IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

NEW LEAF INVESTMENTS, LLC, Plaintiff/Appellant, vs. BENNIE RAY RYBURN, CORDELIA RYBURN, and TRAVIS ATKINSON, Defendants/Appellees.	)	Case No. 121,349

APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA

HONORABLE LORI WALKLEY, DISTRICT JUDGE

AFFIRMED

Carrie Kopp
James B. Blevins Jr.
George William Velotta II
BLEVINS AND ASSOCIATES
LAW, PLLC
Purcell, Oklahoma — For Plaintiff/Appellant

Jason Mewhirter
GREAT PLAINS LEGAL
SERVICES, LLC
Oklahoma City, Oklahoma — For Defendants/Appellees

OPINION BY GREGORY C. BLACKWELL, JUDGE:

The plaintiff appeals the decision of the district court finding that it failed to prove all elements necessary to establish an easement by necessity through

the defendants' land. Upon review, we agree that the plaintiff did not prove an entitlement to an easement by necessity and thereby affirm.

BACKGROUND

This action concerns a section of land in Cleveland County, Oklahoma, that was historically held by Anna Methven. On June 4, 1924, Methven acquired 160 acres of land described as all of the SE/4 of Section Fifteen, Township Ten North, Range One West of the Indian Meridian, Cleveland County, Oklahoma. On September 6, 1924, Methven conveyed the SW/4 SE/4 to Rosa M. Jackman by warranty deed. This deed was not recorded until February 1, 1926. In the interim, on July 17, 1925, Methven conveyed the E/2 SE/4 to W.H. Kelly and Mary Kelly, also by warranty deed. As a result of the Kelly conveyance, Methven retained only the NW/4 SE/4 of the property, which appears to have then become landlocked. Subsequently, Methven sold her remaining property interest, the NW/4 SE/4, to C.M. Burns. The plaintiff is the successor in title to the NW/4 SE/4. The defendants are successors in title to a portion of the SW/4 SE/4. The successors to the E/2 SE/4 are not parties to this litigation.

The plaintiff purchased the NW/4 SE/4 in April 2021 and filed a petition seeking an easement by necessity over the SW/4 SE/4 that August. The case ultimately proceeded to a bench trial, which was held in April 2023. The court, in a journal entry of judgment filed on May 8, 2023, found that the plaintiff failed to provide proof of necessity of access at the time of severance, relying on the fact that at the time of the sale of the SW/4 SE/4, Ms. Methven still had access over the E/2 SE/4, and therefore, no necessity could be proven at the time of

severance. The plaintiff now appeals, arguing that the recording date as opposed to the conveyance date, is the proper date of severance for any easement-by-necessity analysis.

STANDARD OF REVIEW

"When a trial court grants or denies an easement of necessity, the appellate court will examine the record and affirm unless the trial court's decision is found to be against the clear weight of the evidence or contrary to law or established principles of equity." *Johnson v. Suttles*, 2009 OK CIV APP 89, ¶ 8, 227 P.3d 664, 667 (citing *Mooney v. Mooney,* 2003 OK 51, ¶ 27, 70 P.3d 872, 878.).

ANALYSIS

It is well established by Oklahoma caselaw that an easement by necessity is implied where a landlocked parcel is created. Here, the parties seem to agree that the NW/4 SE/4 section of land that the plaintiff now owns became landlocked upon the conveyance to the Kellys; thus, an easement by necessity is implied. However, despite the implication, a plaintiff must, in order to establish an easement by necessity, prove the following three elements: "(1) unity of title; (2) conveyance of part of the land previously held under unity of title; and (3) a resulting necessity for access to the property *at the time of its severance.*" *Johnson*, 2009 OK CIV APP 89 at ¶ 9 (citing 28A C.J.S. *Easements* § 93. (1996) (emphasis supplied)).

Here, the parties do not dispute that there was unity of title for the parcels in question and that there was a conveyance of the land previously held under

the unity of title. However, at issue is whether plaintiff successfully proved that there was necessity for access to the property at the time of its severance. Upon review, we hold that plaintiff did not prove necessity at the time of severance on this record, no matter whether the proper date is the actual conveyance date or the deed recording date.

"'Since an easement implied by necessity arises simultaneously with the severing conveyance and because of the circumstances then existing, it may not arise from circumstances occurring subsequent to the conveyance.'" *Vertex Holdings, LLC v. Cranke*, 2009 OK CIV APP 10, ¶ 18, 217 P.3d 120, (citing 28A C.J.S. Easements § 106.). Oklahoma courts have held that "a claimant must show that his land or portion thereof was inaccessible and in need of an easement at the time of the severance of the two tracts." *Johnson*, 2009 OK CIV APP 89 at ¶ 15 (citing *Blackwell v. Mayes Cnty. Util. Servs. Auth.*, 1997 OK 190, 571 P.2d 435). When Methven conveyed the SW/4 SE/4 to Jackman, it is undisputed that she split the land, previously held in unity, into two separate tracts. Thus, in order to prove necessity for the easement, plaintiffs needed to prove that Methven's land, or a portion thereof, was "inaccessible and in need of an easement" at the time of severance.

