

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS RAMALLO,
Appellant,
vs.
PAULINE SHIELDS AND BRUCE
SHIELDS,
Respondents.

No. 44431

FILED

APR 04 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property easement dispute. Seventh Judicial District Court, Lincoln County; Steve L. Dobrescu, Judge.

Appellant Luis Ramallo challenges the district court's determination that an unimproved access road running through his property, which connects respondents Pauline and Bruce Shields' property to Nevada State Highway 318, is an implied easement. More specifically, Ramallo argues that unity of title never existed between the two parcels of land and that the access road was not necessary for the proper or reasonable enjoyment of Shields' property. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

Unity of title

Ramallo asserts that the record does not contain substantial evidence establishing that unity of title existed between the land owned by Ramallo and the land owned by the Shields. According to Ramallo, the deed executed in December 1980, from Crystal Springs Development Company to Jay and Marjorie Wright, establishes that Douglas Miller, the previous owner of the Shields' property, never owned Ramallo's property.

Therefore, he asserts, the first element necessary for an easement by implication—unity of title—never existed. We disagree.

There are three requirements for an easement by implication: (1) prior common ownership and subsequent separation by a grant of the dominant tenement; (2) apparent and continuous use of the easement; and (3) the easement must be necessary for the reasonable enjoyment of the dominant tenement.¹ “Although an implied easement arises by operation of law, the existence of an implied easement is generally a question of fact.”² This court has consistently provided that “[a] district court’s findings of fact and conclusions of law, even where predicated upon conflicting evidence, must be upheld if supported by substantial evidence, and may not be set aside unless clearly erroneous.”³

In this case, Ramallo did not submit any transcripts of the district court proceedings, nor has he submitted a settled and approved statement of the evidence or proceedings, even though he argues that the district court’s findings of fact are not supported by substantial evidence. Instead, Ramallo argues on appeal that the deed from Crystal Springs Development Company to Jay and Marjorie Wright is sufficient to establish that Miller never owned Ramallo’s property and therefore unity of title never existed.

¹Boyd v. McDonald, 81 Nev. 642, 647, 408 P.2d 717, 720 (1965) (quoting Rogers v. Cation, 115 P.2d 702, 706 (Wash. 1941)).

²Jackson v. Nash, 109 Nev. 1202, 1208, 866 P.2d 262, 267 (1993).

³Pombo v. Nevada Apartment Ass’n, 113 Nev. 559, 562, 938 P.2d 725, 727 (1997); see also Trident Construction v. West Electric, 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989).

Although the 1980 deed purports to establish that Crystal Springs owned Ramallo's land in 1980, the title history within the record is incomplete. Furthermore, the Shields point out that Miller offered testimony during trial explaining why his name was excluded from the 1980 deed even though he owned the property at the time the deed was executed. Ramallo acknowledges this testimony in his reply brief, but fails to point to any evidence in the record that rebuts Miller's statements. Additionally, it appears that Ramallo conceded that unity of title existed when he asserted in his trial statement that Miller divided and sold a portion of the land in question to Jay and Marjorie Wright.

Additionally, this court has stated that "[w]ithout a complete transcript of the testimony taken . . . or a statement of the evidence or proceedings [this court has] no basis upon which to review the propriety of the trial court's ruling."⁴ District court findings "must be presumed to have been supported by the evidence presented to the lower court when there is no record of testimony upon which to predicate any other determination."⁵

In this case, we presume that the district court's findings of fact are supported by substantial evidence. It is impossible for this court to fully consider the relevance of the documentary evidence submitted at trial without reference to the testimony accompanying its submission.

⁴Johnson v. Johnson, 87 Nev. 244, 248, 484 P.2d 1072, 1075 (1971).

⁵Id.; see also Ute, Inc. v. Apfel, 90 Nev. 25, 27, 518 P.2d 156, 157 (1974) (presuming that the district court's order setting aside a default judgment was correct where the record was devoid of a transcript or a statement of the proceedings).

Necessity

Ramallo argues that because the Shields' property abuts State Route 375, alternative exit routes are available and the third element necessary for an easement by implication—necessity—is not present. We disagree.

This court has recognized that “[f]or an easement to exist in addition to the unity of title, and the apparent and continuous use, the easement must be necessary to the proper or reasonable enjoyment of the dominant tenement.”⁶ We have stated that “we feel an even preferable standard is to construe necessity as really meaning ‘intent.’”⁷ Additionally, this court not only places particular emphasis on the intent of the owner who severs two parcels, but it has also recognized the importance of the purchaser's expectations.

It is grounded in the court's decision that as to a particular transaction in land, the owner of two parcels had so used one to the benefit of his other that, on selling the benefited parcel, a purchaser could reasonably have expected, without further inquiry, that these benefits were included in the sale.⁸

In this case, the district court determined that the access road was reasonably necessary for the proper or reasonable enjoyment of the Shields' property because Miller testified that he intended the road to be a

⁶Alrich v. Bailey, 97 Nev. 342, 345, 630 P.2d 262, 264 (1981).

⁷Boyd v. McDonald, 81 Nev. 642, 648, 408 P.2d 717, 720 (1965).

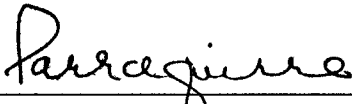
⁸Id. at 649, 408 P.2d at 721.

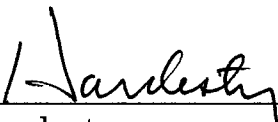
permanent access route to the property and the Shields used the access road to enter the property before purchasing the land.


The record contains substantial evidence to support the district court's determinations. The district court's findings of fact state that Miller testified as to his intent when he severed the parcels, and they suggest that at least some evidence was admitted at trial showing that the Shields entered the property by way of the access road prior to purchasing the property. From this evidence, a reasonable mind could conclude that both Miller and the Shields understood the access road to be a permanent ingress to and egress from the property.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Steve L. Dobrescu, District Judge
Carolyn Worrell, Settlement Judge
Waldo De Castroverde
Law Offices of Gary D. Fairman
Lincoln County Clerk