

IN THE COURT OF APPEALS 01/16/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00020 COA

DOROTHY O'NEAL BROWN

APPELLANT

v.

ROBERT W. PARKER AND VICKIE H. PARKER

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. J. N. RANDALL, JR.

COURT FROM WHICH APPEALED: CHANCERY COURT OF STONE COUNTY

ATTORNEYS FOR APPELLANT:

JACK PARSONS AND

REBECCA TAYLOR

ATTORNEY FOR APPELLEES:

M. RONALD DOLEAC

NATURE OF THE CASE: CIVIL -- REFORMATION OF A QUITCLAIM DEED

TRIAL COURT DISPOSITION: DEED ORDERED REFORMED TO REFLECT THE
APPELLEES' OWNERSHIP OF AN EASEMENT ACROSS THE APPELLANT'S PROPERTY

BEFORE FRAISER, C.J., BARBER, AND McMILLIN, JJ.

BARBER, J., FOR THE COURT:

Dorothy Brown appeals from a judgment of the Chancery Court of Stone County awarding the Appellees, Robert W. and Vicki H. Parker, a permanent right-of-way easement across Brown's land. The Chancellor based his judgment upon the two alternative legal theories of mutual mistake and easement by necessity. Finding no reversible error in the chancellor's findings, we affirm.

I. BACKGROUND

The facts of this case involve four different conveyances of real property.

Dorothy Brown was the owner of a large parcel of property located in Stone County. On February 5, 1987, Brown conveyed an 80 acre portion of this property to Robert and Vicki Parker so that they could develop a deer camp on it. On May 1, 1991, a second conveyance took place. Brown conveyed to the Parkers an additional 12.33 acre parcel located to the west of the previously conveyed 80 acre parcel. This 12.33 acre parcel, however, was not contiguous with the 80 acre parcel. Therefore, an area of land in which the Parkers had no ownership interest remained between the two parcels. Brown retained ownership of this area. This area was also the location of Brown's personal residence.

Included in the second conveyance was a fifty-foot wide right-of-way easement which traversed the area between the 12.33 and 80 acre parcels. This easement connected the 12.33 acre parcel to the previously conveyed 80 acre portion.

On August 2, 1991, a third conveyance took place. Brown conveyed to the Parkers the remainder of her property, including the area between the two parcels previously conveyed to the Parkers. Brown made this conveyance while also retaining for herself a life estate in the land conveyed. Seventeen days later, after the relationship between Brown and the Parkers had begun to undergo some difficulties and after Brown had begun to have second thoughts about the third conveyance, a fourth conveyance took place. The Parkers, by quitclaim deed, reconveyed to Brown their entire interest in the property which they obtained by way of the third conveyance. In doing so, however, they failed to retain for themselves the fifty-foot wide right-of-way easement that Brown had granted them as part of the second conveyance.

On July 31, 1992, after Brown had denied the Parkers permission to use the fifty-foot wide right-of-way, the Parkers filed suit in the Chancery Court of Stone County. In their complaint, they sought to reacquire the right-of-way easement. In furtherance of this end, the Parkers alleged that "through oversight" they had failed to retain the right-of way when they executed the quitclaim deed in favor of Brown. Thus, they sought reformation of the quitclaim deed. In the alternative, the Parkers asserted that the court should declare them the owners of the right-of-way by way of an easement by necessity.

On August 7, 1992, Brown answered the Parkers' complaint. She denied the Parkers allegations and asserted two counter-claims for damages. The first of these counter-claims was premised upon the

theory of private nuisance. Specifically, Brown alleged that the Parkers had interfered with her right to use and enjoy her personal residence by situating their dog kennels on a location that was too close to that residence. The second of these counter-claims was premised upon the theory of assault. Specifically, Brown alleged that during the course of the souring of the Brown-Parker relationship, Vicki Parker had physically struck her. For this latter claim, Brown sought both compensatory and punitive damages.

Trial was had on the case on April 20-22, 1993. At its conclusion, the chancellor granted the Parkers the right to the fifty-foot wide easement. In doing so, he found that there had been a mutual mistake in the execution of the quitclaim deed. In the alternative, the chancellor declared that the Parkers were entitled to the right-of-way because it was the "only reasonable access to the eighty acres" owned by the Parkers. Finally, the chancellor denied Brown any relief on her two counter-claims. After the chancellor denied Brown's motion for a new trial, Brown appealed. In doing so, she asserted the following three assignments of error:

I. The chancellor erred in reforming the quitclaim deed based upon a finding of mutual mistake where mutual mistake was not specifically pled in the complaint and there was insufficient evidence on the record supporting such a finding;

II. The chancellor erred in granting an easement-by-necessity; and

III. The lower court erred in not granting Brown any relief on her counter-claims.

II. DISCUSSION

a) Mutual Mistake

The chancellor found that neither party knowingly intended that the easement right-of-way crossing Brown's property be reconveyed to Brown and that the reconveyance of the easement by way of the quitclaim deed of August 19, 1991, was the result of a mutual mistake between the parties. Based upon this finding, the chancellor ordered the quitclaim deed reformed so as to retain the easement in favor of the Parkers. Brown now asserts that this ruling was erroneous because the Parkers did not specifically plead mutual mistake in their complaint. In support of this argument, Brown cites *United States Fidelity & Guaranty Co. v. Gough*, 289 So. 2d 925, 927 (Miss. 1974), wherein the Mississippi Supreme Court held that reformation of an insurance contract was erroneous where mutual mistake was not pled in the complaint.