At trial, the plaintiff only called one witness, Mr. Derik Keith, the real estate investor who owns the plaintiff, New Leaf. Mr. Keith did not testify regarding the necessity of the easement at the time Methven severed the SW/4 SE/4 from the rest of her property. The plaintiff presented no other evidence, either by way of exhibits or testimony, demonstrating Methven's need for an

easement through Jackman's property due to inaccessibility at the time Methven severed the SW/4 SE/4 from the rest of the quarter section. In the absence of any evidence in the record of necessity for the easement at the time of severance, we find that the court's decision to deny plaintiff an easement of necessity was not against the clear weight of the evidence or contrary to law.

The plaintiff argues on appeal that that proper time to determine when a parcel becomes landlocked is not the date of the final conveyance but at the time of recording of the relevant transaction. Under this view, because the Jackman deed was not recorded until February 1, 1926, and the Kelly deed was recorded on July 17, 1925, the plaintiff contends that the parcel did not become landlocked until the recording of the Jackman deed, and thus the easement by necessity over the SW/4 SE/4 would be appropriate. We reject this view on this record.

Although we are sympathetic to the plaintiff's view,[1] as it is entirely possible that the Kellys had no actual notice—and certainly they had no record notice—that they could be impressed with an easement at the time they

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[1] Oklahoma's race-notice rule, codified at 16 O.S. §§ 15-16, states that no instrument related to real estate shall be valid against third persons unless acknowledged and recorded and that every conveyance recorded as prescribed by law from the time it is filed is constructive notice of the contents thereof to subsequent purchasers or encumbrancers. Oklahoma courts have held that "[o]ne who is purchasing an interest in real estate, and who has no notice actual or constructive of an outstanding unrecorded instrument relating to the real estate, is entitled to rely on the records, and if there is nothing on the records to put him on notice, or to cause an ordinarily prudent man to make additional inquiry, he is a bona fide purchaser insofar as notice is concerned and is protected against such outstanding instrument. *Davis v. Lewis*, 1940 OK 105, ¶ 0, 100 P.2d 994. Thus, it appears that plaintiff's assertion could be correct if the Kellys did not have actual notice that Methven had conveyed the SW/4 SE/4 to Jackman. As noted below, however, no evidence was presented as to actual notice, or of Methven's need for an easement at the time of any of the relevant deeds were executed or recorded.

purchased the E/2 SE/4, we need not decide this fundamental question on this record. This is because there was *no evidence whatsoever* brought below regarding the necessity of an easement at the time of severance, whether we look to the execution dates *or* the recording dates.

The parties seemed to have presumed below, based on the deeds alone, that Methven had no access to her property even after her conveyance of the E/2 SE/4. While true that she *appears*, by examination of the recorded deeds alone, to have left herself with no access to her remaining property, no evidence from the relevant time period—whether 1924 or 1926—was presented. A number of assumptions are required to reach conclusion that Methven truly left herself landlocked after either conveyance. Methven may very well have had access through a route not shown in the deed records, and thus, the necessity may not have arisen until a later time.[2] An easement of necessity will not be impressed absent a showing of necessity at the time of the severance. *Blackwell v. Mayes Cnty. Util. Servs. Auth.*, 1977 OK 190, ¶ 3-4, 571 P.2d 435, 436; *Vertex Holdings, LLC v. Cranke*, 2009 OK CIV APP 10, ¶ 18, 217 P.3d 120. Here, no evidence was marshalled on this critical question, no matter whether the date of execution or recordation is "the time of the severance." Because we cannot presume a

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[2] Furthermore, while it is true that the Kellys did not have *record* notice of the conveyance from Methven to Jackman, the plaintiff did not address whether or not there was *actual* notice of the conveyance. No proof on this issue was shown either way. While the plaintiff contends that the Kellys could have believed that Methven still owned the entire W/2 SE/4, the opposite is also true. The Kellys very well could have had *actual* notice that Jackman was the new owner of the SW/4 SE/4. If so, a race-notice rule would not have saved Jackman from being impressed with an easement by necessity (assuming there was a necessity) even if the recording date is the proper date to measure the severance.

necessity arose in the 1920s when none was shown from the evidence submitted, we must affirm.[3]

AFFIRMED.

HUBER, P.J., and HIXON, J., concur.

October 30, 2024

[3] We are also sympathetic to the fact that proof of such necessity in the 1920s may have long since been lost to history. If such is the case, the plaintiff is not without a remedy but may proceed under the procedures for a private condemnation of a way of necessity. *See* Okla. Const. art. 2, § 23 and 27 O.S. § 6.