSON (11500)  
**HILL, JOHNSON & SCHMUTZ**  
4844 North 300 West, Suite 300  
Provo, Utah 84604  
Telephone (801) 375-6600  
Facsimile (801) 375-3865  
*Attorneys for Plaintiff/Appellant*

**FILED**  
**UTAH APPELLATE COURTS**

**JAN 07 2009**

---

IN THE UTAH COURT OF APPEALS

---

OAK LANE HOMEOWNERS  
ASSOCIATION,

Plaintiff/Appellant,

vs.

DENNIS L. GRIFFIN and RENAE  
GRIFFIN,

Defendants/Appellees.

**REPLY BRIEF OF APPELLANT**

Case No. 20080084

District Court Case No. 030405130

---

Appeal from the Fourth Judicial District Court, Utah County, State of Utah  
The Honorable Fred D. Howard

SHAWN D. TURNER (5813)  
**LARSON, TURNER, DALBY & ETHINGTON**  
1218 West South Jordan Parkway, #B  
P.O. Box 95921  
South Jordan, Utah 84095  
Telephone (801) 446-6464  
Facsimile (801) 254-0303  
*Attorneys for Defendants/Appellees*

STEPHEN QUESENBERRY (8073)  
JESSICA GRIFFIN ANDERSON (11500)  
**HILL, JOHNSON & SCHMUTZ**  
4844 North 300 West, Suite 300  
Provo, Utah 84604  
Telephone (801) 375-6600  
Facsimile (801) 375-3865  
*Attorneys for Plaintiff/Appellant*

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**..... i

**TABLE OF AUTHORITIES**..... ii

**ARGUMENT** ..... 1

**I. UNDER UTAH LAW, THE GRIFFINS DO NOT HAVE AN INTEREST IN OR EASEMENT OVER OAK LANE.**..... 1

**A. Under Utah Law, The Griffins Have No Ownership Interest In Oak Lane.** 1

**B. Under Utah Law, The Griffins Do Not Have An Express Easement Over Oak Lane.** ..... 3

**II. THE NATURE OF THE OWNERSHIP OF OAK LANE CONSTITUTES A MATERIAL ISSUE OF FACT.**..... 4

**CONCLUSION**..... 6

## TABLE OF AUTHORITIES

### Cases

<i>Bowen v. Riverton City</i> , 656 P.2d 434 (Utah 1982).....	1
<i>Carrier v. Lindquist</i> , 2001 UT 105, 37 P.3d 1112.....	2
<i>Oak Lane Homeowners Ass’n v. Griffin</i> , 2006 UT App 465, 153 P.3d 740.....	1
<i>Poteet v. White</i> , 2006 UT 63, 147 P.3d 439.....	1
<i>Potter v. Chadaz</i> , 1999 UT App 95, 977 P.2d 533.....	3, 4
<i>Warburton v. Virginia Beach Fed. Sav. &amp; Loan Ass’n</i> , 899 P.2d 779 (Utah Ct. App. 1995).....	4

### Statutes and Rules

Utah Code Ann. § 25-5-1 (2008).....	4
Utah R. Civ. P. 56(c).....	2

## ARGUMENT

The trial court erred when it granted the Griffins' motion for summary judgment and found that the Griffins had an easement over a private lane by virtue of a subdivision plat. Under the Utah Rules of Civil Procedure, a court may not grant summary judgment unless the moving party establishes "[1] that there is no genuine issue as to any material fact *and* [2] that the moving party is entitled to judgment as a matter of law." Utah R. Civ. P. 56(c) (emphasis added); see also *Oak Lane Homeowners Ass'n v. Griffin*, 2006 UT App 465, ¶6, 153 P.3d 740. When a court addresses a motion for summary judgment, it "must evaluate all the evidence and all reasonable inferences fairly drawn from the evidence in a light most favorable to the party opposing summary judgment." *Bowen v. Riverton City*, 656 P.2d 434, 436 (Utah 1982).

This Court reviews a trial court's grant of summary judgment de novo, *Poteet v. White*, 2006 UT 63, ¶ 7, 147 P.3d 439, and should therefore reverse the trial court's decision because the Griffins were not and are not entitled to judgment as a matter of law. Under Utah law, the Griffins have no interest in or easement over Oak Lane. Further, a material issue of fact exists as to the ownership of Oak Lane.

### **I. UNDER UTAH LAW, THE GRIFFINS DO NOT HAVE AN INTEREST IN OR EASEMENT OVER OAK LANE.**

#### **A. Under Utah Law, The Griffins Have No Ownership Interest In Oak Lane.**

The Griffins can point to no relevant Utah law that provides them an interest in Oak Lane. Even the "learned treatises" cited by the Griffins do not cite any Utah case

law or statutory law. The one Utah case cited by the Griffins is easily distinguished from the facts of the case before this Court.<sup>1</sup> In *Carrier v. Lindquist*, two adjacent property owners each had land abutting a public alley. 2001 UT 105, ¶¶ 4-5, 37 P.3d 1112. One of the property owners blocked the other's access to the alley. *Id.* at ¶ 6. The Utah Supreme Court held that the defendants could not block the plaintiffs' access to the alley because "landowners whose property abuts public streets, alleys, and public ways that appear on a plat map are entitled to a private easement over those public ways." *Id.* at ¶ 12.

This case is clearly distinct from *Carrier v. Lindquist* because, rather than a public alley, the dispute revolves around a private street. The initial purchasers of the Oak Hills subdivision specifically declined to dedicate Oak Lane to public use. Those initial owners therefore expressly retained ownership of Oak Lane by virtue of the plat. It is clear that the original owners of Oak Lane did not simply retain an easement over Oak Lane, but rather actually owned, as tenants in common, the land.

