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Worthwhile Legal News and Commentary

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Court of Appeals of Virginia opens door to second round of easement litigation

5 Feb 2024

Christopher A. Glaser

The Court of Appeals of Virginia affirmed the denial of an implied easement absent evidence of its location but may have encouraged the parties to further litigate the issue. In *Morris v. Parker*, the central issue initially before the trial court was whether the Morrises had established an implied easement to use a platted but unimproved road partially upon the Parkers' property.

The Morrises owned two lots—Lot 3 being to the west of Lot 5—with Lot 5 bordering a platted but unimproved right of way known as Flurry/Fluridy Road on its east side. Mr. Morris testified at trial that he never used Flurry/Fluridy Road but accessed Lots 3 and 5 via two other entrances to the west and south. The Parkers owned the property on the east side of Flurry/Fluridy Road. The Parkers accessed their property via a gravel road to the east of their parcel. The Morrises subdivided their property and sought to benefit a newly-created Lot 5-A by paving the platted Flurry/Fluridy Road—claiming that it was the same gravel road used by the Parkers—and using it as a driveway.

Importantly, neither side provided the trial court with any accurate description of the physical location of the claimed easement. While a title examiner testified that both properties were once owned by a common grantor as well as to the location of Flurry/Fluridy Road in the land records, no one testified as to the physical location of the platted Flurry/Fluridy Road or whether it was developed or not. For his part, Mr. Morris testified that he did not know whether the gravel road was in the same place as the platted Flurry/Fluridy Road.

The trial court found in favor of the Parkers holding that there was no evidence that the easement was in use at the time of the severance or that it was apparent, continuous, and reasonably necessary. On appeal, the Court of Appeals affirmed on a narrower basis under the "right-result-different-reason" principle. No evidence linked the platted right of way to an actual physical location. As the Morrises failed to establish the location of the claimed easement, their cause of action failed.

While the Parkers' trial court victory was affirmed, they may only have a short reprieve from litigation. The Court of Appeals stated in a footnote that its "ruling does not preclude the Morrises from instituting an action alleging an easement over a different location that might correspond to the platted Flurry/Fluridy Road." The parties are likely in for Round 2.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no-cost in-house updates of the nation's most noteworthy cases and national trends following the spring and fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in and around the Washington, D.C. region, feel free to contact us. Our Real Estate Litigation and Transactions Practice Group is ready to assist.

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