

2-8-2016

Spectra Site Communications v. Lawrence Appellant's Reply Brief Dckt. 43082

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Spectra Site Communications v. Lawrence Appellant's Reply Brief Dckt. 43082" (2016). *Idaho Supreme Court Records & Briefs*. 5736.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5736

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

SPECTRA SITE COMMUNICATIONS, INC.,)	
)	
Plaintiff/Respondent,)	Docket No. 43082
)	Case No. 2003-4621
vs.)	
)	
DOUGLAS LAWRENCE and BRENDA J. LAWRENCE,)	
)	
Defendant/Appellants.)	
)	
)	
)	

APPELLANT’S REPLY BRIEF

Appealed from the District Court of the First Judicial District in the State of Idaho,
In and For the County of Kootenai

The Honorable Steve Verby District Judge Presiding

Susan P. Weeks
JAMES VERNON and WEEKS
1626 Lincoln Way
Coeur d’Alene ID 83814
Telephone: (208) 667-0683
Facsimile (208) 664-1684

W. Jeremy Carr, ISB # 6827
CLARK and FEENEY LLP
1229 Main Street
Lewiston ID 83501
Telephone: (208) 743-9516
Facsimile: (208) 746-9160

Attorneys for Plaintiff/Respondent
Spectra Site Communications Inc.

Attorney for Defendant/Appellate
Douglas and Brenda Lawrence

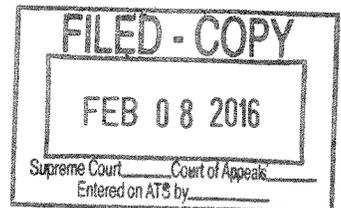


TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES ii

ARGUMENT 1

I. THE DISTRICT COURT ERRED IN GRANTING SPECTRA SITE A
PERMANENT INJUNCTION BASED UPON HALL’S IMPLIED EASEMENT
FROM PRIOR USE 1

II. THE DISTRICT COURT ERRED IN GRANTING SPECTRA SITE A
PERMANENT INJUNCTION BASED UPON HALL’S IMPLIED EASEMENT BY
NECESSITY 4

CONCLUSION 5

CERTIFICATE OF SERVICE 6

TABLE OF CASES AND AUTHORITIES

<i>Akers v. Mortensen</i> , 147 Idaho 39, 45, 205 P.3d 1175, 1181 (2009)	1, 4
<i>Bird v. Bidwell</i> , 147 Idaho 350, 209 P.3d 647 (2009)	1, 2
<i>Capstar Radio Operating Co. V. Lawrence</i> , 153 Idaho 411, 419, 283 P.3d 728, 736 (2012)	
<i>Davis v. Gowen</i> , 83 Idaho 204, 210, 360 P.2d 403, 407 (1961)	2
<i>Davis v. Peacock</i> , 133 Idaho 637, 641, 991 P.2d 362, 366 (1999)	1, 2, 3
<i>Machado v. Ryan</i> , 153 Idaho 212, 220, 280 P.3d 715, 723 (2012)	4
<i>Schultz v. Atkins</i> , 97 Idaho 770, 773-74, 554 P.2d 948, 951-52 (1976)	1
<i>Thomas v. Madsen</i> , 142 Idaho 635, 638, 132 P.3d 392, 395 (2006)	2

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING SPECTRA SITE A PERMANENT INJUNCTION BASED UPON HALL'S IMPLIED EASEMENT FROM PRIOR USE

In order to prove the existence of an implied easement by prior use, a party must show: unity of title or ownership and subsequent separation; apparent continuous use long enough before separation fo the dominant estate to show that the use was intended to be permanent; and that the easement must be reasonably necessary to the proper enjoyment of the dominant estate. *Akers v. Mortensen*, 147 Idaho 39, 45, 205 P.3d 1175, 1181 (2009).

The district Court, and Spectra Site, rely on *Schultz v. Atkins*, 97 Idaho 770, 773-74, 554 P.2d 948, 951-52 (1976) , *Bird v. Bidwell*, 147 Idaho 350, 209 P.3d 647 (2009), and *Davis v. Peacock*, 133 Idaho 637, 641, 991 P.2d 362, 366 (1999) to stand for the proposition that Spectra Site did not need to show apparent continuous use. However, all three cases state that apparent continuous use is a required element to create an implied easement.

In *Shultz*, the Court compared the four elements needed to create an implied easement for right of way as set out in 1 Thompson, Real Property Treatise. Those elements were:

(1) Unity and subsequent separation of title; (2) obvious benefit to the dominant and burden to the servient tenement existing at the time of the conveyance; (3) use of the premises by the common owner in their altered condition long enough before the conveyance to show that the change was intended to be permanent; and (4) necessity for the easement.

Shultz, at 774, 554 P.2d at 952. The Court went on to list the essential elements necessary to create an implied easement under Idaho's case law. The Court said:

To establish an easement by implication in favor of the dominant estate, three essential elements must be made to appear; (1) Unity of title and subsequent

separation by grant of dominant estate; (2) Apparent continuous user; (3) The easement must be reasonably necessary to the proper enjoyment of the dominant estate.

Id. (citing *Davis v. Gowen*, 83 Idaho 204, 210, 360 P.2d 403, 407 (1961)). The Court went on to state “that while the phraseology of the requirements set out in *Davis v. Gowen*, supra, is somewhat different from that discussed in 1 Thomson s 396, the same principles are involved.” *Id.* The *Shultz* case clearly identifies apparent continuous use as an essential element necessary to create an implied easement.

