

SUPREME COURT OF NEBRASKA

Lake Arrowhead, Inc. v. Jolliffe

639 N.W.2d 905, 263 Neb. 354 (2002) · No. No. S-00-966 · Decided March 8, 2002

SUMMARY

The Supreme Court of Nebraska reviewed a declaratory judgment action concerning access to an 11.5-acre parcel adjacent to a gated residential subdivision. The court held that the appellee failed to prove the adverse-use element required for a prescriptive easement because prior access had been permissive, but affirmed that using a subdivision lot to access the parcel did not violate the applicable residential restrictive covenant.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, Justice; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	March 8, 2002
DOCKET	No. S-00-966
DISPOSITION	other
PROCEDURAL POSTURE	Lake Arrowhead appealed from a Washington County District Court order granting Jolliffe a permanent prescriptive easement over subdivision roads and declaring that his use of Lot 4 to access an adjacent parcel did not violate restrictive covenants.
STANDARD OF REVIEW	Because the declaratory judgment action and requested injunction involved equitable issues, the appellate court tried factual issues de novo on the record and reached an independent conclusion, while giving weight to the trial court's credibility determinations when credible evidence conflicted on material facts.
PRECEDENTIAL VALUE	Published opinion; precedential Nebraska Supreme Court decision
PARTIES	Lake Arrowhead, Inc. v. Tony Jolliffe

TOPICS

- prescriptive easements
- covenants and restrictions
- declaratory judgment
- real estate
- appellate procedure

PRACTICE AREAS

Real estate law

Easements

Restrictive covenants

Declaratory judgments

Appellate procedure

QUESTIONS PRESENTED

1. Whether Jolliffe established a prescriptive easement over Lakeland Estates roads for ingress to and egress from his adjacent parcel.
2. Whether Jolliffe's use of Lot 4 to access the adjacent parcel violated Lakeland Estates' restrictive covenant requiring lots to be used for residential purposes.
3. Whether the district court's rulings concerning the scope and burden of the claimed easement were correct.

HOLDINGS

1. Jolliffe did not establish a prescriptive easement because he failed to prove by clear, convincing, and satisfactory evidence that the prior owner's use was adverse.
2. Jolliffe's use of Lot 4 for ingress to and egress from the adjacent parcel did not violate the restrictive covenant limiting lots to residential use.

KEY QUOTATIONS

“A party claiming a prescriptive easement must show that his or her use was exclusive, adverse, under a claim of right, continuous and uninterrupted, and open and notorious for the full 10-year prescriptive period.” (911)

“It is undisputed that Lake Arrowhead erected a locked gate which blocked part of Mammel's route to the parcel and that Mammel was required to wait for a representative of the subdivision to unlock the gate and allow him access.” (912)

“There is nothing in Jolliffe's proposed use of Lot 4 which violates the terms of the restrictive covenants.” (913)

FACTUAL BACKGROUND

Tony Jolliffe owned an approximately 11.5-acre parcel adjacent to, but outside, the gated Lakeland Estates subdivision. Because a creek isolated most of the parcel, access was available from subdivision roads, including Summit Drive, or from Jolliffe's undeveloped Lot 4. A prior owner, William Mammel, used Lakeland Estates roads to reach the parcel approximately 10 to 40 times per year, but testified that Lake Arrowhead had given him permission to do so and that subdivision personnel controlled access through a locked gate. Jolliffe later sought an easement, was denied one, and began using Lot 4 after Lake Arrowhead told him that Lot 4 could be used for access.

PROCEDURAL HISTORY

Lake Arrowhead filed a declaratory judgment action seeking declarations that Jolliffe lacked a prescriptive easement and that his use of Lot 4 violated the subdivision's restrictive covenants, along with injunctive relief.

Jolliffe counterclaimed for recognition of a prescriptive easement and a right to use Lot 4. After a bench trial, the district court ruled for Jolliffe on both issues. The Nebraska Supreme Court reversed the prescriptive-easement ruling and affirmed the restrictive-covenant ruling.

DISPOSITION

other

CASES CITED

- Nebraska Nutrients v. Shepherd, 261 Neb. 723, 626 N.W.2d 472 (2001)
- Hillary Corp. v. United States Cold Storage, 250 Neb. 397, 550 N.W.2d 889 (1996)
- Harders v. Odvody, 261 Neb. 887, 626 N.W.2d 568 (2001)
- Svoboda v. Johnson, 204 Neb. 57, 281 N.W.2d 892 (1979)
- Simacek v. York County Rural P.P. Dist., 220 Neb. 484, 370 N.W.2d 709 (1985)
- Jurgensen v. Ainscow, 155 Neb. 701, 53 N.W.2d 196 (1952)
- Latenser v. Intercessors of the Lamb, Inc., 250 Neb. 789, 553 N.W.2d 458 (1996)
- Reed v. Williamson, 164 Neb. 99, 82 N.W.2d 18 (1957)
- Briggs v. Hendricks, 197 S.W.2d 511 (Tex. Civ. App. 1946)