

COURT OF APPEALS OF MARYLAND

Bishields v. Campbell et ux., 200 Md. 622

91 A.2d 922 (1952) · No. No. 24, October Term, 1952 · Decided October 24, 2001

SUMMARY

The Maryland Court of Appeals addresses the scope of a prescriptive right-of-way easement and the servient owner's ability to maintain gates across it. The court holds that prior unlocked gates limited, but did not defeat, the prescriptive easement, and reverses the portion of the decree categorically prohibiting any gate or obstruction.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Delaplaine, J.; Markell, C.J.; Collins, J.; Henderson, J.; Hammond, J.
JURISDICTION	Maryland
DECIDED	October 24, 2001
DOCKET	No. 24, October Term, 1952
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Second appeal from a decree of the Circuit Court for Allegany County concerning an injunction against obstruction of a prescriptive right-of-way. The defendant appealed from the portion of the decree enjoining him from maintaining any gate or other obstruction on the roadway.
PRECEDENTIAL VALUE	Published precedential opinion of the Court of Appeals of Maryland
PARTIES	Michaele Bishields v. James E. Campbell and wife

TOPICS

prescriptive easements easements equitable relief appellate procedure remedies

PRACTICE AREAS

Real property Easements Equitable remedies Appellate procedure

QUESTIONS PRESENTED

1. Whether the servient-estate owner could maintain a gate across a prescriptive right-of-way where prior gates had existed but had not prevented passage.

2. Whether the injunction barring the defendant from maintaining any gate or other obstruction conformed to the Court of Appeals' prior opinion and the scope of the prescriptive easement.

HOLDINGS

1. Absent an agreement or surrounding circumstances showing otherwise, the owner of the servient estate may maintain gates at the beginning and termination of a right-of-way, so long as the use does not unreasonably interfere with the easement.
2. The decree could not categorically prohibit the defendant from maintaining any gate or obstruction because the prior use established a right to passage, not necessarily a right to an entirely unobstructed roadway. The second paragraph of the decree was therefore stricken.

KEY QUOTATIONS

“a right of way is merely a right of passage and the owner of the land is entitled to use it for any purpose that does not unreasonably interfere with the use of the easement.” (624)

“The law is also clear that when an easement has been acquired by prescription, the character and extent of the use permissible are commensurate with and determined by the character and extent of the use during the prescriptive period.” (625)

“We held that the fact that unlocked gates had been erected across the roadway for the statutory period did not negative, but merely limited, the prescriptive right.” (626)

FACTUAL BACKGROUND

The complainants used a roadway across the defendants' land for more than forty years to reach their home and had acquired a prescriptive easement on the first appeal. The defendants erected a steel-and-wire gate at the roadway entrance and locked it. Although three earlier gates had existed during the prescriptive period, none had been locked, and the complainants could open them and continue along the road.

PROCEDURAL HISTORY

The Circuit Court for Allegany County initially dismissed the complainants' bill. On the first appeal, the Court of Appeals reversed and remanded, holding that the complainants had acquired an easement by prescription and could seek injunctive relief. On remand, the circuit court entered a decree declaring the right of the complainants and the public to use the roadway and enjoining the defendant from maintaining any gate or obstruction. The Court of Appeals reversed the second paragraph of that decree and remanded with instructions to strike it.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The second paragraph of the decree was to be stricken. The first paragraph was affirmed, and the case was remanded with costs to the appellant.

CASES CITED

- Campbell v. Bishields, 197 Md. 572, 80 A.2d 262
- Baker v. Frick, 45 Md. 337, 341, 24 Am. Rep. 506
- Barry v. Edlavitch, 84 Md. 95, 112, 35 A. 170, 33 L.R.A. 294
- Shivers v. Shivers, 32 N.J. Eq. 578
- Rogerson v. Shepherd, 33 W. Va. 307, 10 S.E. 632, 636
- Frazier v. Myers, 132 Ind. 71, 31 N.E. 536
- Brill v. Brill, 108 N.Y. 511, 15 N.E. 538, 539

OPINION

DELAPLAINE, J.

200 Md. 622 (1952) 91 A.2d 922 BISHIELDS v. CAMBBELL ET UX. [No. 24, October Term, 1952.] Court of Appeals of Maryland. Decided November 11, 1952. *623 The cause was argued before MARKELL, C.J., and DELAPLAINE, COLLINS, HENDERSON and HAMMOND, JJ. Matthew J. Mullaney, for appellant. William L. Wilson, Jr., for appellees. DELAPLAINE, J., delivered the opinion of the Court.

This is the second appeal in the suit brought in the Circuit Court for Allegany County by James E. Campbell and wife to enjoin Michael Bishields and wife from barricading a road near Slabtown, over which they claimed a right of way, leading from the public highway through the land of defendants to their own home.

In the bill filed on November 2, 1949, complainants alleged that prior to October 26, 1949, they had been using the roadway continuously and adversely more than forty years and had thus acquired an easement over the land of defendants, but that defendants had erected a steel and wire gate at the entrance of the roadway and put a lock on the gate, thereby closing the roadway to complainants and the public.

