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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201–2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Allan B. Needham and Donna L. Needham, Plaintiffs vs. Connie K. Hanley, Desirae L. Hanley, and Richard Hanley, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action No. 2015-2109

HEADNOTES

Easements - Rights of Way – In General

1. A right of way is an easement, which may be created by an express grant. Amerikohl Mining Co. v. Peoples Nat. Gas Co., 860 A.2d 547, 550 (Pa. Super. 2004), *citing* Merrill v. Mfgrs. Light and Heat Co., 185 A.2d 573, 575 (Pa. 1962).

Easements – Express Easements – In General

1. When reviewing an express easement, the rights conferred by the grant of an express easement must be ascertained solely from the language of the easement agreement, provided that the language of the agreement is unambiguous. Steen v. Pennsylvania Tpk. Comm'n, 3 A.3d 747, 751-52 (Pa. Commw. Ct. 2010), *citing* Norma L. Joiner v. The Southwest Central Rural Electric Co–Operative Corp., 786 A.2d 349 (Pa.Cmwlth.2001).

2. "In effect, an easement is interpreted in the same manner as any other contract; if the language of the agreement is clear, our inquiry is ended...." Steen v. Pennsylvania Tpk. Comm'n, 3 A.3d 747(Pa. Commw. Ct. 2010).

3. "It is a familiar rule that where the terms of a deed are doubtful, the court will adopt that construction which is most strongly in favor of the grantee and against the grantor." Walker v. Walker, 153 Pa. Super. 20, 25, 33 A.2d 455, 458 (1943), *citing* Ransberry v. Brodhead's Forest and Stream Ass'n, 174 A. 97 (Pa. 1934). But, this is only applicable when there is doubt as to the "character and extent" of the right of way. Walker, supra.

4. "If an easement is granted in general terms which do not fix its location, the owner of the servient estate has the right, in the first instance, to designate the location of such easement. This right, however, must be exercised in a reasonable manner with due regard to the rights of the owner of the easement if the owner of the servient estate does not designate the location, the person entitled to an easement may select a suitable route, taking into consideration the interest and convenience of the owner of the land over which the easement passes." Taylor v. Heffner, 58 A.2d 450, 453 (Pa. 1948), *internal citations omitted.*

5. An easement that is created of a specific width "does not give to the grantee unlimited rights within its boundaries." Brahm v. McCandless Twp., 44 Pa. D. & C.2d 475, 479-80 (Pa. Com. Pl. 1967), *citing* Taylor v. Heffner, , 58 A.2d 450, 453 (Pa. 1948).

6. The law provides that the possessor of the land subject to the easement may not interfere unreasonably with the easement holder's use of the easement. Palmer v. Soloe, 601 A.2d 1250, 1252 (Pa.Super. 1992).

7. It is true that the servient estate has the right to designate any reasonable location for an easement. Taylor, *supra*. However, when the owners of the dominant estate entered into their deed, the owners of the servient estate, chose not to specifically limit use of the easement. As such, owners of the dominant were entitled to make reasonable use of the right-of-way, provided their access did not inconvenience the servient estate or prevent access to the servient estate.

8. Access to the 10-12 foot paved roadway within the 50 foot easement by way of two (2) separate driveways, neither of which may be constructed in such a way as to result in water runoff, erosion or damage to the other residential lots by the owners of the dominant estate

who were granted access to existing driveways in the terms of their Deed and had two existing driveways on their property, is reasonable.

Easements – Express Easements – Breach of Contract Issues

1. When an owner sells two parcels of land, both subject to an easement, the deed of the second buyer cannot place restrictions upon the use of the easement by the first buyer that are not contained within the first buyer's deed when the first buyer was not a party to the second buyer's deed.

2. An Agreement to jointly maintain the roadway within an easement concerns only the "roadbed" described in that Agreement, and the owners of the land subject to the easement shall be solely responsible for the maintenance of all the land not covered by the paved roadbed.

