Campbell v. Sullivan

Superior Court of Connecticut, Judicial District of Stamford-Norwalk At Stamford

December 11, 2017, Decided; December 11, 2017, Filed

FSTCV166028793S

Reporter
2017 Conn. Super. LEXIS 5104 *

Steve A. Campbell v. Margaret Lynn Sullivan

Notice: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Judges: [*1] Edward R. Karazin, Judge Trial Referee.

Opinion by: Edward R. Karazin

Opinion

MEMORANDUM OF DECISION

The defendant, Margaret Lynn Sullivan, is the owner of, and resides at, 1 Lennon Lane, Wilton, Connecticut. The plaintiff, Steven A. Campbell, is the owner of the abutting property located at 2 Lennon Lane, Wilton, Connecticut.[1] On June 7, 2016, the plaintiff commenced this action by service of a summons and complaint. On November 13, 2017, the parties filed a stipulation of facts not in dispute, and presented evidence at a bench trial on November 15, 2017. After the presentation of evidence and testimony from witnesses, the parties agreed to submit briefs containing their arguments on December 8, 2017. The following facts were contained in the joint stipulation and developed during trial.

The deed to 2 Lennon Lane contains an easement for "a right of way for all lawful purposes of ingress and egress, including public utilities" over the 1 Lennon Lane property. (Complaint Ex. B.) The easement was to be fifty feet wide, and is the only means for the owner of 2 Lennon Lane to reach his property. The fifty-foot-wide right of way described by this easement contains a paved area approximately twelve feet wide and **[*2]** is now known as Lennon Lane.[2] The plaintiff, as the owner of 2 Lennon Lane, has a right

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[1] The plaintiff's mother, Tonia W. Stephens-Campbell, resides at the 2 Lennon Lane property, and is also a named plaintiff in this action. Because Steven A. Campbell is the owner of the 2 Lennon Lane property, the court will refer to him as the plaintiff for the purposes of its memorandum of decision.

[2] As demonstrated on a map that the parties agreed could be made a full exhibit (Ex. N), the paved twelve-foot portion of Lennon Lane is not located in the center of the right of way.

of ingress and egress over the defendant's property consistent with the easement. Over time, the defendant has placed rocks and erected fencing within the fifty-foot right of way.[3] In addition, the plaintiff alleges that the defendant has allowed trees and other overgrowth to impede his ingress and egress to 2 Lennon Lane.

"For a determination of the character and extent of an easement created by deed we must look to the language of the deed, the situation of the property and the surrounding circumstances in order to ascertain the intention of the parties . . . The language of the grant will be given its ordinary import in the absence of anything in the situation or surrounding circumstances which indicates a contrary intent . . . Any ambiguity in the instrument creating an easement, in a case of reasonable doubt, will be construed in favor of the grantee." (Citations omitted.) *Mackin v. Mackin, 186 Conn. 185, 189, 439 A.2d 1086 (1982)*. "[T]he determination of the scope of an easement is a question of fact . . . [and the] decision as to what would constitute a reasonable use of a right-of-way is for the trier of fact whose decision may not be overturned unless **[*3]** it is clearly erroneous." (Internal quotation marks omitted.) *Stefanoni v. Duncan, 282 Conn. 686, 699, 923 A.2d 737 (2007)*. "[T]he holder of an easement . . . is entitled to use the servient estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude." (Internal quotation marks omitted.) *Schwartz v. Murphy, 74 Conn.App. 286, 296, 812 A.2d 87 (2002)*, cert. denied, *263 Conn. 908, 819 A.2d 841 (2003)*.

The defendant argues that any actions she has taken to encroach into the easement area are minimal, reasonable, and do not impede the plaintiff's access to 2 Lennon Lane; therefore, she has not interfered with the plaintiff's rights of ingress and egress. The plaintiff argues that he is entitled to the entire fifty-foot right of way as granted by the easement; therefore, the defendant's placement of the items within the right of way violates his rights of ingress and egress over the defendant's property.