We find Brown's argument without merit. *Gough* was decided before the 1982 adoption of the Mississippi Rules of Civil Procedure. Rule 8(e) of these rules states that "No technical forms of pleading or motions are required." M.R.C.P. 8(e). In addition, the Comment to Rule 8 states:

The purpose of Rule 8 is to give notice, not to state facts and narrow the issues as was the purpose of pleading in prior Mississippi practice. Consequently, the distinctions between "ultimate facts" and "evidence" or conclusions of law are no longer important since the rules do not prohibit the pleading of facts or legal conclusions *as long as fair notice is given to the parties*.

M.R.C.P. 8 cmt. (emphasis added). The Parkers alleged that through an oversight, they failed to

retain for themselves an easement interest. In view of the "notice" approach to pleading embodied in the Mississippi Rules of Civil Procedure, we hold that *Gough* is no longer the applicable law and that the Parkers allegation was sufficient to notify Brown of their claim for relief.

In view of the possibility that we might rule that *Gough* is no longer good law, Brown's Reply brief cites Rule 9(b) of the Mississippi Rules of Civil Procedure. This rule states:

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.

M.R.C.P. 9(b). This citation by Brown, however, avails her not. Simply put, we are of the opinion that the Parkers' complaint complied with Rule 9(b).

Brown finally argues that the chancellor erred in finding mutual mistake since Mississippi case law holds that such a finding must be proved beyond a reasonable doubt, *see Parrien v. Mapp*, 374 So. 2d 794, 796 (Miss. 1979), and there was testimony on the record that would have raised such a doubt. We reject this argument. While it is true that the term "beyond a reasonable doubt" is not susceptible to an easy or precise definition, we do not think that the mere fact that Brown placed contradictory evidence on the record which *could have, if believed by the trier of fact*, raised a reasonable doubt, is the same thing as saying that the plaintiffs did not prove their case beyond a reasonable doubt. The fact that the chancellor heard all of the evidence and ultimately chose to find in favor of the Parkers was consistent with his prerogative as a trier of fact. Such a finding will not be disturbed unless it is not supported by substantial evidence or is manifestly erroneous. *Shearer v. Shearer*, 540 So. 2d 9, 11 (Miss. 1989). Convinced that neither is the case, we refuse to do so.

b) Easement by Necessity

As an alternative ground for granting the Parkers the easement, the chancellor found that the easement was "necessary by way of necessity" to the Parker's properties. On appeal, Brown contends that the chancellor erred in making such a ruling since an easement by necessity only arises where a use interest is "strictly necessary" to the dominant tenement and the chancellor was only able to find that the right-of-way easement was "reasonably necessary" to the Parkers' use of their properties.

An easement by necessity only arises where strict necessity is proved. *Fourth Davis Island Land Co. v. Parker*, 469 So. 2d 516, 520 (Miss. 1985). No strict necessity exists here. The chancellor therefore erred.

The Mississippi Supreme Court has also recognized that "there may be implied grants of things not strictly necessary but highly convenient." *Id.* at 521. As the Mississippi Supreme Court explained in a decision rendered after *Fourth Davis*:

It is well established in our law that an easement may be created by grant, implication, or prescription. Our law provides "[t]hat an implied easement must be continuous, apparent,

permanent and necessary’

[S]trict necessity is not required for an implied easement when the easement is not in the form of a way of necessity. If the easement sought is not a way of necessity, all that must be proven is a reasonable necessity. The Court . . . [has previously] spoke[n] of these implied easements as being ‘highly convenient or essential to the full enjoyment of the land.’

‘[T]he necessity should be judged by whether an alternative would involve disproportionate expense and inconvenience, or whether a substitute can be furnished by reasonable labor or expense.’

Gulf Park Water v. First Ocean Springs Dev. Co., 530 So. 2d 1325, 1330-31 (Miss. 1988) (citations omitted).

In the present case, the chancellor heard testimony regarding the feasibility of constructing and/or utilizing alternative routes to the eighty acre parcel. Additionally, the chancellor conducted a personal "on foot" investigation of the lands at issue and the other proposed right of ways. In the end, he concluded that "the only reasonable access to the 80 acres was the lane road or right of way easement conveyed by deed dated May 1, 1991." The chancellor may well have been justified in holding this to be an easement by implication because there is substantial evidence that it was continuous, apparent, permanent and necessary. However, the issue was not addressed by the chancellor. Because it was not addressed by him, we decline to hold that such an easement arose.

c) Brown’s Counter-Claims

At trial, Brown asserted counter-claims for nuisance and for assault. The nuisance claim was based upon Brown’s allegations that the Parkers had constructed and maintained a dog kennel on an area of their property that was much too close to Brown’s personal residence and thus, by way of the ensuing smell and noise, interfered with Brown’s use of her property. The assault claim was based upon Brown’s allegation that Vicki Parker had physically struck her during the course of a disagreement that had occurred between them. The chancellor denied relief on both claims. Brown now asserts that the chancellor’s decision was erroneous.

Other than pointing to specific evidence on the record which supposedly proves her counter-claims, Brown fails to explain exactly what was wrong with the chancellor’s decision. Presumably, Brown is asserting that the chancellor’s decision was against the overwhelming weight of the evidence. We are of the opinion, however, that such was not the case. Accordingly, we uphold the chancellor’s ruling.

III. CONCLUSION

For the foregoing reasons, the judgment of the Chancery Court of Stone County is affirmed with respect to the finding of mutual mistake and the reformation of the quitclaim deed. The alternative finding of easement by necessity, however, is reversed. Nevertheless, because this reversal does

nothing to undermine the ultimate result of the chancellor's judgment, the chancellor's judgment is affirmed.

THE JUDGMENT OF THE CHANCERY COURT OF STONE COUNTY IS AFFIRMED. COSTS ARE ASSESSED TO THE APPELLANT.

FRAISER, C.J., BRIDGES, P.J., COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.