



Griggs v. Cascade River Community Club

110 Wash.App. 1084 (2002) | Cited 0 times | Court of Appeals of Washington | April 1, 2002

Concurring: Susan R. Agid

Unpublished Opinion

To prevent vandalism, the Cascade River Community Club (the Community Club) placed jersey barriers in front of a private roadway easement that Gary and Holly Griggs and Timothy O'Marra (Homeowners) used as the easiest access to the Griggs' home. Another route to and from the Griggs' home existed, but was longer and required navigating an unpaved hill at 14 percent grade for several hundred feet. Homeowners sued the Community Club to enjoin them from blocking the roadway with jersey barriers. The trial court entered a judgment in favor of the Community Club. Homeowners appeal, arguing that the trial court erred in allowing the Community Club to effectively abrogate the roadway easement and in denying attorney fees. Because the jersey barriers block a permanent roadway easement, we reverse and remand.

STATEMENT OF FACTS

In the plat dedication, the developers of the Community Club granted easements along private roadways to all members: 'All roadways marked private and designated as a community tract shall provide for a permanent easement for roadway purposes, utilities, and drainage, to all members of Cascade River Community Club, Inc.' According to Betty Gully, who has owned property within the Community Club since 1966, the east upper gate was originally open when she moved there because there was construction in progress on the water system. After the developers replaced the water system, a cable gate accessible only by the caretaker limited access to the east upper gate. In the early 1970s, a Community Club member petitioned the board to install a keyed gate, which he purchased, to give him access directly from the county road through the east upper gate. Later, all members received keys to the gate on the condition that the members close and lock it when not in use. Thereafter, depending on the level of care, the Community Club frequently interchanged the locks between locks accessible by members and the lock accessible only by the caretaker.

When the caretaker only lock was on the east upper gate, vandals rammed, bent, and sometimes knocked the gate off its hinges. Because of the continuous damage to the gate, the Community Club replaced the gate a number of times over the years. At its meetings, the Community Club's board discussed problems with the gate about 15 separate times. A Skagit County deputy sheriff recommended that the board close the east upper gate. Upon his advice, the Club replaced the gate with jersey barriers that are movable by heavy, construction equipment only.



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Homeowners sued the Community Club to force the removal of the jersey barriers in front of the east upper gate. After hearing from Homeowners and several witnesses, the trial court denied the Homeowners' request for an injunction. Homeowners appeal.¹

DISCUSSION

I. Blocking an Easement

Because an injunction is an equitable remedy decided upon the circumstances of each case, we normally would review the trial court's decision for an abuse of discretion. *Standing Rock Homeowners Ass'n v. Misich*, 106 Wn. App. 231, 240-41, 23 P.3d 520, review denied, 145 Wn.2d 1008 (2001). Where there are only questions of law at issue, such as in this case, we review de novo. *State v. Kelley*, 77 Wn. App. 66, 69, 889 P.2d 940 (1995). Whether a servient owner may erect and maintain fences, bars, or gates across an easement depends upon the intention of the parties who created it. *Standing Rock*, 106 Wn. App. at 241; *Green v. Lupo*, 32 Wn. App. 318, 321, 647 P.2d 51 (1982); cf. *Rupert v. Gunter*, 31 Wn. App. 27, 31, 640 P.2d 36 (1982) (quoting *Evich v. Kovacevich*, 33 Wn.2d 151, 162, 204 P.2d 839 (1949)).

Here, Homeowners argue that the language of the easement is unambiguous in granting a permanent roadway easement and that to block an end of the roadway negates its value as such. We agree. The plat dedication granted a permanent roadway easement: 'All roadways marked private and designated as a community tract shall provide for a permanent easement for roadway purposes, utilities, and drainage, to all members of Cascade River Community Club, Inc.' (emphasis added). No limitations are expressed in the grant. While the language of the easement is silent as to the number and points of ingress and egress, Homeowners correctly assert that a roadway has points of connection at each terminus of the roadway and it is logical to have ingress and egress at each terminus. More importantly, it is undisputed that the easement in question has always had a connection to the county road. We conclude, therefore, that the plat dedication grants a permanent roadway easement for ingress and egress with the county road.

A roadway that does not connect to the county road does not serve the purpose of the easement grant. In *Evich*, the Supreme Court held that the dominant owner had the right to access his walkway easement from any point and not merely from the gate designated by the servient owner. *Evich*, 33 Wn.2d at 162; see also *Healy v. Roberts*, 109 Ill. App. 3d 577, 440 N.E.2d 647, 651 (1982) (railroad ties across easement improper); *Roman v. Johnson*, 48 Conn. App. 498, 710 A.2d 186, 188 (1998) (jersey barriers across prescriptive easement). As discussed above, Homeowners acquired a right to ingress and egress through the east upper gate, not just from one direction. Given the unconditional nature of the permanent roadway easement, jersey barriers that block ingress and egress to and from the county road effectively abrogate the easement.

Certainly, the Community Club can take steps to install gates that do not unreasonably interfere with



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the dominant owner's use. The Court of Appeals has upheld numerous instances involving gates that limit access to easements in a reasonable manner. *Standing Rock*, 106 Wn. App. at 242 (unlocked gates); *Lowe v. Double L Props., Inc.*, 105 Wn. App. 888, 891, 20 P.3d 500, review denied, 145 Wn.2d 1008 (2001) (heavy gate); *Rupert*, 31 Wn. App. at 32 (lightweight gate); cf. *Steury v. Johnson*, 90 Wn. App. 401, 957 P.2d 772 (1998) (locking cable gate may be reasonable). Historically, the Community Club has used gates to limit access to the community.

Nonetheless, the Community Club contends that its action in erecting the jersey barriers was lawful under its articles of incorporation and bylaws. Although these documents are not part of the record on appeal, the trial court found that they give the board responsibility for 'doing all things necessary and proper' to operate the Community Club. In addition, the Community Club cites RCW 24.03.035(20) for essentially the same general statement of power and also argues that it erected the jersey barriers to provide security for their water system as required under WAC 246-290-415(8). Although the board may have authority to provide for security and other matters, it may not unreasonably interfere with the dominant owner's use of an easement -- a substantive property right. To place jersey barriers in a way that renders a portion of the easement useless as a roadway is impermissible. We conclude that the trial court erred as a matter of law in denying an injunction to remove the jersey barriers.

II. Attorney Fees

Homeowners maintain that they are entitled to an award of attorney fees at trial and on appeal by contract because the Community Club's bylaws provide it. RCW 4.84.330 mandates an award of attorney fees to the prevailing party if provided by contract, whether or not the contract specifies that particular party. According to Homeowners' opening brief, the bylaws state that each member must pay any attorney fees and costs reasonably incurred for enforcing an assessment. Yet, no where in the record is there any mention of an assessment for installing the jersey barriers. Because this case does not involve the enforcement of an assessment, we do not award attorney fees in this case.

CONCLUSION

In short, the Community Club cannot block an unrestricted, permanent easement established for roadway purposes. The trial court erred by denying an injunction to remove the jersey barriers. We reverse and remand.

1. Homeowners assign error to numerous findings of fact, but fail to provide corresponding argument in their briefs. We deem an assignment of error as to findings of fact abandoned if not argued in the briefs. *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 630, 733 P.2d 182 (1987). We accept the trial court's findings of fact as verities and proceed to review the conclusions of law de novo.

