

2009-012564

Klamath County, Oregon



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Fee: \$66.00

After recording return to:
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Salem, OR 97308-1048

ACCESS EASEMENT

GRANTOR: MARVIN NEWELL and BETTY NEWELL, husband and wife
(Circuit Court of the State of Oregon for the County of Klamath,
Case No. 77-340 by Finding of Fact and Conclusions of Law dated
June 17, 1978. *See Exhibit 1*).

GRANTEE: OLIN A. ROYER and COLLEEN M. ROYER, husband and wife.

Real property is described on Exhibit 2.

True and actual consideration: None.

9.10
FILED a

D. Mine, Clerk
Arthur J. Meyer

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF KLAMATH

OLIN A. ROYER and COLLEEN M. ROYER, husband and wife,

Plaintiffs,

vs.

MARVIN NEWELL and BETTY NEWELL, husband and wife,

Defendants,

No. 77-340 E

FINDINGS OF FACT

and

CONCLUSIONS OF LAW

The above suit in equity came before the Court for trial December 28, 1977; plaintiff appearing in person and by Robert Hamilton, of their attorneys; defendant appearing in person and by Blair Henderson, of their attorneys; at the outset the plaintiffs requested a Court view of pertinent premises and consequently the Court, the parties and their attorneys viewed the real property in question. Thereafter opening statements were made and plaintiffs presented testimony and evidence and rested; defendants presented testimony and evidence and rested; and the parties through counsel asked leave to submit written closing memoranda; the Court received the last of the memoranda on March 20, 1978, and having considered the law and the evidence and now being fully advised in the premises, makes and files the following

FINDINGS OF FACT

I

Page 1.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exhibit 1
Page 1

County of KLAMATH, STATE OF OREGON
I hereby certify that this is a true and correct copy of the original of the original.
Clerk of Court
By [Signature]
Date 8/19/80

1 Plaintiffs are the owners of a tract of land of 1.10 acres
2 with their residence and outbuildings situated thereon specifically
3 described in Paragraph I of the complaint.

4
5 II

6 Defendants are the owners of real property surrounding all
7 sides of plaintiffs' land, except the west side thereof, specifically
8 described in Paragraph III of the complaint.

9 III

10 Plaintiffs only means of ingress and egress to their
11 property is over a 30' strip of land enclosed by barbed wire
12 fencing specifically described in Paragraph II of the complaint.

13 IV

14 All of the lands mentioned in Findings I, II and III,
15 were, prior to severance, under the single ownership of Buford
16 E. Boyd and Margaret A. Boyd, for a number of years prior to
17 the severance which occurred by a deed recorded April 19, 1961,
18 by which the said grantors being then the owners of all of the
19 lands mentioned above sold on contract their residence property
20 to the plaintiffs herein, that being the tract described in
21 Finding No. I. The means of ingress and egress utilized by the
22 common grantors was the 30' strip described in Finding No. III.
23 Neither the contract document nor the deed to the purchasers
24 makes any mention of the 30' strip.

V

The common grantor of the lands in question impliedly granted to plaintiffs herein a permanent non-exclusive right of ingress and egress over the 30' strip described in Finding No. II

VI

The Court finds against the plaintiffs on their contention that they gained the right to the use of the 30' strip in question by prescription.

VII

The Court finds against the defendants on their contention set forth in their affirmative defense and counter-claim that the plaintiffs hold a mere license for ingress and egress over the 30' strip and that the defendants have a right to direct the usage thereof by plaintiffs and their successors in interest.

VIII

The Court finds in favor of the plaintiffs and against the defendants on the plaintiffs' claim in their counter-suit for Declaratory Judgment that they should be decreed to have an easement of right of way of ingress and egress on the 30' strip mentioned at Finding No. III.