Before testimony was taken, the Court was informed that Mrs. Bishields was dead, and the case proceeded against Bishields as the sole defendant. It appeared at the trial that the gate complained of was the fourth gate that had been erected there during a period of at least forty years, but the three previous gates had never been locked. Defendant asserted that he had complained of the use of the roadway by complainants, but had never taken any action to prevent them from using it.

On November 15, 1950, the Court dismissed the *624 bill, and from that decree complainants took the first appeal. On April 13, 1951, the Court of Appeals reversed the decree and remanded the case for the passage of a decree in conformity with the Court's opinion.

We held in that opinion, which was written by Judge Grason, that the evidence established that complainants had used the roadway through defendant's land openly, continuously and adversely

more than twenty years, and thus had acquired an easement by prescription.

We further held that, since complainants had no other reasonably convenient way to their property, they were not precluded from obtaining an injunction on the ground that they would not suffer irreparable injury because of the obstruction. *Campbell v. Bishields*, 197 Md. 572, 80 A.2d 262.

On April 4, 1952, the Circuit Court entered another decree, which consists of three paragraphs. The first paragraph declares that complainants and the public have the right to the free use of the roadway over defendant's property from the public road to the property of complainants. Defendant made no objection to that paragraph, but appealed from the second paragraph, which enjoins him from "maintaining any gate or other obstruction on said roadway or from interfering in any manner with the free use of the same."

As the second decree has given rise to controversy over the meaning of "free use of the roadway," we think it appropriate to state the general principle that a right of way is merely a right of passage and the owner of the land is entitled to use it for any purpose that does not unreasonably interfere with the use of the easement. Hence, it is held in this State that, in the absence of an agreement or surrounding circumstances to the contrary, the owner of the servient estate has the right to maintain gates on a right of way at the points where the way begins and terminates.

Baker v. Frick, 45 Md. 337, 341, 24 Am. Rep. 506. Of course, if a grant, construed in connection with the *625 surrounding circumstances, shows an intention that no gate shall be erected, such a showing of intention is controlling. It is equally true that the fact that a gate was standing at the time of a grant is a circumstance that strengthens the presumption that the parties contemplated that a gate might thereafter be maintained.

The law is also clear that when an easement has been acquired by prescription, the character and extent of the use permissible are commensurate with and determined by the character and extent of the use during the prescriptive period. *Barry v. Edlavitch*, 84 Md. 95, 112, 35 A. 170, 33 L.R.A. 294.

Accordingly, where the owner of land, over which another has acquired a right of way by prescription, erects a gate across the way, where there had been no gate for more than twenty years, equity might protect the owner of the easement in his use of the way entirely unobstructed by such gate. *Shivers v. Shivers*, 32 N.J. Eq. 578.

On the other hand, where a right of way has been acquired by prescription, but the owner of the land maintained a gate across the way during the entire prescriptive period, he may continue to maintain a gate across the way afterwards. *Rogerson v. Shepherd*, 33 W. Va. 307, 10 S.E. 632, 636.

In a case in Indiana, where a deed reserved a right of way which was not to be fenced, but for a period of forty years the parties had used the way with gates swung at either end, the Court held

that the maintenance of the gates was in accordance with the intention of the parties, and therefore none of them could successfully contend afterwards that no gates were to be permitted.

Frazier v. Myers, 132 Ind. 71, 31 N.E. 536. In Brill v. Brill, 108 N.Y. 511, 15 N.E. 538, 539, where the defendant had a right of way over the plaintiff's farm, the Court of Appeals of New York stated that the dispute as to whether the plaintiff had the right to have gates at the two ends of the road presented *626 the factual question whether they unnecessarily interfered with the defendant's use of the road.

On that question the Court observed: "The duty of the defendant to keep upon his own lands such cattle and other animals as he may possess, and to keep up and maintain his own portion of the fence line, of which the gate in question is a part, is mitigated only by his privilege to have a reasonably convenient passage upon the road over the plaintiff's land.

In regard to it the rights of the two parties are correlative, and both are protected when the gate is opened only for necessary use, and closed when passage through it in either direction is effected." In the instant case it was shown that, prior to the erection of the gate in controversy, defendants had put up three other gates, which had been knocked down during the course of 37 years.

The important circumstance in the case is that none of the three previous gates had ever been locked and accordingly there was nothing to prevent the use of the roadway by complainants. Very often the gate was open. But when it was closed, complainants opened it and continued on their way.

We held that the fact that unlocked gates had been erected across the roadway for the statutory period did not negative, but merely limited, the prescriptive right. As the second paragraph of the decree is not in conformity with the opinion of the Court of Appeals, we reverse that part of the decree and remand the case to the Court below with instruction that the second paragraph be stricken out.

Decree affirmed in part and reversed in part, and case remanded, with costs to appellant.