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Implied Easements in Maryland - Lane v. Flautt

IMPLIED EASEMENTS IN MARYLAND

Lane v. Flautt[1]

The complainants-appellees sought an injunction to restrain the respondents-appellants from erecting a structure which would cut off light and air from the complainants' property. The lower court granted the injunction; the respondents appealed. *Held:* Cause remanded for amendment of decree.

The parties were owners of adjacent lots on which were located houses, each abutting the other at the dividing line for a depth of twenty-two feet. For the remaining depth of twelve feet there was a five-foot space between the houses; the respondents owned the land underlying the space. The structure forming the basis for this suit was to be constructed in this space, which structure would block a large window in the complainants' house and darken two other windows facing an outset in the complainants' property. In 1899 both properties were under the same ownership but the ownership was severed during that year when the lots were sold separately at a mortgage foreclosure sale. The buildings on the properties were the same in 1899 as at present.

It was held that the two properties were so arranged that the complainants' property was necessarily dependent for light and air on the other property and thus on severance of ownership there arose an easement for light and air by implication as to the large window. The Court, however, held that the easement did not cover the other two windows. Since a space was provided for light on their own side there was no necessary dependence on the respondents' property to manifest an intention that their light should come from that side.

The Court devoted only a small portion of its opinion to the legal problem presented. The statements made in the paragraph above constitute a paraphrase of the entire discussion of the law. This seems unusual, as the particular problem was being raised for the first time in this state.

When a landowner uses one lot for the benefit of another in such a way that the use would be an easement if the properties were separately owned and the use were exercised as a right, such use is known as a quasi-easement.[2]

[1] 6 A. (2d) 228 (Md. 1939). See also the same case on a second appeal from the form of the trial court's decree under the opinion of the Court of Appeals on the first appeal, Baltimore Daily Record, December 12, 1939.

[2] 2 Tiffany, Real Property (2d ed. 1920) 1272.

Whether the quasi-easement will ripen into a real easement on the severance of the ownership in the lots is known as the doctrine of implied easements.[3] Two rules have been developed to determine if an easement will arise. If the quasi-dominant lot is sold first, an easement arises if it is reasonably necessary for the enjoyment of the property granted.[4] If the quasi-servient lot is sold first the easement is raised as an implied reservation and therefore will be raised only in the case of strict necessity.[5]

In the opinion the Court used the word "necessary," but did not qualify it with either of the words "strict" or "reasonable." An examination of the facts clearly discloses that the rule adopted was "reasonable necessity." If the facts had revealed that the quasi-dominant lot was sold first at the mortgage foreclosure it could be said that it was on this basis that the Court applied the reasonable test; but, there was no indication of which lot was sold first. We can reject this reasoning on still another basis. The principle underlying the two rules is, quite obviously, found in the legal maxim that a deed will be construed against the grantor. The application of one rule or the other could not be based on this principle in the case under discussion where the deeds were executed by a court officer.

The Court in all probability applied the "reasonable necessity" test because it considered the sales as simultaneous. While there has been no case in Marvland deciding that the "reasonable" rule should apply to concurrent sales, such a view prevails in this country and in England,[6] and it has been adopted in a Maryland dictum.[7]

It is true that the sales which were important in the instant case were not, strictly speaking, simultaneous. Few indeed would be the applications of this rule if it were dependent upon the occurrence of actually concurrent sales. It seems fit and proper, though, that the rule should

[3] *Ibid.*

[4] Kilgour v. Ashcom, 5 H. & J. 82 (Md. 1820); McTavish v. Carroll, 7 Md. 352, 61 Am. Dec. 353 (1855); Cherry v. Stein, et al., 11 Md. 1 (1858); Janes v. Jenkins, 34 Md. 1, 6 Am. Rep. 300 (1870); Oliver v. Hook, 47 Md. 301 (1877); Burns et al. v. Gallagher, et al., 62 Md. 462 (1884); Eliason v. Grove, 85 Md. 215, 36 A. 844 (1897); Dinneen v. The Corporation, Etc., 114 Md. 589, 79 A. 1021 (1911); Duvall v. Ridout, 124 Md. 193, 93 A. 209 (1914); Allers v. Back, 130 Md. 499, 100 A. 781 (1917); McConihe v. Edmondson, 157 Md. 1, 145 A. 215 (1929); Knight v. Mitchell, 154 Md. 102, 140 A. 74 (1927).

[5] Mitchell v. Seipel, 53 Md. 251, 36 Am. Rep. 404 (1879); Lippincott v. Harvey, 72 Md. 572, 19 A. 1041 (1890); Mancuso v. Riddlemoser Co., 117 Md. 53, 82 A. 1051, Ann. Cas. 1914A, 84 (1911).

[6] Washburn, American Law of Easements and Servitudes (4th ed. 1885) 110.

[7] Mitchell v. Seipel, *supra* n. 5.

be applied to our case, where, presumably, the sales were as nearly simultaneous as is practicable.

