

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Dwight D. Conn and Donna J. Conn v. James L. Beckman and Brooke F. Beckman

Conn v. Beckman · No. No. 18-0551 · Decided September 9, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for the Beckmans in a dispute over an express right-of-way, driveway, parking pad, and sidewalk. The court held that the 1970 deed sufficiently described and created an enforceable easement, that the Conns had notice of the easement, and that the doctrine of merger did not extinguish it because the properties lacked complete unity of title.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	September 9, 2019
DOCKET	No. 18-0551
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Conns appealed the circuit court's order granting the Beckmans' motion for summary judgment and denying the Conns' motion for partial summary judgment in a contested right-of-way and trespass action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper when there is no genuine issue of material fact and the record could not lead a rational trier of fact to find for the nonmoving party.
PRECEDENTIAL VALUE	The opinion is a memorandum decision issued under West Virginia Rule of Appellate Procedure 21; the source metadata identifies it as published.
PARTIES	Dwight D. Conn, Donna J. Conn v. James L. Beckman, Brooke F. Beckman

TOPICS

easements

summary judgment

real estate

appellate procedure

standard of review

PRACTICE AREAS

real estate

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QUESTIONS PRESENTED

1. Whether the 1970 deed contained a sufficiently definite description of a right-of-way to create an enforceable easement against subsequent titleholders.
2. Whether the circuit court erred in considering the Conns' notice of the easement and the open and obvious nature of the driveway in evaluating their bona fide purchaser argument.
3. Whether the doctrine of merger extinguished the Beckmans' easement because of common ownership interests in the properties.
4. Whether summary judgment was properly granted to the Beckmans.

HOLDINGS

1. The 1970 deed contained a sufficient description of a right-of-way to make the easement enforceable against future titleholders. The deed identified the existing driveway, located it on the described parcel, and specified its connection to Roadway D; an exact metes-and-bounds description of the driveway itself was not required.
2. The circuit court did not err in considering the Conns' actual and constructive notice of the right-of-way. Because the driveway was open and obvious and the Conns acknowledged their knowledge of the easement or apparent easement, they were not protected as bona fide purchasers.
3. The doctrine of merger did not extinguish the Beckmans' easement because the two properties were not held with complete unity of title.
4. Summary judgment for the Beckmans was proper, and the Conns were not entitled to partial summary judgment.

KEY QUOTATIONS

“As to the Conns’s argument that the 1970 deed does not contain the exact metes and bounds of the “existing driveway,” “[West Virginia] Code § 36-3-5a(a) (2004) provides that a right-of-way cannot be declared invalid because of the failure of the granting instrument to include a metes and bound description, a centerline specification, or a drawing or plat reference.”” (6)

“Accordingly, we find that the circuit court did not err in rejecting the Conns’s merger argument due to the lack of unity of title in the two properties.” (8)

FACTUAL BACKGROUND

The Conns and Beckmans owned adjacent properties in the J.B. Miller Subdivision. A driveway crossed the Conns' property and provided the only access to both homes; the Beckmans also used a gravel parking pad and sidewalk connected to the driveway. Historical deeds and right-of-way agreements, including a 1970 deed and a 1992 agreement, described a right to use an existing driveway for ingress and egress. After the Conns learned through a 2015 survey that portions of the driveway, parking pad, and sidewalk were on their property, disputes arose and the Conns filed an action challenging the Beckmans' rights.

PROCEDURAL HISTORY

The Conns purchased property formerly owned by Margaret E. Garrett's heirs. The Beckmans later purchased adjacent property and asserted rights to use a driveway, parking pad, and sidewalk located partly on the Conns' property. The Conns sued for trespass and declaratory relief, while the Beckmans moved for summary judgment based on deeds, plats, and right-of-way agreements. The Circuit Court of Marion County granted the Beckmans' motion and denied the Conns' motion for partial summary judgment. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- Andrick v. Town of Buckhannon, 187 W. Va. 706, 421 S.E.2d 247 (1992)
- Toth v. Board of Parks & Recreation Commissioners, 215 W. Va. 51, 593 S.E.2d 576 (2003)
- Highway Properties v. Dollar Savings Bank, 189 W. Va. 301, 431 S.E.2d 95 (1993)
- Folio v. Clarksburg, 221 W. Va. 397, 655 S.E.2d 143 (2007)
- Hoard v. Railroad Co., 59 W. Va. 91, 53 S.E. 278 (1906)