Legal Fees – Agreement of Parties

1. Generally "each side is responsible for the payment of its own costs and counsel fees absent bad faith or vexatious conduct…unless there is express statutory authorization, a clear agreement of the parties or some other established exception." McMullen v. Kutz, 985 A.2d 769, 775 (Pa. 2009), *internal citations omitted.*

2. However, when the issue being litigated is outside of the scope of an agreement between the parties, the agreement regarding payment of legal fees does not apply.

Appearances:

Joseph Macaluso, Esq. *Attorney for Plaintiffs*

Scott Arnoult, Esq. *Attorney for Defendant*

OPINION

Before Meyers, J.

This action concerns the use of a right-of-way that was reserved when the property in question was subdivided by the previous owners. The right-of-way is on land owned by Defendants, (collectively referred to as the "Hanleys"). Plaintiffs (collectively referred to as the "Needhams") contend that they are entitled to make free use of the entire reserved area. The Hanleys contend that the Needhams are entitled to use only the amount of the right-of-way required to reasonably obtain access to the roadway therein.

Factual and Procedural History

The properties at issue are located at 50, 55, and 60 Mt. Union Road, Fayetteville, PA 17222. Compl. ¶¶1, 12. A survey of the properties

dated July 30, 2007 was recorded in the Office of the Recorder of Deeds for Franklin County at instrument number 200811680 (hereinafter "Survey). Compl., Ex. A.[1] The survey depicts Lots 3, 4, 1A, and 6.[2] Survey. At the time the survey was recorded the all relevant lots were owned by Henry and Cathy Hawley (hereinafter "Hawleys"). Compl., ¶¶4, 12.

The Needhams own Lot 3, which they acquired via a deed dated May 24, 2012 (hereinafter referred to as "Needhams Property"). Compl., ¶4; Transcript, ¶¶7,9. The address for the Needhams Property is 60 Mount Union Road, Fayetteville, Pennsylvania. Transcript, ¶7. The Needhams' deed states that the property was "conveyed together with and subject to all covenants, conditions, easements, right of way, restrictions, and limitations of record." On the same date, the Needhams executed a Driveway Maintenance Agreement (hereinafter "Agreement") with the Hawleys. Compl. ¶4. The Agreement provides, in relevant part:

> The residing owners, heirs and/or assigns of Lots 1A and 6, Lot 4, and Lot 3 are jointly responsible for the road maintenance and repair, snow and ice removal, and upkeep of the roadbed (free of potholes and ponding) and drainage facilities within the 50 foot Private Right-of-way …
>
> The owners, heirs, and/or assigns of Lot 1A and 6, Lot 4, and Lot 3 at no time will block any existing driveway access to, nor knowingly allow any disruption of easy access to these other lots.
>
> Any one of the owners shall have the right to enforce the terms hereof by an action of law…after first given [sic] the other owner seven (7) days written notice, and if successful, shall be entitled to the proportionate payment from the other plus reasonable legal fees and costs in said enforcement.

Agreement.

The Needhams' Deed and Agreement were filed with the Franklin County Recorder of Deeds for Franklin County as instrument number 201310974.

Prior to the commencement of the above captioned action, the Needhams had two garages on their property. Compl. ¶ 7; Transcript, ¶12. Garage 1 is on the East side of the Needhams' home, between the home and Mount Union Road, and Garage 2 is on the far West side of Needhams' home from Mount Union Road. Id. and Compl. Ex. C. The Needhams allege that each of these garages were connected to the right-of-way by a separate driveway, Garage 1 by Driveway 1, and Garage 2 by Driveway 2. Compl. ¶¶9, 16; *see also* Compl. Ex C. The Needhams had used both driveways

1 For ease of reference this survey has also been attached to this Opinion.

2 There is also a Lot 5 depicted, which is not relevant to this case and will therefore not be discussed in this Opinion.

to access their property from the time they began living on the property in May of 2010 until approximately April 2014.[3] Compl., at ¶11; Transcript, ¶14.