And from the foregoing Findings of Fact, the Court now makes and files the following

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Page 3.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

CONCLUSION OF LAW

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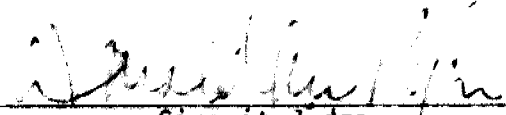
As to the Decree which should be entered herein, to-wit:

1. Plaintiffs and their successors in title to the lands described in Paragraph I of the complaint should be decreed to have a permanent and perpetual easement of right of way for ingress and egress over the 30' strip of land described in Paragraph II of the complaint to and from plaintiffs' said 1.10 acres tract of land and the public roadway commonly known as O'Connor Road, at the south terminus of the 30' lane, including the right to go upon the lands on said easement for the purpose of maintaining the lane as a useable roadway, in a manner so as to not unreasonably interfere with defendants' right to utilize the servient land for purposes not inconsistent with plaintiffs' easement.

2. Plaintiffs and their successors in interest in the lands on which the above easement is located and their lands adjoining the easement, and their agents and employees, should be permanently enjoined from in any manner obstructing or interfering with the use of said easement as appurtenant to and for the benefit of the lands of plaintiffs above described.

3. Defendants and their successors in title to the lands on which the easement is located should be decreed to have no obligation to repair or maintain the easement for any condition that does not result from their unreasonable use of the servient estate or their interference with plaintiffs' right of ingress and egress.

DATED this 17th day of June 1978.


Circuit Judge

FILE
3:56 PM

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

[Signature]

OLIN A. ROYER and COLLEEN M.
ROYER, husband and wife,

Plaintiffs,

vs.

MARVIN NEWELL and BETTY NEWELL,
husband and wife,

Defendants.

No. 77-340

E

SUIT FOR MANDATORY
INJUNCTION

County of KLAMATH
STATE OF OREGON

I hereby certify that the within is
true and correct copy and
of the original.

Clerk of Court

By

Date



Plaintiffs allege:

I

That plaintiffs are the owners of the following described
real property situate in Klamath County, State of Oregon:

A tract of land situated in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section
14, Township 40 South, Range 9 East of the Willamette
Meridian, more particularly described as follows:

Beginning at an iron pin on the west line of the NW $\frac{1}{4}$
NE $\frac{1}{4}$ of said Section 14, said point being south a distance
of 624.1 feet from the stone marking the North one-
fourth corner of said Section 14; thence South 85°28'
East a distance of 198.55 feet to an iron pin; thence
South 8°49' West a distance of 263.35 feet to an iron
pin; thence West a distance of 157.57 feet to an iron
pin on the west line of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 14;
thence North along the west line of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said
Section 14 a distance of 275.93 feet, more or less, to
the point of beginning, containing 1.10 acres, more or
less.

II

That plaintiffs are also the owners of the following describ
easement which said easement gives plaintiffs' access from O'Conr

1 Road to the real property owned by plaintiffs described in
2 Paragraph I above:

3 A strip of land 30 feet in width for access purposes,
4 said strip of land being located easterly of and
5 adjacent to the west line of the NE $\frac{1}{4}$ of Section 14,
6 Township 40 South, Range 9 East of the Willamette
Meridian, Klamath County, Oregon, more particularly
described as follows:

7 Beginning at an iron pin on the west line of the NE $\frac{1}{4}$
8 of said Section 14, said point being south a distance
9 of 900.03 feet from the stone marking the North one-
10 fourth corner of said Section 14; thence South along
11 the west line of the NE $\frac{1}{4}$ of said Section 14 to the
12 north boundary of the County Road; thence easterly
along the north boundary of the County Road a distance
of 30 feet; thence North parallel with the west line
of the NE $\frac{1}{4}$ of said Section 14 to a point that is east
a distance of 30 feet from the point of beginning;
thence West a distance of 30 feet, more or less, to
the point of beginning.

13 III

14 That defendants are the owners of the following described
15 real property, which said real property lies adjacent to plaintiffs'
16 property and which said real property is subject to plaintiffs'
17 easement described in Paragraph II above:

18 The NE $\frac{1}{4}$ of Section 14, Township 40 South, Range 9
19 East of the Willamette Meridian, Klamath County, Oregon.