This is a dispute over the use of a right of way. The disputed right of way is for ingress and egress. This is broad enough to include the ability to turn around, reverse, and enter and exit safely. It does not include the right to park on the right of way. On the other hand, merely because the defendant owns the fee in the right of way, she does not have the right to obstruct the plaintiff's right for all lawful **[*4]** purposes of ingress and egress.

In addition, the defendant argues that the plaintiff has trimmed trees and other plants within the fifty-foot right of way, which are actually located on the defendant's property, without consent. The holder of an easement is not entitled to cause unreasonable damage to the servient estate or interfere unreasonably with its enjoyment. See *id.* The law is settled that the obligation of the owner of the servient estate, as regards an easement, is not to maintain it, but to refrain from doing or suffering something to be done which results in an impairment of it. See *id., 297*. The duty of maintaining an easement so that it can perform its intended function therefore rests on the owner of the easement absent any contrary agreement. See *id.*

Under these circumstances, it is clear that it is the plaintiff's responsibility to maintain the easement at his expense, and he has no right to compel the defendant to maintain it for his benefit. Accordingly, the plaintiff may maintain the easement in a reasonable fashion. *Powers v. Grenier Construction, Inc., 10*

[3] In his complaint, the plaintiff claims that the defendant erected a fence across the entire fifty-foot wide right of way. The defendant admits that this is true, but that the section of fence that went across the right of way has since been removed, allowing passage through that section of the right of way. However, portions of that fence still exist on the defendant's property.

Conn.App. 556, 560, 524 A.2d 667 (1987); see also *Labbadia v. Bailey, 147 Conn. 82, 89, 157 A.2d 237 (1959)*; see also 1 Restatement (Third) section 413 page 631.

Finally, the plaintiff argues that he requires the entire fifty-foot right of way established by the easement because he will **[*5]** be receiving "prefabricated modules" that will function as additions to the home located on 2 Lennon Lane. These modules are apparently quite large and would be transported to the 2 Lennon Lane property via a large truck. The plaintiff testified that the truck would need a pathway of at least thirty feet wide for ingress to his property. The plaintiff also testified that he had researched the possibility of adding these modules to his home, but at the time of testimony, had not paid for the modules, nor did he have a specific delivery date for the modules.[4] As of the time of this decision, the plaintiff's plans to remodel his home are not definitive reasons as to why any of the defendant's encroachments into the easement would be unreasonable, and why he would need access to the entire fifty-foot right of way.[5]

After hearing all the evidence and the stipulation of facts filed by the parties which the court accepts as true, the court orders the following:

1. The boulders (also called rocks by the defendant) shown on exhibit M-1 obstruct the right of way of the plaintiff for ingress and egress and accordingly they are ordered **[*6]** to be removed by January 15, 2018.

2. The court finds the fence shown in exhibit M-2 on the left side next to the parked car obstructs the right of way. Accordingly, it is ordered to be removed by January 15, 2018.

3. The court finds that the fence shown on the right side of exhibit M-3 obstructs the right of way of the plaintiff and the 18 feet of that fence is ordered removed by January 15, 2018.

4. The plaintiff may not park on the right of way. See exhibit M-6 and M-7 for violations.

5. The court finds that the area shown on exhibit M-10 caused scratches and other interference with the plaintiff's vehicle and interferes with the plaintiff's ingress and egress. The plaintiff is authorized to remove all necessary brush and shrubs from the right of way in order to allow safe passage in the existing right of way. The trimming is limited to this area.

6. The defendant is not to park any cars in her drive way that extends into the right of way not just the traveled 12-foot portion as seen on Exhibit M-1. The court finds the right of way for ingress and egress includes unobstructed ingress and egress.

All of the preceding are made orders of the court.

All the facts set forth herein are found **[*7]** by the court.

SO ORDERED

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[4] Even in his proposed statement of facts submitted after trial per the request of the court, the plaintiff only requests that the court find "[The plaintiff] plans on remodeling his premises by way of prefabricated modules."

[5] See *57 Broad Street v. Summer House Owners, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-16-6027381-S (November 30, 2016, Adams, J.T.R.) (finding that granting the plaintiff's use of the entire easement area would not comport with the balancing test in *Stefanoni v. Duncan*.)