Amarillo Court of Appeals Rules in Landlocked Property Case

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The Amarillo Court of Appeals recently issued an opinion in *Gordon v. Demmon*, a case involving access to landlocked property. This is an issue more common in Texas than one might realize, so I always find court opinions instructive and a good reminder to landowners about some key considerations when dealing with access to property.

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Background

In 1971, the Gordons purchased a 6 acre tract of land in Bell County, which was severed from a larger tract owned by the Bremsers. The Gordon's property is landlocked, but since 1971, it has been accessed by two roads. The "South Road" along the south and west sides of their tract, and the "Schrader Road" along the northern side of the tract. Mr. Gordon testified that there is a canyon running

through the center of his property, making it "very difficult" to get to the south side from the north side. He also described that as "very impassible by vehicle." Because of this, he testified, the two separate entries were necessary.

In 2003, the Demmons purchased the tracts of land previously owned by the Bremsers upon which both the South and Schrader Roads are located. The Gordons claim that the new owners then began obstructing access from both roads by locking a gate allowing access.

In 2011, the Gordons sued the Demmons seeking to establish an easement over both the Schrader and South Roads.

Trials

At the initial trial, the trial court granted easements by necessity in favor of the Gordons for both the Schrader and South Roads. The court described the easement as being that portion of property "reasonably required to permit the holder to accomplish the purpose of the easement, which is ingress and egress" to the Gordon's land. The easements were to be "no wider than reasonably necessary" to allow ingress and egress to the property.

The Demmons sought a partial new trial to determine the sole issue of the scope and location of the declared easements. The court granted that motion and a new trial was held.

During the partial new trial, Mr. Gordon testified about his plan to subdivide his tract with private residences and recreational facilities. He reiterated his need for a 60′ wide easement along both roads.

The court granted the Gordons an easement by necessity for Schrader Road for the general purpose of ingress and egress "plus an additional 30 foot wide easement to access" their property. Along South Road, a second easement was granted.

The Gordons, unsatisfied with the easements granted, appealed. In particular, they argued that the court erred in not granting them a 60′ easement by necessity and erred by not granting an easement by estoppel.

Currently, no petition for review by the TX Supreme Court has been filed, but the deadline for doing so has not yet passed.

Appellate Court Opinion

The Amarillo Court of Appeals affirmed the trial court's decision. [Read Opinion here.]

Easement by necessity.

In order to successfully prove an easement by necessity, the party claiming the easement must demonstrate: (1) unity of ownership of the alleged dominant and servient estates prior to severance; (2) the claimed access is a necessity, not a mere convenience; and (3) the necessity existed at the time the two properties were severed.

The Amarillo Court of Appeals focused on the issue of necessity in its opinion–how wide of an easement was actually necessary for the Gordons to access their property? The court found that there was sufficient evidence int eh record to support the trial court's conclusion that a more limited easement along Schrader road was sufficient to allow necessary access. Further, because the South Road allowed access to the property, the court reasoned that further established that a wider easement across Schrader road was not a necessity.

Importantly, the question of whether two easements by necessity to access one tract of property were required was not raised by the parties on appeal and was not addressed by the court. At least one other TX case, *Duff v. Matthews,* 311 S.W.2d 637 (Tex. 1958) reversed an easement by necessity where the landlocked owner did have access to another portion of the landlocked property.

Thus, the appellate court upheld the trial court's easements by necessity as granted.

Easement by estoppel.

In order to prove an easement by estoppel, the Gordons would have to prove: (1) a representation of the easement was communicated to them, either by words or action; (2) the communication was believed; and (3) the Gordons acted upon the promise. "In order to create an easement by estoppel, something must be said or done by the owner of the servient estate at the time of the grant of the dominant

estate that induces the acceptance of the grant." Here, that would have required a communication from Mr. Bremser to Mr. Gordon at the time Gordon purchased the 6 acre property. Unfortunately, Mr. Bremser died before trial and was unable to testify. There was no writing or witnesses describing what Mr. Bremser communicated to Mr. Gordon in 1971. Under the rules of evidence, the mere testimony from Mr. Gordon about what Mr. Bremser said 41 years ago was inadmissible. Without any evidence of communications made by Mr. Bremser, an easement by estoppel could not be proven.

Key Takeaways

The most important take away from this (and may be every) landlocked property case is that any access easements need to be in writing. If a potential buyer is looking at purchasing landlocked property, he or she should ensure that an express, written easement is obtained and filed prior to purchase. If someone currently owns property that is landlocked but for which informal access has been granted, the owner should seek to obtain an express, written easement from the current owners of the property being crossed. This is almost always the safest, surest way to protect access to property and avoid a legal dispute.

Next, it is important to spell out the exact details of the easement being granted. For example, easements should certainly include the width of the easement–a major issue in this case–but also should address permissible activities. For example, in 1971 the road was being used only by one person for access to the land. Now, the Gordons plan to subdivide and need access for multiple families. That is an issue that could potentially have been addressed in a written easement agreement.

Finally, remember that people die. Very often in cases involving access to property, a key witness has passed away. As was the case here, without the ability to obtain testimony about what was done, said, or existed at the time of property severance, oftentimes, there is simply no way to prove the existence of an easement. Yet another reason that any easement or access agreement should be reduced to writing.