

Case Addresses Easement Access for Landlocked Parcel

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The issue of accessing landlocked property in Texas is one on which I get calls at least once a week. There is a lot of misinformation out there about accessing landlocked property. A recent case from the Ft. Worth Court of Appeals looked at whether the owner of one parcel had the right to cross two adjacent parcels to reach a public road.

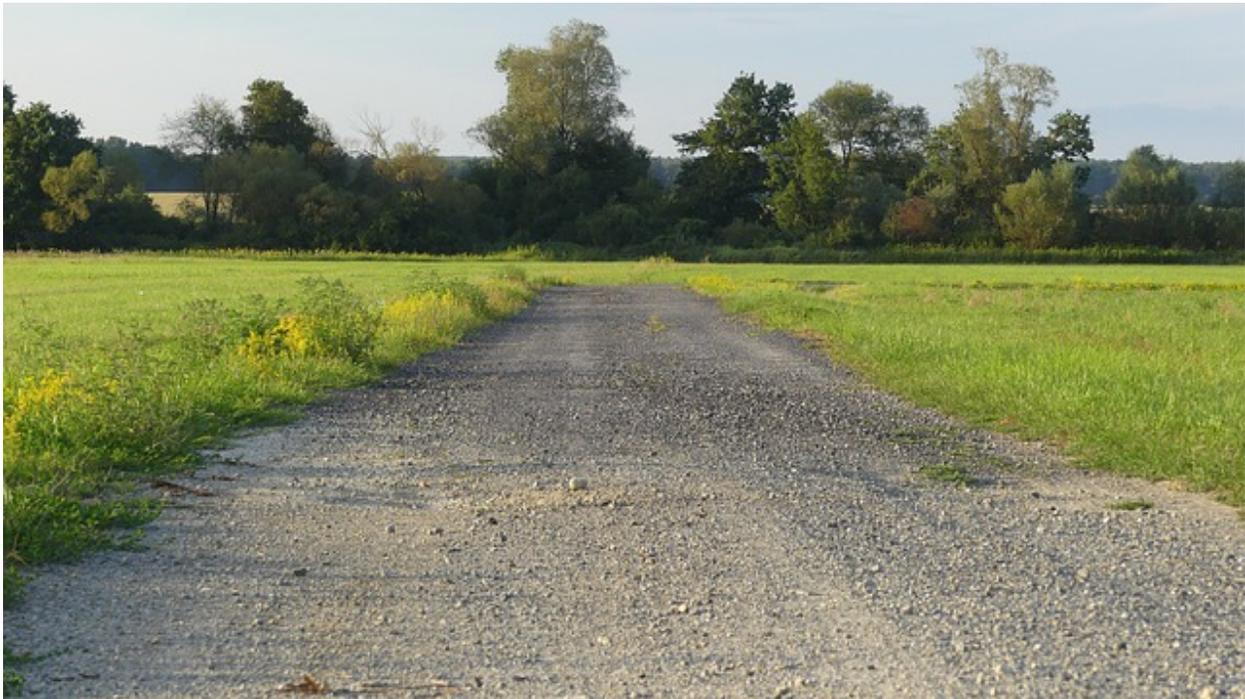
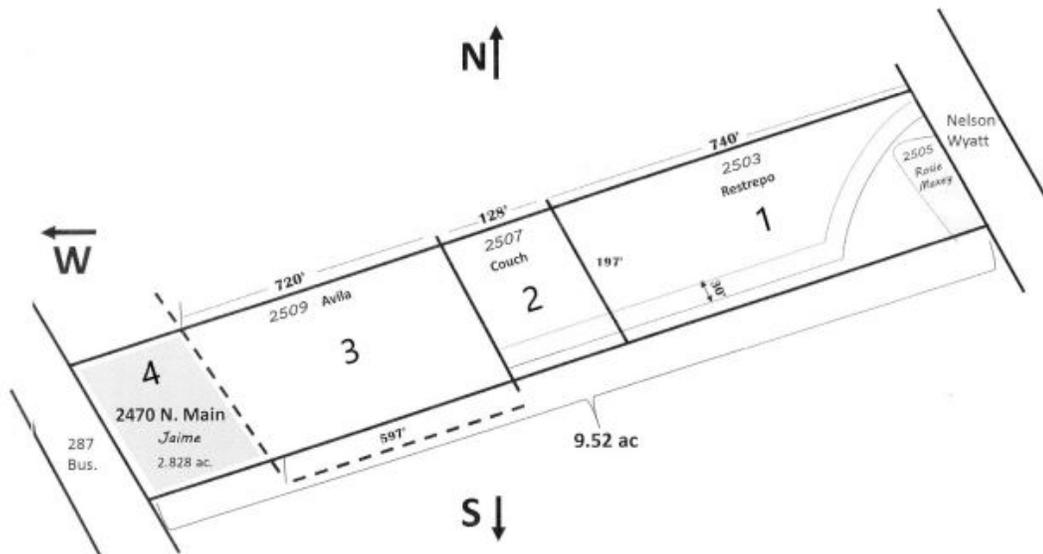


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Background

This case involved a stretch of land in Mansfield, Texas. In 1999, Mr. Maxey, the owner, divided the property into four perpendicular lots, as depicted below:



Both Lots 1 and 4 had public road access. Lots 2 and 3 were dependent on a gravel driveway that ran through Lots 1 and 2 to access Nelson Wyatt Road.