20 EXCEPTING THEREFROM a tract of land situated in the NW $\frac{1}{4}$
21 NE $\frac{1}{4}$ of Section 14, Township 40 South, Range 9, East of
the Willamette Meridian, more particularly described as
follows:

22 Beginning at an iron pin on the West line of the NW $\frac{1}{4}$
23 NE $\frac{1}{4}$ of said Section 14, said point being South a
distance of 624.1 feet from the stone marking the
24 North one-fourth corner of said Section 14; thence
South 85°28' East a distance of 198.55 feet to an
25 iron pin; thence South 8°48' West a distance of 253.35
feet to an iron pin; thence West a distance of 157.57
26 feet to an iron pin on the West line of the NW $\frac{1}{4}$ NE $\frac{1}{4}$

1 of said Section 14; thence North along the West
2 line of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 14 a distance
3 of 275.93 feet, more or less, to the point of
4 beginning.

5 IV

6 That plaintiffs and plaintiffs' predecessors in title have
7 used the easement as set out in Paragraph II above under a claim
8 of right, openly, visibly, notoriously and adversely to defendants'
9 interests, continuously since prior to 1961.

10 V

11 Plaintiffs also own the easement described in Paragraph II
12 above for the reason that both the real property owned by plaintiffs
13 and the real property owned by defendants were originally owned
14 by Buford E. Boyd and Margaret A. Boyd, husband and wife, under
15 a common ownership, with plaintiffs being subsequent purchasers
16 of a portion of said property, which portion of said property did
17 not lie adjacent to any public roadway, but was in fact separated
18 from any public roadway by that real property presently owned by
19 defendants.

20 VI

21 That defendants have and are intentionally, ~~deliberately~~
22 ~~and unnecessarily~~ interfering with plaintiffs' use and utilization
23 of said easement in the following manner, to-wit:

24 1. By allowing defendants' cattle to roam about that
25 easement described in Paragraph II above.

26 2. By failing and refusing to maintain that fence and to
install and keep closed gates therein, which said fence lies
directly to and adjacent to the East of that easement

Page

1 described above and which said fence separates said easement
2 from defendants' pasture.

3 3. By placing gates across said easement.

4 VII

5 That defendants threaten to and intend to continue said
6 acts and to further encroach upon plaintiffs' right to use and
7 utilize said easement and to cause plaintiffs' further damages
8 which cannot be adequately compensated or the amount thereof
9 established and for which no adequate remedy at law can be had;
10 and that said alleged acts of interference have caused the
11 plaintiffs irreparable harm and injury and will continue to cause
12 plaintiffs irreparable harm and injury and that said threatened
13 acts of interference by defendants of the use of said easement by
14 plaintiffs will cause plaintiffs irreparable harm and injury in
15 the future unless enjoined.

16 VIII

17 That by reason of the foregoing, plaintiffs have suffered
18 general damages in the sum of \$1,000.00.

19 IX


20 That as hereinabove alleged, the acts of defendants in
21 interfering with plaintiffs' right to use and utilize said easement
22 and resulting damage to plaintiffs were intentional and malicious
23 and plaintiffs should be awarded punitive damages against the
24 defendants in the sum of \$5,000.00.

25 WHEREFORE, plaintiffs pray that defendants be forever
26 enjoined from interferring with and encroaching upon plaintiffs'

1 right to use and utilize said easement; and from continuing
2 any of the acts of interference and encroachment for which
3 this suit has been brought; and that plaintiffs have judgment
4 against the defendants ~~in the sum of \$1,000.00 general~~
5 ~~damages, and in the sum of \$5,000.00 punitive damages and~~
6 for their costs and disbursements incurred herein; and for
7 such other and further relief as would be just and equitable
8 herein.

9 Dated this 13th day of April, 1977.

10 BEDDOE & HAMILTON

11 
12 Robert S. Hamilton
13 Of Attorneys for Plaintiffs
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