The Hanleys own lots 1A, 4, and 6 which they acquired via a deed dated November 23, 2013. Compl., ¶12; Transcript ¶14. Lots 1A and 6 comprise one tract of land, and are occupied by Richard Hanley; Desirea and Connie Hanley reside on Lot 4 (the three lots collectively are hereinafter referred to as "Hanleys' Property").[4] Compl., ¶¶12-13. The Deed states that the land was:

> subject to privately owned rights of way as follows:
>
> Lots 1A, 6, 4, and 3 will utilize current paved ten foot wide roadbed on private right of way, not to exceed further than required for access to respective lots unless privately owned by them. The existing paved roadbed will not exceed twelve feet in width.
>
> Lot 4 [part of Defendant's Property] will access from same paved roadbed to access perspective lot.
>
> Lot 3 [Plaintiff's Property] will access from paved roadbed to nearest single twelve foo [sic] rock bed driveway on lot 4 [Driveway 1]…This rock bed driveway may not exceed fourteen feet in width without written permission from current owner(s) of Lot 4.
>
> [Defendant's Property] is together with and subject to all covenants, conditions, easements, right of way, restrictions, and limitations of record.

Hanleys' Deed.

The Hanleys' deed was filed with the same Driveway Maintenance Agreement as was executed by the Needhams and Hawleys. Needhams' Deed. Compl. Ex. E. Hanleys' Deed is recorded with the Franklin County Register of Deeds as instrument number 201326832.

Needhams allege that "in about April 2014 Defendants began to block use" of Driveway 2, first by "parking a large vehicle in the way" which was removed by the Hanleys upon the Needhams' complaints. Compl. ¶17. In October 2014 the Hanleys allegedly blocked Driveway 2 using rope and "large railroad ties." Compl., at ¶18; Transcript, ¶16. From April 17, 2015 until the Needhams' Complaint was filed on June 8, 2015 the Needhams claim that the Hanleys used parked vehicles "along the rope and railroad

3 The Plaintiffs lived on the property they now own for approximately two years prior to purchasing the property by the Deed described above.

4 While the three Defendants do not all reside together, all three own the entirety of the property as joint tenants with rights of survivorship, and thus the tracts will be considered collectively.

ties" to further block the Needhams' use of Driveway 2 and access to Garage 2. Compl., at ¶18; Transcript ¶¶16-22.

The Needhams sent a certified letter to the Hanleys giving notice that the Needhams intended to enforce the terms of the Driveway Maintenance Agreement on April 13, 2015. Transcript, ¶22. The Needhams filed their Complaint on June 8 of 2015, together with a Petition for Injunctive Relief. The Hanleys filed a response on June 11, 2015. On June 8, 2015 a Temporary Injunctive Order was entered by the Court. A hearing was held on the Petition for Injunctive Relief on June 11, 2015. In an Order of Court dated June 11, 2015 the Temporary Injunctive Order was extended, and the Hanleys were "directed to remove the railroad ties and any parked vehicles blocking [Plaintiffs'] access during the pendency of the within action."

On June 24, 2015 the Needhams filed a Motion to Enforce the June 11, 2015 Order. A hearing was scheduled on that Motion for August 14, 2015.

On July 7, 2015 the Hanleys filed an Answer, Counterclaim and New Matter. On July 27, 2015 Hanleys filed an Answer to the Motion to Enforce the June 11, 2015 Order. On July 31, 2015 Needhams filed a Reply to the Hanleys' Counterclaim and New Matter with an additional New Matter. A hearing was held on August 14, 2015 regarding the Needhams' Motion to Enforce the June 11, 2015 Order of Court. An Order of Court dated August 14, 2015 "specifically ordered that neither of the parties to this action nor any of their agents may remove or change any of the markers" which were to be placed jointly by the parties counsel.[5] A pre-trial conference was held with counsel for both parties on October 26, 2015. In an Order dated November 18, 2015 this Court scheduled the trial for February 5, 8, and 9, 2016. The November 18 Order further ordered that this Court would view the property at issue on the morning of the first day of trial, February 5, 2016.