In Utah, the Statute of Frauds clearly states that a transfer of real property must be in writing:

No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting,

---

<sup>1</sup> The rest of the treatises and cases from other states cited by the Griffins in their brief are irrelevant because they are not binding authority on this Court and distinguishable because of the way the original owners of Oak Lane modified the plat and retained ownership of Oak Lane.

assigning, surrendering or declaring the same. or by his lawful agent thereunto authorized by writing.

Utah Code Ann. § 25-5-1 (2008). Therefore, any subsequent ownership of Oak Lane would have to be expressly transferred, in writing, by those original owners. And such a transfer did occur. On September 11, 2003, the seven original owners of Oak Lane transferred their interests in Oak Lane via quitclaim deed to the Association. (R. 535-39.)

The subsequent owners of Lot 2, the Watkins, testified that they understood that Oak Lane was a private road and used it only with permission. (R. 131-139.) It is undisputed that no language in the Griffins' deed grants them an express ownership interest in or easement over Oak Lane. They were therefore not entitled to judgment as a matter of law, and this Court should reverse the trial court's summary judgment.

**B. Under Utah Law, The Griffins Do Not Have An Express Easement Over Oak Lane.**

The Griffins argue that an easement by plat is simply an express easement. However, the Griffins do not meet the elements required under Utah law for an express easement.

Under Utah law, an express easement is “expressly created between two parties in a land transaction or conveyance by an express grant or an express reservation.” *Potter v. Chadaz*, 1999 UT App 95, ¶ 9, 977 P.2d 533.. There are no specific requirements for the creation of an express easement, so Utah courts look to the “intent of the parties to an agreement purportedly transferring real property . . . . Words that clearly show intention to grant an easement are sufficient, provided the language is certain and definite in its

term.”” *Id.* (quoting *Warburton v. Virginia Beach Fed. Sav. & Loan Ass’n*, 899 P.2d 779, 781-82 (Utah Ct. App. 1995)). Additionally, creation of an express easement requires the mutual assent of the parties, as well as consideration. *Id.*

In this case, there is indisputably no indication that any owner of Lot 2 ever transferred or conveyed an express easement to the Griffins, written or otherwise. In fact, all the evidence indicates the contrary. The Griffins’ deed does not reference Oak Lane at all. (R. 132, 139.) The house on Lot 2 is not accessible via Oak Lane. And, most importantly, the intent of all parties involved indicates no intention of creating an express easement. The original owners expressly delineated the public dedication of Oak Lane in the plat and took over ownership of the lane. (R. 532.) Lot 2’s previous owners acknowledge that they used Oak Lane with permission of the original owners, not because they had any kind of an easement on the road, (R. 131-139), and the original owners deeded Oak Lane to the Association. (R. 535-39.) The Griffins cannot point to any document, fact, or circumstance indicating they have an express easement over Oak Lane.

Therefore, the Griffins do not have an express easement over or ownership interest in Oak Lane and were not entitled to judgment as a matter of law.

## **II. THE NATURE OF THE OWNERSHIP OF OAK LANE CONSTITUTES A MATERIAL ISSUE OF FACT.**

Though there are several disputed issues of material fact in this case, two of the most important and material disputes are with respect to the nature of the ownership of Oak Lane and the nature and extent of the Griffins’ use of Oak Lane.

There is clearly a dispute as to the ownership of Oak Lane. The Association claims ownership of Oak Lane by virtue of a quitclaim deed from the original owners of Oak Lane. (R. 535-39.) As illustrated through the Griffins' brief, they, on the other hand, claim that Oak Lane is owned by the current owners of the subdivision by virtue of the plat and that the quitclaim deed is ineffective to convey title of Oak Lane to the Association. This fundamental dispute is both a factual and legal question at issue in this case that should have precluded summary judgment.

There is also a clear dispute as to the Griffin's use of Oak Lane. The Association claims that the Griffins' use has not been for access but rather for sporadic storage. (R. 306.) The Griffins, on the other hand, claim that they used Oak Lane to access their property on a daily basis. (R. 226.) Such a dispute is material in that the Griffins do not need to use Oak Lane to access their property or even for the enjoyment and use of their property. The Griffins are simply trespassing on property that they do not own or have an easement over and that they have no interest in helping to maintain. This material dispute is a factual question at issue in this case that should have precluded summary judgment.

In light of the above disputed facts, the trial court erred in granting summary judgment, and this Court should reverse and remand for a trial.

## CONCLUSION

Therefore, in light of the foregoing, this Court should reverse the trial court's grant of summary judgment in the Griffins' favor and remand this case back to the trial court for a trial.

RESPECTFULLY SUBMITTED this 7th day of January 2009.

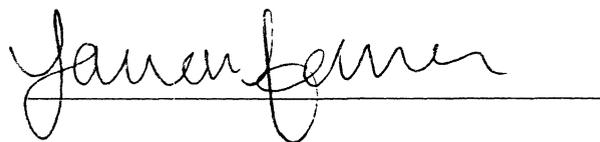
HILL, JOHNSON & SCHMUTZ, LC

  
\_\_\_\_\_  
Stephen Quesenberry  
Jessica Griffin Anderson  
*Attorneys for Plaintiff/Appellant*

**PROOF OF SERVICE**

I hereby certify that, on the 7th day of January 2009, two true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** were mailed, postage prepaid, to the following:

SHAWN D. TURNER  
**LARSON, TURNER, DALBY & ETHINGTON**  
1218 West South Jordan Parkway, #B  
P.O. Box 95921  
South Jordan, Utah 84095

A handwritten signature in cursive script, appearing to read "Shawn Turner", is written over a horizontal line.