

SUPREME COURT OF VIRGINIA

Clifton v. Wilkinson

Clifton · No. Record No. 121232 · Decided September 12, 2013

SUMMARY

The Supreme Court of Virginia held that an easement by necessity does not arise when property becomes landlocked through an exercise of eminent domain rather than through a conveyance severing a unity of title. The court concluded that any damages resulting from the loss of access were compensable in the condemnation proceeding and reversed the circuit court’s judgment granting an easement.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Charles S. Russell; Kinser, C.J.; Lemons, J.; Goodwyn, J.; Millette, J.; Mims, J.; Powell, J.; Russell, S.J.
JURISDICTION	Virginia
DECIDED	September 12, 2013
DOCKET	Record No. 121232
DISPOSITION	reversed
PROCEDURAL POSTURE	The Cliftons appealed a circuit court judgment declaring that Evelyn Rose Wilkinson possessed an easement by necessity over an access lane and enjoining obstruction of the lane.
STANDARD OF REVIEW	De novo review because the dispositive question was one of law.
PRECEDENTIAL VALUE	Published opinion; precedential value not otherwise specified in the source.
PARTIES	Mac R. Clifton, Carol Clifton, Beatrice Jones v. Evelyn Rose Wilkinson

TOPICS

- easement by necessity
- eminent domain
- real estate
- appellate procedure
- standard of review

PRACTICE AREAS

- real estate law
- eminent domain
- easements
- appellate procedure

QUESTIONS PRESENTED

1. Whether an easement by necessity can arise when a parcel becomes landlocked by an eminent-domain taking rather than by a conveyance severing a former unity of title.
2. Whether the circuit court properly declared that Wilkinson had a right of ingress and egress over the Cliftons' access lane.

HOLDINGS

1. An easement by necessity does not arise when a parcel becomes landlocked by the exercise of eminent domain. Such an easement requires that the necessity for access arise simultaneously with a conveyance that severs a former unity of title.
2. The circuit court erred in declaring an easement by necessity because the record did not establish a qualifying conveyance-based severance that caused the parcel to become landlocked.

KEY QUOTATIONS

“A right of way by necessity arises from an implied grant or implied reservation.” (5)

“The necessity cannot arise subsequent to the conveyance because “the necessity referred to is the subjective necessity of the inference that the parties so intended at the time of the grant” or reservation.” (6)

“Because the ten-acre tract did not become landlocked by a conveyance from a former owner severing a former unity of title, no implied grant of a right of ingress and egress arose.” (7)

FACTUAL BACKGROUND

In 1957, C. T. Wilkinson, Jr. received an 18.35-acre tract adjoining Route 704. In 1961, the State Highway Commissioner condemned 3.83 acres through the tract for construction of limited-access Interstate 81, leaving a 9.64-acre parcel landlocked and awarding compensation for the taking and damage to the residue. Wilkinson subsequently accessed the parcel for farming through an unpaved lane across neighboring property owned by the Cliftons, with their permission, for approximately 45 years. After Wilkinson's death and the termination of the permissive arrangement, the Cliftons blocked the lane, prompting Evelyn Rose Wilkinson's action.

PROCEDURAL HISTORY

After a parcel became landlocked following a 1961 eminent-domain taking for construction of Interstate 81, the parcel owner used an access lane across the Cliftons' property for approximately 45 years with permission. The Cliftons later blocked the lane after terminating that permission. Wilkinson sought declaratory relief based on a prescriptive easement or, alternatively, an easement by necessity; the prescriptive-easement claim was withdrawn. The Circuit Court of Washington County found an easement by necessity and entered an injunction, and the Supreme Court of Virginia reversed and entered final judgment for the Cliftons.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None; the court entered final judgment for the Cliftons.

CASES CITED

- Mulford v. Walnut Hill Farm Group, LLC, 282 Va. 98, 109, 712 S.E.2d 468, 475 (2011)
- Fairfax's Devisee v. Hunter's Lessee, 11 U.S. (7 Cranch) 603, 604 (1812)
- Maryland v. West Virginia, 225 U.S. 1, 10 (1912)
- O'Dell v. Stegall, 703 S.E.2d 561, 570 (W. Va. 2010)
- Gray v. Virginia Secretary of Transportation, 276 Va. 93, 104, 662 S.E.2d 66, 72 (2008)
- Middleton v. Johnston, 221 Va. 797, 802-03, 273 S.E.2d 800, 803 (1981)
- American Small Business Investment Co. v. Frenzel, 238 Va. 453, 456, 383 S.E.2d 731, 734 (1989)