

IN THE COURT OF APPEALS 03/26/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00179 COA

MAXWELL C. LAWSON AND KAY LAWSON

APPELLANTS

v.

CHARLES H. SPEARS

APPELLEE

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

TRIAL JUDGE: HON. R. B. REEVES, JR.

COURT FROM WHICH APPEALED: AMITE COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANTS:

JOHN H. WHITE, JR.

ATTORNEY FOR APPELLEE:

BRYAN C. HARBOUR

NATURE OF THE CASE: REAL PROPERTY-EASEMENT

TRIAL COURT DISPOSITION: PERMANENT EASEMENT GRANTED IN FAVOR OF
SPEARS OVER ADJACENT PROPERTY OWNED BY LAWSONS

BEFORE BRIDGES, P.J., BARBER, AND McMILLIN, JJ.

McMILLIN, J., FOR THE COURT:

This is an appeal from a judgment entered in the Chancery Court of Amite County. The judgment granted to Charles Spears a permanent easement over adjacent property owned by Maxwell C. and Kay Lawson. The easement was adjudged to run along an existing roadway referred to in the case as "the Old Springfield Trace Road." The Lawsons allege that the chancellor's judgment is erroneous being against the great weight of the evidence.

Based upon our limited standard of review, we are unable to conclude that the chancellor was manifestly in error, and we affirm.

I.

Facts

Maxwell C. Lawson and his wife, Kay Lawson, are the record owners of a tract of land in Amite County. A portion of the property is bounded on the east by a public road and on the west, in part, by a tract owned by Charles Spears. Spears acquired title to his tract in 1976. (His wife was originally a joint tenant, but she is now deceased.) The Lawsons acquired title to the bulk of their property in 1983 from Ray and Mildred Miller. The public road running in a generally north-south direction in this area had been re-routed in an easterly direction in the late 1940's or early 1950's. One effect of this re-routing was to divide off a small triangular tract of land from a tract owned by Ione Walker, such that Walker's tract, which had formerly been one contiguous tract lying east of the road, now consisted of a large tract still east of the road and the above-mentioned small triangle lying west of the road and acted as a buffer between a portion of the Lawson tract and the rerouted public road.

Evidence was presented which established that since acquiring title to his tract in 1976, Spears had gained access to his property along a roadway leaving the public road and running across Ione Walker's triangular tract, onto and across the Lawson tract, and into the Spears tract. There was testimony presented that this roadway was formerly the old public roadway that had fallen into disuse with the rerouting mentioned above, but that the roadway had run along the route used by Spears and then had swung south through an adjoining tract owned by Pettitt on a route that eventually led to the State of Louisiana.

In 1982, the Lawsons' predecessors in title, Ray and Mildred Miller, conveyed to Spears a thirty-foot right-of-way for ingress and egress across their property. The instrument of conveyance described the easement as follows: "The right of way shall be over the existing roadway or as agreed to." The deed from the Millers to the Lawsons did not make exception for the right-of-way easement; however, the instrument was on file in the Amite County land records at the time the Lawsons took title.

The record shows that the Lawsons acquired title to the Walker triangular tract in 1988. Spears and the Lawsons used the roadway jointly and with apparent harmony from 1983 until 1992. Access was controlled by locked gates, but both parties had keys to the locks. As the result of disagreements that arose in 1992, the Lawsons took affirmative measures to deny to Spears any further access to his property over the previously-used roadway, and this litigation ensued.

The chancellor adjudged that Spears was entitled to a permanent easement for access to his property over the existing roadway. He based his ruling upon a finding that the roadway was an old public roadway that had never been formally abandoned nor fallen into disuse for the ten year period necessary to evidence an abandonment of public use. Alternatively, he adjudicated that the right-of-way instrument to Spears from the Millers created an easement by grant over all of the property except the Walker triangular tract, and that Spears had acquired an easement by prescription over the Walker triangular tract in the years commencing with his purchase in 1976.

II.

Discussion

The chancellor appears to have been substantially correct in regard to his findings of fact and discussion of law on the matter of the original public nature of the access used by Spears from the present public way across the Lawsons into his property, except for one consideration. There was credible evidence produced that the road used by Spears did, in fact, follow the old public roadway from the point it left the relocated public road and ran in a generally southwesterly direction across the Lawson tract until it entered into the Pettitt tract to the south. There was also evidence of use of the roadway on a sufficiently continuous basis after the public road was relocated; this use being by Spears, by his predecessors in title, and by the owners of the tract lying to the south of Lawson was sufficient to meet the test of *McNeely v. Jacks* to preserve the public character of the way, at least insofar as Spears was concerned. *McNeely v. Jacks*, 526 So. 2d 541, 544-45 (Miss. 1988). In the *McNeely* case, the Supreme Court dealt with a similar situation and said:

If a public road runs through the property of one and deadends on the property of another, and for ten years the latter (and persons acting on his behalf and with his permission) are the only ones to use the road, no abandonment occurs.

Id. at 545.