The trial proceeded on February 5, 2016 beginning with a view of the property, and concluded on February 8, 2016. In an Order of Court dated February 8, 2016 this Court allowed both parties to file proposed findings of fact, memorandum of law, and proposed orders as well as time to object to the proposed findings of fact, memorandum of law, or proposed orders of the opposing party. Both the Needhams and the Hanleys filed the required documents by April 12, 2016.

On April 15, 2016 the Hanleys filed a Motion for Contempt under 42 Pa.C.S.A. §2503 and for a Protective Order. The Needhams filed an Answer on May 5, 2016. A hearing was held on May 9, 2016, where

5 Both parties contend that the other violated this Order, which remained in effect leading up to, throughout, and following the Trial held by this Court. For the sake of clarity the allegations of both parties are omitted from this Opinion except where they are germane to the underlying property use dispute.

the Court found the it to be supported by clear and convincing evidence that "occupants of Plaintiffs household are directing lighting, whether it be spotlights or flashlights from their property and projecting it into the Defendants' residence for unexplained and non-legitimate purposes." Order, May 10, 2016. The appropriateness of the parties use of the right-of-way was reserved for determination by this Court in a full Opinion. The matter is now ripe for a decision by this Court.

Discussion

The documents in this case deal with a right-of-way over a piece of property. A right of way is an easement, which may be created by an express grant. Amerikohl Mining Co. v. Peoples Nat. Gas Co., 860 A.2d 547, 550 (Pa. Super. 2004), *citing* Merrill v. Mfgrs. Light and Heat Co., 185 A.2d 573, 575 (Pa. 1962). As such, the case law frequently refers to easements, rather than specifically referring to rights-of-way. However, because a right of way is an easement, this Opinion will frequently use easement to indicate the right-of-way in question especially when citing to prior case law.[6]

Breach of Contract

When reviewing an express easement, the rights conferred by the grant of an express easement must be ascertained solely from the language of the easement agreement, provided that the language of the agreement is unambiguous. Steen v. Pennsylvania Tpk. Comm'n, 3 A.3d 747, 751-52 (Pa. Commw. Ct. 2010), *citing* Norma L. Joiner v. The Southwest Central Rural Electric Co–Operative Corp., 786 A.2d 349 (Pa.Cmwlth.2001). "In effect, an easement is interpreted in the same manner as any other contract; if the language of the agreement is clear, our inquiry is ended...." Id.

"It is a familiar rule that where the terms of a deed are doubtful, the court will adopt that construction which is most strongly in favor of the grantee and against the grantor. Walker v. Walker, 153 Pa. Super. 20, 25, 33 A.2d 455, 458 (1943)., *citing* Ransberry v. Brodhead's Forest and Stream Ass'n, 174 A. 97 (Pa. 1934). But, this is only applicable when there is doubt as to the "character and extent" of the right of way. Walker, *supra*.

"If an easement is granted in general terms which do not fix its location, the owner of the servient estate has the right, in the first instance, to designate the location of such easement. This right, however, must be exercised in a reasonable manner with due regard to the rights of the owner of the easement if the owner of the servient estate does not designate the location, the person entitled to an easement may select a suitable route,

6 This Court notes that not all easements are in the form of rights-of-way, but as all rights-of-way are easements the case law discussing easements applies to rights-of way, and therefore to the land at issue in this case.

taking into consideration the interest and convenience of the owner of the land over which the easement passes." Taylor v. Heffner, , 58 A.2d 450, 453 (Pa. 1948), *internal citations omitted*.

