

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILIP L. ROBBINS,
Appellant,
vs.
JOHN J. ERLANGER,
Respondent.

No. 41668

FILED

MAR 17 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order granting an easement by necessity. Eighth Judicial District Court, Clark County; David Wall, Judge.

The district court granted an easement by necessity in favor of John Erlanger, permitting him egress onto Phillip Robbins' property for the limited purposes of accessing his electrical junction box and to erect and maintain a rain gutter at the base of the roof of Erlanger's garage to control runoff.¹ Erlanger and Robbins are the owners of adjoining lots in a community named "Tennistates." The parties do not dispute that they derived title from the original developer of "Tennistates," and that the development has a zero-lot-line construction.² The southern exterior wall of Erlanger's residence is the boundary line between the parties' properties.

¹The bench trial was not reported for this case; consequently, the following facts are primarily taken from the district court's findings of fact and conclusions of law.

²The term zero-lot line describes a planned development subdivision in which some of the homes within the subdivision are built on the boundary line between two lots. See Cal. Comm. Int. Dev. L & Prac. § 4:9 (2004).

Robbins took title to his property by deed in 1981, and Erlanger took title to his property from the prior owner in 1984. Erlanger's residence was constructed with the electrical breaker box and telephone switch box located on the outside of the southern wall of the residence. At some point, Robbins erected a gate on his property, obstructing access to the utility boxes on the outside of Erlanger's southern wall. Erlanger periodically requested, and Robbins granted, permission to access Robbins' property to service and maintain the utility boxes.

During heavy rainfall, water runoff from Erlanger's roof would descend upon Robbins' property and seep back into Erlanger's residence, resulting in damage to Erlanger's home. It was determined that installation of a rain gutter at the southern edge of Erlanger's roof would reduce or eliminate the damage caused. In July 1999, Robbins agreed to provide the necessary access to his property and trim the shrubs along the southern wall in the winter to prevent damage. However, in February 2000, Robbins refused to allow Erlanger access to his property for any reason.

In June 2000, Erlanger filed a complaint against Robbins in district court seeking equitable relief in the form of an easement or license allowing access to the utility boxes on the outside of the southern wall of his residence and the construction and maintenance of a rain gutter. Following a bench trial, the district court concluded that Erlanger established the required prior common ownership and reasonable necessity to obtain an easement by necessity. The district court granted Erlanger an easement by necessity. The district court also cautioned that Erlanger must provide reasonable notice to Robbins before accessing Robbins' property, and that Robbins could not deny, restrict, or prevent

Erlanger access to his property for the purposes of the easement. Additionally, the district court required that Erlanger must bear the costs of any damage to Robbins' property as a result of his entry onto the property for purposes of the easement.

This court has stated that the party claiming an implied easement by necessity must show: "(1) prior common ownership, and (2) reasonable necessity."³ On appeal, Robbins concedes prior common ownership. Both parties' deeds state that their property is subject to restrictions, conditions, rights of way, and easements of record. It appears that "Tennistates" was a planned development, even though a single builder did not construct all of the homes within the development. Given the zero-lot-line construction used in "Tennistates," it can be inferred that an easement or right away across Robbins' property was contemplated at the time the subdivision was created.⁴ Hence, each homeowner in the subdivision has an implied easement onto the adjoining landowner's property for purposes of accessing the wall on that property.

Consequently, we conclude that the district court did not err in finding a limited easement onto Robbins' land for the purpose of maintaining and repairing the utility boxes. Moreover, due to the nature of the zero-lot-line development, an easement for access to the adjoining lot owner's property to erect and maintain a rain gutter, even though not

³Jackson v. Nash, 109 Nev. 1202, 1211, 866 P.2d 262, 268 (1993).

⁴See Cal. Comm. Int. Dev. L & Prac. § 4:9 (2004) (explaining that the term "zero-lot line" describes a planned development subdivision in which some of the homes within the subdivision are built on the boundary line between two lots; therefore, the owner of the home built on the boundary line between the two lots needs an easement over the adjoining property to allow access for purposes of maintenance and repair to the side of the home built on the boundary line).

necessary at the time the property was divided, became necessary in this circumstance to prevent further damage to Erlanger's adjoining property. It would be unreasonable for a court to refuse access for the construction and maintenance of a project that would undoubtedly prevent further damage to the servient estate. This is especially true when that very denial will result in the necessity of future access to repair the very damage the landowner is seeking to prevent. This reasoning is more compelling when the resulting damage would incur a much greater cost to the servient estate and require further inconvenience to the dominant property owner.

As this court has explained, the necessity required for an implied easement by necessity "must pertain to the use and enjoyment of land adjacent to the servient estate," and that necessity must be "something significantly greater than inconvenience to the party claiming the easement."⁵ Thus, the inconvenience must be "weighed against the burden and possible damage that could result from imposing an easement across another's property."⁶ Because there is no alternative route to access Erlanger's utility boxes, we conclude that the district court did not err in finding an easement by necessity for purposes of accessing the utility boxes. Furthermore, because the district court balanced the equities involved, limited Erlanger's access to Robbins' property, and advised Erlanger that he would be responsible for paying for any damage to Robbins' property from his use of the easement, we further conclude that the district court did not err in finding reasonable necessity for an


⁵Jackson at 1211, 866 P.2d at 269.


⁶Id.

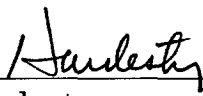
easement to erect and maintain a rain gutter on the outer wall of Erlanger's residence.

Additionally, it is evident that Robbins' remaining argument, that the district court's judgment constitutes a taking of property for personal use under Article 1, Section 8 of the Nevada Constitution, is without merit.⁷ For an unconstitutional taking to occur, there must be a governmental action that amounts to the taking of private property for public use.⁸ In this instance, there was no governmental action that occurred. Instead, only private parties are involved, and the district court's judicial determination that Erlanger offered substantial evidence to establish an easement by necessity does not amount to the government taking property for public use. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁷Nev. Const. art. 1, § 8 provides, “[p]rivate property shall not be taken for public use without just compensation having been first made.”

⁸City of Las Vegas v. Bustos, 119 Nev. 360, 362, 75 P.3d 351, 352 (2003) (noting that a landowner is entitled to just compensation when the government takes private property for public use).

cc: Hon. David Wall, District Judge
Leavitt Sully & Rivers
Richard R. Reed
Clark County Clerk