The evidence of such continued use after relocation of the primary route of the public road, standing alone, would appear sufficient to support the chancellor's decision in this case except that it appears uncontradicted that, in order to obtain access to the Spears property by remaining on the old public roadway, Spears would have to follow the old roadbed onto the Pettitt property to the south and then onto his property. Even Spears testified that when he first began to use this way for access to his property, Mr. E. E. Lawson, father of Maxwell Lawson and a former owner of the property, had suggested that Spears leave the old roadway at a point where the old roadway approached within approximately 100 yards of the Spears' east property line and cut across in a more westerly direction into his property. Any rights acquired by Spears for access along this route, therefore, do not appear to be sustainable strictly under the rule of *McNeely v. Jacks*, since a significant portion of the route does not lie in what the evidence showed to be the old public roadway. Strict reliance upon the rule of *McNeely v. Jacks*, therefore, presents some difficulties since a significant portion of the present route used by Spears does not lie in the old public roadway.

However, we are not required to resolve the issue of what effect the mutual agreement of the parties to deviate somewhat from the old roadbed has on the outcome of this case, since we have concluded that the chancellor's alternate theory for establishing the easement is correct and resolves all issues before us. There is competent evidence in the record that the route in question was being used by Spears prior to the conveyance of a right of way from the Millers to Spears "over the existing roadway or as agreed to." The Lawsons never adequately state their legal position in their brief as to the effect of this conveyance. At trial, it was clear that Mr. Lawson felt he was free to simply disregard the instrument since it was not mentioned in his deed from the Millers. Of course, that position is untenable since the instrument was filed of record prior to the conveyance from the Millers to the Lawsons. *See, e.g., Mississippi State Highway Comm'n v. Cohn*, 217 So. 2d 528, 532 (Miss. 1969).

There is some indication in the Lawsons' brief that the instrument might be ineffective for vagueness, or that the Lawsons might be able to require Spears to use some alternate route across the property. Neither position, if such positions are being advanced, have merit. General grants of an easement across property are not rendered void by virtue of being indefinite as to exact location. In *Capital Electric Power Ass'n v. Hinson*, the Mississippi Supreme Court quoted with approval from the treatise *Thompson on Real Property* to the effect that:

[T]he rule is well settled that where a grant of an easement is general as to the extent of the burden to be imposed on the servient tenement, an exercise of the right, with the acquiescence and consent of both parties, in a particular course or manner, fixes the right and limits it to the particular course or manner in which it has been enjoyed. The grant of a way when there is any uncertainty or ambiguity in it may be interpreted by reference to the attendant circumstances, to the situation of the parties, and especially to the practical interpretation put upon the grant by the acts of the parties in the use of the easement immediately following the grant. When the grant is ambiguous the construction given by the parties themselves, as proved by the manner in which they exercise their rights under the conveyance, is legal evidence.

Capital Elec. Power Ass'n v. Hinson, 226 Miss. 450, 460-61, 84 So. 2d 409, 412 (1956).

The chancellor concluded that the phrase "existing roadway" meant the route that Spears testified he had been using prior to the right-of-way grant from the Millers and the one he continued to use after the conveyance and after the Lawsons acquired the servient estate from the Millers. The evidence is overwhelming that the Lawsons acquiesced in Spears' use of the route, including evidence that gates were constructed at the entrance by the joint efforts of the parties and that both parties had keys to the gate locks. We cannot conclude that the chancellor was manifestly in error in awarding a permanent easement by conveyance over the route in question based on the evidence in the record. This finding deprives this Court of any authority to disturb the chancellor's ruling.

As to the portion of the roadway that runs across the Walker triangular tract acquired by the Lawsons in 1988, it is uncontroverted that Spears had been using that portion of the roadway openly and continuously since acquiring his title in 1976. He further testified that he never sought permission of the owners because he was unaware that the small tract belonged to anyone other than the

Lawsons or their predecessors in title. Such non-permissive use for twelve years was, on these facts, hostile to the rights of the true owner within the meaning of applicable law and was more than sufficient to establish a prescriptive easement over this small tract in favor of Spears prior to the time the Lawsons acquired title to the land. *Thornhill v. Caroline Hunt Trust Estate*, 594 So. 2d 1150, 1152-53 (Miss. 1992). Alternatively, this portion of the disputed easement unquestionably ran along the old public roadway so that the continued use of the roadway by Spears and his predecessors after the main public road was re-routed would have been sufficient to preserve his right to use this small portion of the route to his property under the rule of *McNeely v. Jacks*, 526 So. 2d 541, 544-45 (Miss. 1988).

We conclude that the chancellor committed no manifest error in any aspect of his ruling, and we affirm the judgment.

THE JUDGMENT OF THE AMITE COUNTY CHANCERY COURT AWARDING A PERMANENT EASEMENT IN FAVOR OF CHARLES SPEARS OVER THE PROPERTY OF MAXWELL AND KAY LAWSON IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANTS.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., AND BARBER, COLEMAN, DIAZ, KING, PAYNE AND SOUTHWICK, JJ., CONCUR.