

2002

Jamie Evans v. Board of County Commissioners of Utah County : Reply Brief

Utah Court of Appeals

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JAMIE EVANS,
Plaintiff and Appellant,

v.

THE BOARD OF COUNTY
COMMISSIONERS OF UTAH
COUNTY,
Defendant and Appellee,

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Appellate Case No. 20020689-CA

Trial Court Case No. 960400821

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TABLE OF CONTENTS

REPLY ARGUMENT	1
I. A PLATTED ROAD NEED NOT BE PHYSICALLY BUILT FOR A LANDOWNER TO ENJOY A PRIVATE RIGHT OF WAY OVER IT.....	1
II. THE RESERVATION DID NOT VIOLATE THE STATUTE OF FRAUDS BECAUSE THE EASEMENT DIMENSIONS ARE SPECIFIED AND LOCATABLE.....	3
CONCLUSION.....	4

TABLE OF AUTHORITIES

Statutes

Utah Code Ann. Section 72-5-105	3
---------------------------------------	---

Cases

<i>Carrier v. Lindquist</i> , 2001 UT 105, 37 P.3d 1112.....	1,2
<i>Culbertson v. Hermes Assoc. Ltd</i> , 2001 UT 108, 44 P.3d 642...	2

REPLY ARGUMENT¹

I. A PLATTED ROAD NEED NOT BE PHYSICALLY BUILT FOR A LANDOWNER TO ENJOY A PRIVATE RIGHT OF WAY OVER IT.

The County disputes Mr. Evans argument that since Pine Street was platted, though not physically constructed, his predecessor in interest could reserve a right of way over it and pass it on to Mr. Evans. (Brief of Appellee [hereinafter “BOA”] at 6.) The County asserts Mr. Evans too narrowly construes *Carrier v. Lindquist*, 2001 UT 105, 37 P.3d 1112. (*Id.*)

Mr. Evans’ position and construction of that case was already stated in his Appellant’s Brief (Aplt. Br. at 8-10). However, an additional consideration for the Court is the policy and practical problems that the County’s reading of *Carrier* would cause in platted subdivisions in which lots are sold but not all roads have been built or improved. A hypothetical situation is illustrative. Suppose a subdivision developer did not install street improvements throughout the subdivision but is allowed under a plat or development agreement to do so in the future. For example, the developer may have bonded to construct the remaining platted, dedicated streets when a certain percentage of lots are sold or built upon.

A homeowner then builds on a lot in the subdivision with the expectation he or she will have a right of access over all of the subdivision streets. Or, the

¹ The County correctly notes that the parties stipulated that Mrs. Terry Evans could be joined in this action as a co-owner of Mr. Evans’ property. That formal action has not occurred because the suit was dismissed on summary judgment. However, Mr. and Mrs. Evans stipulate that the decision in this appeal will apply with equal force to each of them.

developer and highway department agree the homeowner can have a temporary highway access directly from his or her lot until the streets are all in. The homeowner could also be looking forward to a more direct route via platted, dedicated streets to be built in the future to a freeway entrance, schools or shopping.

However, the local government then decides to vacate some subdivision streets due to some governmental need and cuts off access to the street abutting the homeowner's lot or to other streets on which the homeowner, the homeowner's association or the developer was counting for efficient, or any, traffic circulation. Since under the County's interpretation of *Carrier* no one has a private right of access over streets that are platted and dedicated until they are actually graded, paved as necessary and in use, the whole expectation of traffic circulation would be upset.

Further, a lot owner not only would lack guaranteed access until construction was complete on a street and vehicles were using it, but also could not get title insurance and sell the lot because a buyer could obtain current, legal access over merely platted streets and would have no guarantee of future access. There would be no remedy for lost access through a government vacation of the street because there would be no private right to enforce or compensate.

Finally, if there is no private right of access over platted streets, why is there a statute providing for their vacation—the very statute the County relied upon in vacating the other platted streets in the subdivision. (See *Culbertson v.*

Hermes Assoc. Ltd, 2001 UT 108, 44 P.3d 642, 654 (citing Utah Code Ann. Sec 72-5-105.)

II. THE RESERVATION DID NOT VIOLATE THE STATUTE OF FRAUDS BECAUSE THE EASEMENT DIMENSIONS ARE SPECIFIED AND LOCATABLE.

The County acknowledges the reserved easement is described by width and purpose but is unenforceable because its precise location is not fixed. Again, Mr. Evans stated in his Appellant's Brief why the trial court could fix the location of the easement and the various factors that would define the most reasonable location. (Aplt. Brf. At 4-8).

Contrary to the County's argument that the easement was vague because it could traverse the length as well as the width of the County's property (BOA at 10), the reservation states the easement is defined as only 56 feet wide, and extends only from Mr. Evans' property to Pine Street. So its width and length are fixed. Mr. Evans did not seek "scores of crossing points" through the County's parcel (BOA at 10) but rather asserted only a 56 foot wide rectangle extending from his property to Pine Street in a single location the trial court could fix with a factual inquiry. The easement is thus not vague, is readily locatable and is much less intrusive than the natural resource exploitation floating or roving easements identified as enforceable in the County's brief (BOA at 12-13). Accordingly, the Court could prevent a forfeiture of a right by remanding this matter for the trial

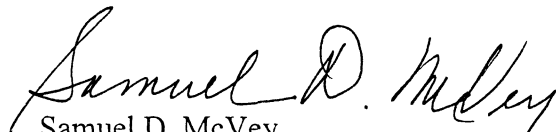
court to determine a reasonable location for the easement which would fulfill its purpose.


CONCLUSION

For the foregoing reasons and for those stated in Appellant's Opening Brief, Mr. Evans requests that this Court reverse the Order Granting Summary Judgment and remand the case for trial or further proceedings in the trial court.

Dated this 20th Day of August, 2003.

Respectfully Submitted,

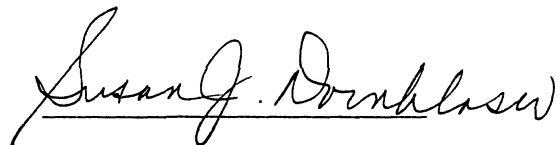

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CERTIFICATE OF SERVICE

I certify that on this 20th Day of August, 2003, two true and correct copies of the foregoing APPELLANT'S REPLY BRIEF were sent via postage prepaid, first class U.S. mail to:

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A handwritten signature in cursive script, reading "Susan J. Donohue", written over a horizontal line.