An easement that is created of a specific width "does not give to the grantee unlimited rights within its boundaries." Brahm v. McCandless Twp., 44 Pa. D. & C.2d 475, 479-80 (Pa. Com. Pl. 1967), *citing* Taylor, supra at 453. The law provides that the possessor of the land subject to the easement may not interfere unreasonably with the easement holder's use of the easement. Palmer v. Soloe, 601 A.2d 1250, 1252 (Pa.Super. 1992).

In this case, there is no easement agreement to interpret as a contract. The Needhams' deed indicates that their property was conveyed "together with and subject to all…easements" but neglects to describe the same. Compl. ¶4. The Agreement between the Needhams and the Hawleys describes the joint maintenance of the paved road within the easement, but does not detail the specific widths of that road, or indicate the number of entrances to the Plaintiff's property that were permitted. The Hanleys deed, on the other hand, thoroughly describes the type of use the Needhams may make of the right-of-way. Hanleys' deed. However, the Needhams are not a party to that contract. "It is a well-established principle of law that a contract cannot impose obligations upon one who is not a party to the contract" Juniata Valley Bank v. Martin Oil Co., 736 A.2d 650, 663 (Pa. Super. 1999).

It is true that, as discussed above, the servient estate has the right to designate any reasonable location for an easement. Taylor, *supra*. However, at the time the Needhams entered into their deed, the owners of the servient estate, the Hawleys, chose not to specifically limit the access to Needhams' property to a single driveway. As such, the Needhams' were entitled to make reasonable use of the right-of-way, provided their access did not inconvenience the servient estate or prevent access to the servient estate. Taylor, *supra*.

The fact that the Hawleys, who sold the property to both Needhams and Hanleys, indicated to the Hanleys that the Needhams were confined to the use of one driveway was disingenuous, since they were certainly aware that the Needhams' deed was silent on the matter. However, as the Hawleys did not constrain the Needhams' use of the right of way in a document to which the Needhams were a party, the Needhams are entitled to a "suitable route" of access to their property, taking into consideration the interests and convenience of the Hanleys. Taylor, *supra*. The Needhams are not, and have never been, entitled to carte blanch use of the entire fifty foot right of way. Brahm, *supra*. However, they are not bound by the terms of the Hanleys' deed, and are entitled to reasonable access to their property. In this case,

this Court finds that the Needhams' use of the right-of-way to access both Garage 1 and Garage 2, via Driveways 1 and 2, to be reasonable, and not an inconvenience to the Hanleys or prevent access to the paved road way by the Hanleys.

Pursuant to the Agreement, which was incorporated into the deeds of both the Needhams and the Hanleys, both are responsible for "road maintenance and repair." Agreement. However, the Agreement applies only to the "roadbed" – which this Court finds to mean the paved roadway currently existing within the right of way. The maintenance of the remaining portion of the 50 foot wide right of way shall be undertaken solely by the owners of that land, the Hanleys. This Court notes specifically that this includes mowing the grass of the right of way, as that has been an often discussed issue in this case. The Needhams shall not utilize the easement area except as it is authorized by this Court or as may be approved of if the entire fifty-foot easement is delineated for use as a public street, pursuant to township and state statutes or regulations.

The Needhams shall be entitled to access the 10-12 foot paved roadway within the 50 foot easement by way of two (2) separate driveways, one of which may extend from the garages on the western side of their residence and the other which may extend from the eastern side of their residence.

Neither driveway may be greater in width than 12 feet and may not be constructed in such a way as to result in water runoff, erosion or damage to the other residential lots on the survey previously identified by this court. Any and all water and erosion control devices erected by the Needhams related to the two driveways to comply with this order must be constructed to Greene Township standards and specifications and shall be maintained at the expense of the Needhams. The Needhams shall comply with all other terms and conditions of their deed, the Agreement, and notes set forth on the survey.

The Needhams shall not encroach upon or make use of any part of the 50 foot easement which is not otherwise granted by the Order accompanying this Opinion or which is not required per the terms of the Agreement, their deed of conveyance, or in accordance with the notes, terms and/or conditions set forth on the survey heretofore referenced by the Court.

