

SUPREME COURT OF WISCONSIN

McCormick v. Schubring, 267 Wis. 2d 141

672 N.W.2d 63, 2003 WI 149 (2003) · No. 02-1004 · Decided November 26, 2003

SUMMARY

The Wisconsin Supreme Court held that an easement of necessity generally arises through the circuit court's exercise of discretion rather than automatically by operation of law. The court also held that a landowner who stands in the shoes of a grantor may obtain an easement of necessity and affirmed the judgment granting the McCormicks vehicular access across Schubring's property.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Patience D. Roggensack, J.
JURISDICTION	Wisconsin
DECIDED	November 26, 2003
DOCKET	02-1004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Schubring appealed a Langlade County Circuit Court judgment granting the McCormicks an easement of necessity across his property. The Wisconsin Court of Appeals certified two questions to the Wisconsin Supreme Court, and the Supreme Court addressed a third question concerning whether the circuit court erroneously exercised its discretion.
STANDARD OF REVIEW	Questions concerning whether an easement of necessity arises as a matter of law and whether a person standing in the shoes of a grantor may obtain one are reviewed de novo. The circuit court's exercise of discretion is reviewed to determine whether it was erroneous.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential
PARTIES	Richard A. Schubring v. R. Scott McCormick, Robert L. McCormick, Shane McCormick

TOPICS

[easement by necessity](#) [easements](#) [real estate](#) [equitable relief](#)

PRACTICE AREAS

real estate

property remedies

QUESTIONS PRESENTED

1. Whether an easement of necessity arises automatically by operation of law when the required elements are established or instead arises through the circuit court's exercise of discretion.
2. Whether a person who stands in the shoes of a grantor who formerly had access to a public highway, but retained a landlocked parcel after severance of part of the property, may obtain an easement of necessity.
3. Whether the circuit court erroneously exercised its discretion by granting the McCormicks an easement of necessity, including vehicular access.

HOLDINGS

1. An easement of necessity generally does not arise automatically as a matter of law merely because the preliminary elements are established; its creation and scope are ordinarily subject to the circuit court's equitable discretion.
2. A person who stands in the shoes of a grantor who formerly had highway access but retained a landlocked parcel after severance may obtain an easement of necessity, provided the preliminary elements are established and the equities support the easement.
3. The circuit court did not erroneously exercise its discretion in granting the McCormicks an easement of necessity, including vehicular access.

KEY QUOTATIONS

"We conclude that an easement of necessity generally does not arise as a matter of law, but rather, through the exercise of a circuit court's discretion." (267 Wis. 2d at 146)

"And, it should not be read to conclude that only a grantee may obtain an easement of necessity for landlocked property." (267 Wis. 2d at 154)

"Accordingly, because the McCormicks proved the elements preliminarily required for an easement of necessity and the circuit court weighed the burdens and benefits to each party's property from the proposed easement, we cannot conclude that it erroneously exercised its discretion in granting the easement." (267 Wis. 2d at 157)

FACTUAL BACKGROUND

Merritt Olk formerly owned three contiguous 40-acre parcels, but Langlade County took the eastern parcel by tax deed in 1946, leaving the remaining 80 acres landlocked. A dirt and gravel road across the former eastern parcel provided access to the 80 acres, and the McCormicks knew of and used that road when they purchased the 80 acres in 1996. Schubring later acquired the former eastern parcel and prevented vehicular access, leading the McCormicks to seek an easement; the circuit court granted one after weighing the burdens and benefits to both properties.

PROCEDURAL HISTORY

The McCormicks filed suit after Schubring prevented their vehicular use of an existing dirt and gravel road crossing his property and negotiations for an easement failed. The Langlade County Circuit Court granted the McCormicks an easement of necessity. Schubring appealed, and the court of appeals certified questions to the Wisconsin Supreme Court.

DISPOSITION

affirmed

CASES CITED

- State v. Byrge, 2000 WI 101, ¶ 32, 237 Wis. 2d 197, 614 N.W.2d 477
- City of Brookfield v. Milwaukee Metro. Sewerage Dist., 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992)
- Ludke v. Egan, 87 Wis. 2d 221, 226-31, 274 N.W.2d 641 (1979)
- Schwab v. Timmons, 224 Wis. 2d 27, 35-41, 589 N.W.2d 1 (1999)
- Baurer v. Sokoloff, 254 Wis. 2d 273, 276, 36 N.W.2d 61 (1949)
- Sampson Invs. v. Jondex Corp., 176 Wis. 2d 55, 62, 499 N.W.2d 177 (1993)
- Frank C. Schilling Co. v. Detry, 203 Wis. 109, 116, 233 N.W. 635 (1930)
- Richards v. Land Star Group, Inc., 224 Wis. 2d 829, 838-39, 848-49, 593 N.W.2d 103 (Ct. App. 1999)
- Bino v. City of Hurley, 14 Wis. 2d 101, 105-06, 109 N.W.2d 544 (1961)
- Sicchio v. Alvey, 10 Wis. 2d 528, 538, 103 N.W.2d 544 (1960)
- Bullis v. Schmidt, 5 Wis. 2d 457, 461, 93 N.W.2d 476 (1958)
- Wynhoff v. Vogt, 2000 WI App 57, ¶ 13, 233 Wis. 2d 673, 608 N.W.2d 400
- Vocational, Technical & Adult Educ., Dist. 13 v. DILHR, 76 Wis. 2d 230, 240, 251 N.W.2d 41 (1977)
- Backhausen v. Mayer, 204 Wis. 2d 286, 290-91, 234 N.W. 904 (1931)
- Dillman v. Hoffman, 38 Wis. 559, 574 (1875)
- Rock Lake Estates Unit Owners Ass'n v. Township of Lake Mills, 195 Wis. 2d 348, 373, 536 N.W.2d 415 (Ct. App. 1995)