Doubtless the rules discussed above were developed to assist the courts in determining the intention of the parties, and to reduce litigation by preventing frivolous claims. They have been criticized on the basis of arbitrariness.[8] An examination of these objections may be profitable, remembering that the fundamental task is to determine the intention of the parties.[9] A problem arises only when the intention has not been expressed; when the intention must be gleaned from the facts and circumstances surrounding the transaction.

Walsh has taken the position that American Courts, in general, do not follow the present English rule that easements arising by implied reservation must be, in fact, actually necessary to the use of the land retained for the purposes intended. He attacks the English rule because it ignores the fact that easements created by reservation turn on exactly the same principle as easements by implied grant, that such a rule of construction can have no application until there is a real doubt. "Where the intent is clear there is no room for construction."[10] Reduced to its lowest terms, his position is that there can be situations where the intent is clear, but where the easement is not actually necessary for the use of the property as intended. Some such situation may arise, but it is difficult to imagine. If in any case it could be said that the easement was not actually necessary for the use of the property as intended, there would, in all probability, be a doubt as to the intention of the parties. The doubts, in justice and on authority, should be resolved against the person who wrote the instrument. If and when the case comes up the Court could, without disturbing the rule, say that it did not apply, as rules of construction are only applicable to situations where the intent is not clear. No rule, especially one of construction, should be blindly followed without due regard for its purpose. The rule of "strict necessity" does serve to state the law clearly and concisely. If it is not perfect, it is so nearly so that convenience can demand its acceptance.[11]

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[8] Walsh, Property (2d ed. 1915) 611; Tiffany, *op. cit. supra* n. 2, 1287, Sec. 363.

[9] Note language of instant case; see cases cited in notes 4 & 5.

[10] *Supra* n. 8.

[11] Some states, especially Pennsylvania, do not use the "strict necessity" doctrine; it is on these cases and on the language of others Walsh bases his opinion, *supra* n. 8.

The English rule was specifically adopted in Maryland in the case of *Mitchell v. Seipel*,[12] and the case is supported by two later decisions as well as by various Maryland dicta.[13]

Walsh has suggested that the term, "reasonable necessity," as a requirement for easements by implied grant should be changed to "add value" to the property granted.[14] It is submitted that the suggested term is no more satisfactory than the one now used; it is neither more definite nor more descriptive and is not entirely accurate because easements have been refused where they would have added value to the property.[15] It could be argued that "reasonable necessity" is not accurate and was rejected in *McConihe v. Edmondson*.[16] That rejection, however, was unnecessary. The Court allowed an easement of way where it was the only convenient approach to the property, but the Court could have said, without disturbing the thought, that the way was "reasonably necessary" for the use of the property granted and thus would have been consistent with the language of the other Maryland decisions.[17]

According to Mr. Tiffany the presence of "necessity" may be indicative of an intention to grant the easement, and the lack of it may be indicative of the lack of an intention to grant the easement, but the requirement should not be controlling.[18] Certainly, a court would not allow the rule to be controlling if the intention were otherwise clear. The language of the decisions, in general, shows a realization that the rule is one of construction and could not control in such a case.[19] Furthermore, the case of *McConihe v. Edmondson* is direct authority for the proposition, even though in that particular case it was unnecessary to discard the rule. Here, too, it is difficult to conceive of a situation where the intention could be clear without the easement being "reasonably necessary" for the convenient enjoyment of the property. Especially is this true if the term is clearly understood.

The Maryland Court has not attempted to define the requirement, but the Indiana Court has stated it very satisfactorily, and in accord with the Maryland decisions:

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[12] *Supra* n. 5.
[13] *Supra* notes 4 & 5.
[14] Walsh, *op. cit. supra* n. 8, 611.
[15] Duvall v. Ridout, Allers v. Back, Knight v. Mitchell, all *supra* n. 4.
[16] *Supra* n. 4.
[17] *Ibid.*
[18] *Supra* n. 8.
[19] *Supra* n. 4.

> "The degree of necessity is to be determined rather by the permanency, apparent purpose, and adaptibility of the disposition made by the owner during the unity of title, than by considering whether a possible use can be made of the parcel granted, after a discontinuance of the right formerly exercised over the other.[20]
>
> "The reasonable application of the doctrine as we deduce it from the authorities, however, leads to the general conclusion that if the service imposed on one, during the unity of possession of the parcels of land, was of a character looking to permanency, and the discontinuance of such service would obviously invoke an actual and substantial rearrangement of that part of the estate in whose favor the service was imposed, to the end that it might be as comfortably enjoyed as before then such a degree of reasonable necessity would seem to exist as would raise an implication that the use was to be continued."[21]

It would seem that "reasonable necessity" and "strict necessity" are accurate and proper terms for describing what motivates courts in allowing or disallowing easements by implication.

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[20] John Hancock Mutual Life Insurance Co. v. Patterson, 103 Ind. 582, 2 N. E. 188, 192 (1885).

[21] *Ibid.*, 2 N. E. 193.