

L. C. EDGAR and Willie Mae EDGAR  
*v.* John STUBBS and Martha STUBBS

78-215

576 S.W. 2d 200

Opinion delivered January 29, 1979  
(Division I)

1. **ROADS & HIGHWAYS — ACCESS ROADS — PRESCRIPTIVE RIGHT OF ADJOINING LANDOWNERS, PROOF OF.** — Where the evidence showed the existence and use of a road for 40 years or more, through land that was not unenclosed and unoccupied, this was sufficient proof that adjoining landowners had acquired a prescriptive right to use of the road as an access road to their property.
2. **EASEMENTS — PROOF OF FORMER PRESCRIPTIVE RIGHT TO USE OF EASEMENT AS ACCESS ROAD — AFFIRMATIVE CONDUCT BY OWNER NECESSARY TO SHOW ABANDONMENT.** — Where a former prescriptive right to the use of an easement for an access road to property has been established, affirmative conduct on the part of the owner of the dominant or servient estate is necessary to show an abandonment of the easement.

Appeal from Crawford Chancery Court, *Bernice Kizer*,  
Chancellor; affirmed.

Appellants, *pro se*.

*N. D. Edwards*, for appellees.

GEORGE ROSE SMITH, Justice. This is a dispute between adjoining landowners about an access road to the appellees' property, which lies east of that owned by the appellants. In 1978 the appellees brought this suit to establish their right to use the road, which begins at a county road to the west and runs across the appellants' land and across the appellees' land. The issue in the trial court was whether the appellees and their predecessors in title have acquired a prescriptive right to use the road. The chancellor upheld the prescriptive right, fixing the width of the road at 20 feet. The appellants' *pro se* brief argues two points, but essentially the question is whether the appellees proved their right to use the road. We agree with the chancellor's decision.

The appellees, as plaintiffs, began their proof by showing the existence of the road for 40 years or more. Two aerial photographs, one taken in 1954 and the other in 1968, showed the road. The witness Taylor testified that he was 58 years old and had known the road all his life. He said it is about a mile long and was once maintained by the county. He and his father ran cattle in the area, using the road about once a week. Other people also used the road: "There was families living in there." Deer hunters traveled the road. At the time of the trial the road existed, was visible, and was used from time to time, even though the area to the east of the appellants' land is no longer occupied. The appellants' proof was to the effect that in recent years the road has been used only occasionally, not regularly.

What is now the appellants' land has not been uninclosed and unoccupied; so the appellees' proof of long continued use of the road establishes a former prescriptive right. *Cupp v. Light Gin Assn.*, 223 Ark. 565, 267 S.W. 2d 516 (1954); *Martin v. Bond*, 215 Ark. 146, 219 S.W. 2d 618 (1949); *Boullioun v. Constantine*, 186 Ark. 625, 54 S.W. 2d 986 (1932). That being true, affirmative conduct on the part of the owner of the dominant or servient estate is necessary to show an abandonment of the easement. *Casenote*, 18 Ark. L. Rev. 355 (1965). There is no such proof. To the contrary, the road is still in use. Finally, the testimony of the witnesses Warnock and Stubbs supports the chancellor's finding that the road is 20 feet wide.

Affirmed.

We agree. HARRIS, C.J., and BYRD and PURTLE, JJ.