

NO. A24A0563

IN THE COURT OF APPEALS
STATE OF GEORGIA

REGINALD GOETTSCH,

Appellant,

v.

SANDRA BROOKS,

Appellee.

REPLY BRIEF OF APPELLANT

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The Appellee's Brief cites the applicable standard as being, "[W]hether Appellant's construction of posts, a chain, a gravel parking area, and the parking of his vehicle in the right of way were 'essential to the enjoyment of the easement granted.'" This is not the standard applied by the trial court in its Order Granting Summary Judgment. In fact, the trial court never considered if the use of the land by Appellant was a "reasonable enjoyment of the easement granted." If this Court agrees with Appellee that this is the standard, this Court should reverse the trial court's decision and remand for the trial court to consider that as the standard.

I. The Trial Court erred in relying on facts which are disputed by the Parties in granting Brooks's Motion for Summary Judgment and denying Goettsch's Motion for Summary Judgment.

When considering a motion for summary judgment, the Court must consider only those facts which are undisputed by the parties. The Court is prohibited from resolving any factual disputes or reconciling issues. The Appellee admits in her brief the Court must have considered disputed facts, because the Appellee points out that the Court specifically noted where facts were *undisputed*. The fact that the Court cited to and considered disputed facts provides a basis for this Court to overturn its Order Granting Summary Judgment.

II. Enumerations of Error II, III, and IV.

The Appellee analyzes the ownership interests of the Parties as if the word “subordinate” was not included in the deed conveying Brooks her underlying fee simple interest in the property. Interpretation of the conveyance of the underlying fee simple property is a question of law which the Court can in fact decide on a motion for summary judgment, but the trial court did not address the meaning of subordinate in the conveyance. Admittedly, what may be a question of first impression, this Court should consider whether the language of the conveyance of fee simple property as subordinate to easements changes the standard by which the Court should analyze the nature of the ownership interests of the parties. Where fee simple property, which consists of the same property as an easement, is taken “subordinate” to that easement, the fee simple owner must be held to the same standard as a fellow easement holder seeking an injunction – the owner of the fee simple must show an adverse effect or substantial or material interference therewith. See generally East Beach Properties, Ltd. V. Taylor, 250 Ga. App. 798 (2001).

Further, the Appellee and the trial court fail to address the fact that a right-of-way easement in a subdivision plat “impliedly includes the authority to do those things which are reasonably necessary for the enjoyment of the things granted.” Lanier v. Burnette, 245 Ga. App. 566, 569 (2000). The Court should reverse and

remand for evidence and argument about whether the parking that slightly overflows onto the edge of the easement, but doesn't overflow into the actual roadway/travel path, is a reasonably necessary use for the enjoyment of an ingress and egress easement, where no other alternatives are available to the easement holder and the use does not affect the use of the easement by others.

The Appellee and the trial court also failed to address whether parking a vehicle is within the scope of the ingress and egress easement which was expressly granted to Appellant. It is undisputed that Appellant's parking area does not interfere with any other easement holders' use of the easement. This Court should reverse and remand for evidence and argument about whether the parking of the vehicle is in fact a trespass where the parking of the vehicle is in the only available area and it does not interfere with the use of the easement by others.

III. The Trial Court erred in finding that the Appellant's interference was a voluntary, intended act.

None of Appellee's arguments address the fact that the issue of whether the act of building a parking structure which slightly protrudes from his property was voluntary and intended is a question of fact. Appellant denies it was a voluntary, intended act, and Appellee insists it was. In the "Facts", the trial court found:

During construction, Defendant believed that the parking area would be built completely off the right of way. . . . Defendant testified he assumed whatever the contractors

constructed would be permissible to use. He also testified he assumed the parking area was permissible because he believed it was necessary to gain access to his house.

These facts create an issue of fact to be decided by the jury about whether the act was voluntary and intentional. This is, by definition, a question of fact which should be determined by the jury. The trial court cited facts on both sides of this issue in the Order Granting Summary Judgment, and, on that basis alone, the Court should remand this issue for determination by a jury.

IV. The Trial Court erred in ruling that there is no genuine issue of material fact with regard to any element of Brooks's trespass claim.

The trial court cited disputed facts as well as undisputed facts, facts in opposition to each other, and irrelevant facts in its order. The Appellee asks this Court to ignore that, and only look to the facts which are beneficial to her as to the determination of the elements of the trespass claim. This is not the standard on a motion for summary judgment. Georgia law requires that facts should be construed favorably to Appellant. The trial court must determine whether there are any material disputed facts first, and the trial court wholly failed to complete the first step. This Court should reverse the Order Granting Summary Judgment and remand the trespass claim for determination by a jury.

V. The Trial Court erred in holding that equitable defenses are not applicable in this case.

Appellee states there is no evidence to support a laches argument. This is not a response to the enumeration of error asserted by Appellant. Appellant stated that the holding by the trial court that equitable defenses are not applicable is an incorrect statement of law. The trial court did not reach the issue of whether there was any evidence in the record, so that issue is not before this Court. This Court should reverse the trial court's ruling that equitable defenses are not applicable and remand for evidence and argument on whether summary judgment should be granted or denied on the equitable defenses.

VI. The Trial Court erred in holding that ejectment is a proper remedy in this case.

Whether the trial court applied Patel Taherbhai, Inc. v. Broad Street Stockbridge II, LLC, 352 Ga. App. 113 (2019) is the question for this Court. This Court should hold that ejectment for trespass on an access easement by an access easement holder will not lie.

VII. The Injunction Portion of the Trial Court's Order should not be upheld.

This Court should require the trial court to be specific as to what structures must be removed in order to provide Appellant with enough specificity to actually

comply with the Order. A person subject to an injunction should never be forced to guess at what is required of him. The law requires the order be “specific in terms” and “describe in reasonable detail” what is required. O.C.G.A. § 9-11-65. This Court should reverse and remand for clarification by the trial court as to what structure or portion of the structure must be removed and as to what is referred to as “the right of way”.

This 25th day of January, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the APPELLANT'S
REPLY BRIEF, by depositing the same in the United States Mail, First Class
postage prepaid and also sent via e-mail addressed to:

Michael H. Cummings II
P.O. Box 1568
Clayton, Georgia 30525

This 25th day of January, 2024.

/s/ L. Allyn Stockton, Jr.
L. Allyn Stockton, Jr.
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