

Summary
of
LIMESTONE DEVELOPMENT CORP. V. VILLAGE OF LEMONT
284 Ill.App.3d 848, 672 N.E.2d 763, 219 Ill.Dec. 910 (1996)
by
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Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

This case involved the use of a road by prescription, implication, and common-law dedication. A property owner brought an action against the users of a road used to access property. The users of the road sought a declaration that the road was either a public or private road by dedication, prescription, or implied easement.

This dispute focused on an unpaved road that leads from Main Street in Lemont to a nearby quarry area and to the property of plaintiff, Limestone Development Corporation (LDC). Part of the road crossed property owned by the Village of Lemont. LDC bought property in anticipation of developing it into a recreational marina. At the time they bought the property, they knew that there was no guaranteed access to the property. In 1990, LDC brought in heavy equipment to widen and clear the Lemont road without Lemont's knowledge or permission. During the road clearing, vegetation and trees were destroyed. Several owners including Lemont objected to the improvements and use of the road. Despite the objections, LDC proceeded to use the road to bring landfill onto its property without Lemont's knowledge or permission. Subsequently, Lemont posted a stop work order and locked the gate that crosses the road, thus blocking LDC's access to its property over the road. In 1992, LDC brought an action for declaratory, injunctive, and monetary relief against Lemont, alleging that Lemont was wrongfully denying LDC access to its property by maintaining a locked gate on the Lemont road.

The trial court found that LDC had the right to unfettered use of the road. A preliminary injunction was issued and Lemont was ordered to remove its lock from the gate. The court also ordered both defendants to allow LDC, its agents, and its invitees free and unfettered access over the canal road. The Appellate court reversed in part. The appellate court recognized a prescriptive easement only and limited its use. In effect, LDC won the battle but lost the war.

The appellate court discussed several issues of interest to land surveyors. In reviewing the points of the court, it should be noted that the Professional Land Surveyor is one of the few professionals involved in land transactions to visit the site and examine the property. Many problems with title are identified by evidence only

appearing at the site. Consequently, landowners, attorneys, and others dealing with property often rely on the surveyor (justified or not) to note evidence that may reveal potential title problems.

1. To establish a public highway by prescription pursuant to section 2-202 of the Illinois Highway Code, public use of the road must have been adverse, under a claim of right, open and notorious, continuous and uninterrupted, with the knowledge of the owner but without his consent, for 15 years. It is not the number of people who actually use the road, but the character of the use, that is important. In this case there was a considerable amount of evidence that the public used the road to access the quarry area for recreational purposes, such as fishing, swimming, camping, and picnicking, for over 15 years. A prescriptive easement gives a right outside of the records. Consequently, a surveyor should attempt to locate any use that is inconsistent with the records or the apparent rights of landowners.

2. The Appellate court noted that the extent of the prescriptive easement is defined by the prescriptive use that led to the easement's creation. All easements are limited and qualified by the use that was established during the prescriptive period. Owners of an easement are allowed to make repairs so that the easement is reasonably usable. However, they cannot make material alterations in the easement's character that place a greater burden on the property. The use is limited to the type of use that led to the creation of the prescriptive easement. Consequently, even if the use is express or ripened into good title by prescription, subsequent use extending beyond the allowable use may be problematic. The surveyor needs to be aware of the allowable use and assess the extent of use on an easement, if at all possible.

3. The court also discussed implied easements. The court noted that implied easements arise as a result of a common grantor's prior or existing use of land at the time of severance. The doctrine of implied easements is based on the principle that a conveyance of property, in the absence of an express grant, imparts all the benefits and burdens that exist at the time of the sale. An implied easement is designed to give effect to the actual intent of the parties as shown by the facts and circumstances attending the property conveyed.

The essential elements for an implied easement from a pre-existing use are: (1) common ownership of the dominant and servient parcels followed by a separation of title; (2) before the separation, the common owner used part of the united parcel for the benefit of another part and this use was continuous, obvious, and permanent; and (3) the claimed easement is beneficial and necessary to the enjoyment of the parcel conveyed or retained. Implied easements often arise in situations such as party walls, joint driveways, septic fields, utility lines, water rights, and so on.

Surveyors must recognize situations where implied easements may be present in order to properly counsel their clients and identify title problems prior to closing. In addition, the surveyor should carefully analyze the existing use of property at the time of subdivision of the property to prevent unwanted easements from arising by

implication. In other situations, the surveyor should expressly provide for easements that are needed and not rely on implied easements which are often costly to litigate and exercise. This is often the case where roads are shown on subdivision plans without any indication of a co-existing utility easement in the road.

4. Statutory dedication and a common law dedication were also discussed. The court stated that dedication of a road can be either a statutory dedication, which is created by the recording of a plat, or a common law dedication, which is shown by the grantor's actions. A statutory dedication is created by a particular form of the instrument recorded, while a common-law dedication may be made by written instrument or may be evidenced by acts and declarations without a writing. Statutory dedication occurs only upon strict and full compliance with the requirements of the Plat Act and a clear indication on the plat of the donation to the public. In determining whether there was a valid statutory dedication, the court is limited to an examination of the plat and its marks and notations.

For a common-law dedication, there must be clear and unequivocal evidence of: (1) an intent to donate the property for the public use and (2) acceptance by the public. The most important requirement is donative intent, which may be manifested by a formal dedication or by acts of the donor from which the intent may be so fairly presumed as to equitably estop the donor from denying a donative intent. Dedication does not arise by NOT asserting a right. It arises only by an affirmative act of the donor resulting from an active decision in the owner's mind. Proof of any act by the dedicator that evinces an intention to dedicate must be clear, unequivocal, and unambiguous.

The surveyor developing property on behalf of the client must take steps to insure the proper procedures to dedicate rights are adhered to. Furthermore, if dedication is not intended, the surveyor should advise their client on the ways to avoid statutory or common-law dedication. While title aspects are normally the domain of attorneys, attorneys are not always involved in the process of subdivision and platting. Consequently, the burden often falls upon the surveyor to protect or carry out the client's intent.