Raymond BRANDENBURG et ux *v.* Olin BROOKS, Jr. et ux

78-208 576 S.W. 2d 196

Opinion delivered January 29, 1979
(Division I)

1. EASEMENTS — WAY OF NECESSITY EASEMENT — MORE THAN CONVENIENCE EASEMENT. — A way of necessity easement across the property of another must be more than one of mere convenience.
2. EASEMENTS — WAY OF NECESSITY EASEMENT — PASSES TO SUBSEQUENT GRANTEES. — A way of necessity easement over remaining lands of a grantor, created by implied grant upon the severance of land, being appurtenant to the granted land, passes by each conveyance to subsequent grantees thereof.
3. EASEMENTS — EASEMENT OF REASONABLE NECESSITY — WHAT CONSTITUTES. — Where the evidence showed that because of the natural terrain of the land involved it was impossible for appellants to get to their property by any other route other than across property belonging to appellees, except by the use of a tractor, appellants were entitled to an easement of necessity (*i.e.*, a reasonable necessity) across the adjoining property of appellees, particularly in view of the fact that appellees had formerly owned all of the property and had agreed when they sold the portion now owned by appellants that the purchasers (appellants' grantors) would have access to their property through appellees' remaining property.

Appeal from Crawford Chancery Court, *Bernice Kizer,* Chancellor; reversed and remanded.

Floyd G. Rogers, for appellants.

Creekmore & Harriman, by: *Marril Harriman,* for appellees.

CONLEY BYRD, Justice. Appellants Raymond Brandenburg, et ux, claimed an easement by way of necessity across property owned by appellees Mr. and Mrs. Olin Brooks, Jr. At the close of appellants' proof the trial court directed a verdict in favor of appellees.

The evidence stated most favorably to appellants, as we

must do in reviewing a directed verdict, *Werbe* v. *Holt,* 217 Ark. 198, 229 S.W. 2d 225 (1950), shows that appellees at one time owned the SW SW Sec. 4, T. 10 N, R 29 W. They sold the South 20 acres to their adjoining neighbors Mr. and Mrs. Pat Kelly. Mrs. Kelly testified that at the time of the purchase from the appellees they agreed that the Kellys' would have access to the South 20 through the remaining 20 acres owned by appellees. Mrs. Kelly says there is no other access to the property with anything but a tractor. Appellant Brooks also testified that there was no access except across the North 20 of appellees. He stated that because of the natural terrain it was impossible to get to the property across any lands of the Kellys' except by a tractor.

We recognize that there is a conflict in the authorities as to the degree of necessity required before a way of necessity may be implied. Some authorities maintain that a reasonable necessity is sufficient, but other authorities require strict or absolute necessity. In any case, it appears that a way of necessity must be more than one of mere convenience. See 25 Am. Jur. 2d Easements and Licenses § 37. Furthermore, the authorities recognize that a way of necessity over remaining lands of the grantor, created by implied grant upon the severance of land, being appurtenant to the granted land, passes by each conveyance to subsequent grantees thereof, 25 Am. Jur. 2d Easements and Licenses § 95.

When the evidence in the record is considered in the light most favorable to appellants, we must conclude that there was substantial evidence from which the trial court could have found that because of the natural terrain appellants were entitled to an easement of necessity — *i.e.,* a reasonable necessity.

We note that appellant's abstract of the testimony does not strictly comply with Supreme Court Rule 9(d) — not being a complete condensation or abridgment of the record. Rather than require appellants to reprint their brief, we direct the clerk to disallow any briefing costs to appellant.

Reversed and remanded.

We agree: HARRIS, C.J., and GEORGE ROSE SMITH and PURTLE, JJ.