The Hanleys shall be entitled to access the 10 foot paved roadway set forth on the survey heretofore referenced in accordance with their deed and the Agreement. The Hanleys shall maintain the remaining lands within the 50 foot easement area as their own subject to compliance with the requirements of the Agreement, their deed, and in accordance with any

notes, conditions, terms, or regulations set forth in the aforementioned survey as well as any requirements of law imposed by any governmental entity having the authority to impose such conditions or restrictions thereon.

Legal Fees

Generally "each side is responsible for the payment of its own costs and counsel fees absent bad faith or vexatious conduct…unless there is express statutory authorization, a clear agreement of the parties or some other established exception." McMullen v. Kutz, 985 A.2d 769, 775 (Pa. 2009), *internal citations omitted*.

In this case, there was a clear agreement the Parties within the Driveway Maintenance Agreement, regarding the costs and fees for enforcing inadequate maintenance of the existing roadway. Compl., Ex. B. However, the issue here is not maintenance of the existing roadway, and is instead an issue of reasonable use of the right-of-way itself which was legitimately in dispute given the lack of specificity in the document of conveyance to each party. As such, the agreement for costs and fees within the Agreement does not apply to this action. Therefore, each of the parties is responsible for their own legal fees and costs.

ORDER OF COURT

AND NOW THIS 6th day of June, 2016,

IT IS HEREBY ORDERED that the Plaintiffs, Allan B. Needham and Donna L. Needham, owners and possessors of Lot No. 3 on a survey of lots dated July 30, 2007 and recorded in the Office of the Recorder of Deeds for Franklin County at instrument number 200811680 shall be entitled to access the 10-12 foot paved roadway within the 50 foot easement by way of two (2) separate driveways, one of which may extend from the garages on the western side of their residence and the other which may extend from the eastern side of their residence.

Neither driveway may be greater in width than 12 feet and shall be constructed in such a way to control and prevent water runoff, erosion or damage to the other residential lots on the survey previously identified by this court. Any and all water and erosion control devices erected for each driveway by the Needhams' shall comply with Greene Township standards and specifications and shall be maintained at the expense of the Needhams. The Needhams shall comply with all other terms and conditions of the Driveway Maintenance Agreement entered into by them and the grantors Henry and Cathy Hawley dated May 24, 2012 and recorded with the Franklin County Recorder of Deeds as instrument number 201310974.

The Needhams shall not encroach upon or make use of any part of the 50 foot easement which is not otherwise granted by this Order or which is not required per the terms of the driveway maintenance agreement, the deed of conveyance of Lot No. 3 to them by Henry and Cathy Hawley or in accordance with the notes, terms and/or conditions set forth on the survey heretofore referenced by the Court.

The Defendants, Connie K. Hanley, Desirae L. Hanley, and Richard Hanley, shall be entitled to access the 10-12 foot paved roadway set forth on the survey heretofore referenced in accordance with the terms and conditions of their deed and the driveway maintenance agreement entered into by the Hanleys and Henry and Cathy Hawley dated November 23, 2013 and recorded in the records of the Franklin County Recorder of Deeds as instrument number 201326832. The Hanleys shall maintain their remaining lands subject to the 50 foot easement area as their own, subject to the requirements of the Driveway Maintenance Agreement, conditions and covenants set forth within their deed of conveyance and in accordance with any notes conditions or terms regulations set forth in the aforementioned survey as well as any requirements of law imposed by any governmental entity having the authority to impose such conditions or restrictions thereon.

IT IS FURTHER ORDERD that each party shall pay their own legal fees and costs. The Needhams shall pay the recording cost to have a certified copy of this Order recorded with the Franklin County Recorder of Deeds indexed to all the parties listed in the caption. Said recording shall occur within twenty (20) days of the date of this Order.

This Order shall be binding not only upon all parties but shall also be conditions binding upon the subject tracts of real property.

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.