When Maxey divided the property, he sold Lots 2 and 4. He granted the owner of Lot 2 an express easement to cross Lot 1 in order to reach Nelson Wyatt Road. Lot 3 was eventually purchased through a constable tax sale and was eventually sold to Avila.

The issue in this case is whether the current owner of Lot 3, Avila, has an express easement or an easement by necessity to cross Lot 2 (owned by Couch) and Lot 1 (owned by Restrepo). Couch and Restrepo claimed that Avila had no right to cross their property and then blocked the driveway with a locked gate on the border between lots 1 and 2, which left Lot 3 landlocked.

Lawsuit

Avila sued Couch seeking a declaratory judgment that Lot 3 had an express easement and easement by necessity to cross Lots 1 and 2. Couch and Restrepo countersued seeking an injunction to prevent Avila from using the driveway.

A bench trial was held, and the trial court found an easement by necessity over Lots 1 and 2 for the benefit of Lot 3. The court denied Avila's request to grant an express easement. Both sides appealed.

Opinion

The court addressed both claims on appeal.

Easement by Necessity

First, the court addressed the Avila's claim of an easement by necessity. To successfully assert an easement by necessity, the party claiming the easement must prove: (1) unity of ownership of the alleged dominant and servient estates prior to severance; (2) the claimed access remains a necessity and not a mere convenience; and (3) the necessity also existed at the time the entities were severed. In order to show necessity, a claimant must show that he lacks any alternative route to legally access the public roadway from his property.

Here, Couch and Restrepo conceded the first and second elements were satisfied in this case. The dispute laid with element 3. Couch and Restrepo claimed that there was no historical necessity for an easement over Lot 1. Their theory was that because at the time of severance, Maxey owned Lots 1 and 3, there was only necessity with regard to Lot 2. As the owner of Lot 1, Maxey had no need for an easement over his own property. This absence of historical necessity, Couch and Restrepo argued, defeated the claim of an easement by necessity.

The court explains this as being a question of what is necessary. If it is the necessity of an easement at severance, then Avila loses because clearly Maxey did not need an easement to access his own property (Lot 1). However, the Texas Supreme Court does not ask about the necessity of an easement, but instead the necessity of access or a roadway across the servient estate. Based on this, the court ruled, that because at the time of severance, Maxey may not have needed an easement, but he certainly needed access across Lot 1 to reach a public road. As the court explained, "The historical necessity is not diminished by the fact that he had the legal right to cross Lot 1 as the owner of Lot 1—even if it was a right he had, it was still a right he needed."

Thus, the court affirmed the trial court's decision of an easement by necessity.

Express Easement

Avila claims that the trial court erred in denying him an express easement across both Lots 1 and 2. This was based on what the court called a "quirk" in the 1999 deed. In the deed, Maxey granted the purchaser of Lot 2 an express easement to cross Lot 1. However, in the metes and bounds of the easement stretched not just across Lot 1, but all the way across Lot 2 to the border of Lot 3. Thus, the metes and bounds appeared that Maxey was granting the owner of Lot 2 an express easement to cross Lot 2 as well, which all parties agree was unnecessary. Avila argued that this metes and bound description granted an easement to the owner of Lot 2 to cross Lot 1, but also granted the owner of Lot 3 to cross Lot 1 and Lot 2.

The court disagreed because nothing in the language of the deed suggest that reservation was made. In fact, the deed language provides the opposite, stating that there were no such reservations. Thus, if Maxey intended to grant an easement to the owner of Lot 3, it had to be expressly done in the deed. It was not. The deed construction rules agree with this because courts do not favor reservations by implication, but require they be made by clear language.

Thus, the court held the unambiguous language of the deed in question did not reserve an express easement in favor of Lot 3.

Key Takeaways

As with every easement case, this illustrates the importance of having any access easements expressly agreed upon, put in writing, and recorded at the courthouse. This avoids the types of disputes involved in this case where parties dispute whether an implied easement exists. If you have an easement—either one that you utilize or one crossing your land—please take the time to write and record that easement to protect both parties.