

IN THE DISTRICT COURT OF MCCLAIN COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
McClain County, Oklahoma

JAN 09 2009

Lynda Baker, Court Clerk
by _____, Deputy

Case No. CV-09- 14

A. DAVID SPARLIN and CATHY ELLIS,)
father and daughter,)
)
Plaintiffs,)
)
vs.)
)
JOHN MANTOOTH,)
)
Defendant.)

PETITION FOR EASEMENT BY NECESSITY

COMES NOW the Plaintiffs, A. DAVID SPARLIN and CATHY ELLIS, (herein collectively and individually referred to as "Plaintiffs"), in their claims against John Mantooth ("Defendant") for the allege and state as follows:

Parties, Jurisdiction and Venue

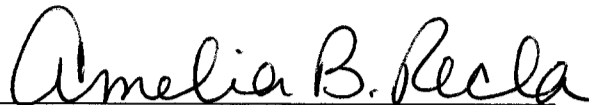
- 1. Plaintiffs are individuals who currently live in McClain County, State of Oklahoma, and own land adjacent to Defendant's land.
- 2. Defendant is a resident of McClain County, State of Oklahoma and owns land at issue in said county.
- 3. The real property at issue herein is located in McClain County, State of Oklahoma.
- 4. Jurisdiction and venue are both herein appropriate and proper.

Statement of Facts

- 5. Mr. Russell Hubbard originally owned both the land currently owned by Plaintiffs and Defendant in its entirety.
- 6. Mr. Hubbard sold a little over twenty-one (21) acres of said land to A. David Sparlin.

7. Mr. Hubbard also sold surrounding/adjacent land to Defendant.
8. Plaintiffs own landlocked property adjacent to Defendant's property.
9. A. David Sparlin gave a portion of his land, which was partly adjacent to Defendant, to his son, David E. Sparlin.
10. On July 28, 1993, Defendant granted David E. Sparlin, along with his wife, an easement from the public roadway to their land-locked property, which lay just South of Defendant's property. A copy of the Grant of Right of Way and plan for easement are attached as Exhibit 1.
11. A. David Sparlin has since deeded land which is partly adjacent to Defendant's property as well.
12. Plaintiffs now wish to build a house on their property, yet do not have any way of ingress or egress to such land from the public road.
13. Plaintiffs have been in contact with Defendant to allow them to use the private road leading up to the Sparlin property, for which an easement was already granted to David E. Sparlin, A. David Sparlin's son, and which was already constructed and paid for by the Sparlins.
14. Defendant has denied Plaintiffs an easement on this already existing private road.
15. It is necessary for Plaintiffs to use this private road in order to access their property.
16. This necessity existed at the time the parcels of land were divided and sold by Mr. Hubbard, because the public road was in existence at that time.

ACCORDINGLY, Plaintiffs request this Court to order an easement by necessity on the already constructed private roadway owned by Defendant which is the only access to Plaintiffs' property.



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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of January, 2009, I mailed, postage prepaid, return receipt requested, by Certified U.S. Mail, a true and correct copy of the above and foregoing, to the individual listed below:

John Mantoath
111 North Third Ave.
P.O. Box 667
Purcell, Oklahoma 73080

Grant of Right Of Way

Indenture, made the 28th day of July, 1993 between John Mantooth, Grantor, and David E. Sparlin and Jone Sparlin, husband and wife, Grantee.

Whereas, the Grantor is seised of an estate in fee simple of a parcel of land described as NW/4 NE/4 NW/4 of Section 36, T.7N, R2W of the I.B.M., and marked on the plan annexed herto, across which there runs a private road shown on the plan by the dotted lines between Point "A", where the road opens into a roadway along the North boundary of said NW/4 NE/4 NW/4 of Section 36, 7N, 2W of the I.B.M., and Point "B", where it opens into property owned by Arther David Sparlin in the South 175 feet of the SW/4 NE/4 NW/4 Section 36T, 7n., R.2.W. of the I.B.M.;

Whereas, the Grantee is seised in fee simple of another parcel of land near the Grantor's land; and

Whereas, the Grantor has agreed, in consideration of the sum of \$10.00 and more, to grant to the Grantee an easement or right of way over the said private road:

Witnesseth, that in pursuance of the said agreement and in consideration of the sum of \$10.00 and more paid by the Grantee to the Grantor, the receipt whereof is hereby acknowledged, the Grantor

hereby grants to the Grantee,

Full and free right and liberty for him and them, his and their servants and visitors, in common with all others having the like right, at all times hereafter, with or without vehicles of any description, for all purposes connected with the use and enjoyment of the said land of the Grantee, to pass and repass along the said private thirty (30) foot wide road for the purpose of going from the said Point "A" to the said Point "B", or vice versa. Provided that the roadway will be narrowed wherever necessary so as to not require the removal of or damage to trees and their roots. It is specifically agreed that grantee will not damage, waste, or destroy trees or the land in any way.

In witness whereof, the Grantor has hereunto set his hand and seal the day and year first above written.

John Mantooth
Grantor, John Mantooth

STATE OF OKLAHOMA)
)
COUNTY OF MCCLAIN)

SS:

Before me, the undersigned, a Notary Public in and for said County and State on this 28th day of July, 1993, personally appeared John Mantooth appeared to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

10-6-93
My commission expires

Joyce M. Perry
Notary Public