The *Bird* Court held that the three elements necessary to establish an implied easement by prior use where:

(1) unity of title or ownership and a subsequent separation by grant of the dominant estate; (2) apparent continuous use long enough before separation of the dominant estate to show that the use was intended to be permanent; and (3) the easement must be reasonably necessary to the proper enjoyment of the dominant estate.

Bird, at 352, 209 P.3d at 649 (2009) (citing *Thomas v. Madsen*, 142 Idaho 635, 638, 132 P.3d 392, 395 (2006)).

In *Bird*, the plaintiff had established apparent continuous use prior to the separation but did not establish that the use was intended to be permanent. *Id.* At 352, 209 P.3d at 649. The *Bird* Court did not do away with the need to show apparent continuous use, but only clarified that a plaintiff needed to prove that the apparent continuous use was intended to be permanent.

The *Davis v. Peacock* Court also affirmed the need to establish apparent and continuous use in order to establish an implied easement by prior use when it stated: “One of the requirements for

establishing an implied easement by prior use is that there has been open and continuous use of the easement prior to the severance of the dominant and servient estates.” *Davis*, at 641, 991 P.2d at 366 (1999) *overruled on other grounds by Spokane Structures, Inc. v. Equitable Inv., LLC*, 148 Idaho 616, 226 P.3d 1263 (2010).

All of these cases stated apparent continuous use as one of the required elements necessary to create an implied easement by prior use. The district court did not make a finding that Spectra Site had proven apparent continuous use, nor does the evidence support a finding that Funke had used the long enough or sufficiently enough to show it was intended to be permanent. Mr. Funke testified that he used the disputed road 20-30 times from 1968 to 1975. (Tr. P. 323, L. 2-5). This is an average of three to four times a year. This use over undeveloped lands does not constitute apparent and continuous use.

The district court also erred in finding that Spectra Site showed that the easement was reasonably necessary for the proper enjoyment of the dominant estate. Spectra Site argues that the district court was presented with a large amount of credible evidence that there was no access via Mellick Road in 1975. However, this ignores the testimony of their own expert, Darius Ruen. Mr. Ruen testified that Mellick Road Right of way touched the Funk property in 1981. (Tr. P. 767, L. 1-24). Mr. Ruen also acknowledged that the historical viewer report description of Mellick Road reached the Funk property. (Tr. P. 766, L. 7-10).

In their reply brief Spectra Site argues this testimony should not be considered since Mr.

Ruen also testified that a public road could not be developed from the lower portion of Funk's property to the northern portion due to the steep topography of the road. (Tr. P. 760, L. 14-25). However, nowhere Spectra Site does not cite any authority for the proposition that a public right of way has to extend the distance of the Funke property. Spectra Site's claim for an implied easement fails if Funke had an alternative access to his property besides the disputed road.¹

II. THE DISTRICT COURT ERRED IN GRANTING SPECTRA SITE A PERMANENT INJUNCTION BASED UPON HALL'S IMPLIED EASEMENT BY NECESSITY

In order to establish an easement by necessity Spectra Site must show a great present necessity for the easement. *Capstar Radio Operating Co. V. Lawrence*, 153 Idaho 411, 419, 283 P.3d 728, 736 (2012). An implied easement by necessity must not be granted if there is an alternate access. *Machado v. Ryan*, 153 Idaho 212, 220, 280 P.3d 715, 723 (2012). If a party has access to their property they cannot show great present necessity. The evidence does not support a finding that Spectra Site, or the Hall parcel, is landlocked. The record clearly indicates that Spectra Site has a license agreement with Lawrence to access Signal Point Road. (Plaintiff's Exhibit 86). In their reply brief Spectra Site, alleges that Lawrence breached this License Agreement. While that may be the case there has been no showing by Spectra Site that the Lawrence breach voided the license agreement or that it was no longer enforceable by Spectra Site. The evidence does not support a finding that Spectra Site showed they have a great present necessity for an easement over the

¹ See, *Akers v. Mortensen*, 147 Idaho, 39, 46 205 P.3d 1175, 1182 (2009).

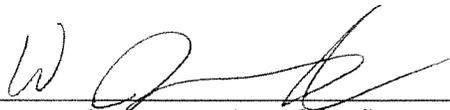
Lawrence property when the evidence showed they have a License Agreement to access the same road.

CONCLUSION

For the reasons stated above the Lawrences respectfully request this Court to reverse the District Court's Amended Final Judgment which issued an injunction enjoining the Lawrences, agents, and heirs from interfering with, impeding, or preventing Spectra Site Communications, Inc., a tenant of Robert Hall, its agents, servants, contractors, employees, tenants, successors, or assigns from using or maintaining the road traversing the Lawrence property more commonly known as Blossom Mountain Road. The Lawrences request this Court vacate the District Court's award of costs and remand this case back to the District Court with instruction to enter a judgement denying the injunctive relief requested by Spectra Site.

Respectfully submitted this 3rd day of February, 2016.

CLARK and FEENEY, LLP

By: 
W. Jeremy Carr, a member of the firm
Attorneys for Defendants-Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2016, I caused to be served **two** true and correct copies of the foregoing document by the method indicated below, and addressed to the following:

Susan P. Weeks
James Vernon and Weeks
1626 Lincoln Way
Coeur d'Alene ID 83814

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Delivery
- email

By: 
W. Jeremy Carr