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Earl v. Pavex, Corp., 2013 MT 343

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A prospective purchaser is on constructive notice of easements granted by the existing or prior owners regardless of whether it is included in the purchaser’s deed. Whether structures and cropland within that easement actually unreasonably interfere with the easement is a question of fact which requires a balancing of the parties’ interests.

In 2006, the Keim family divided a single tract of land into two tracts. The family conveyed one tract to Pavex and retained the second, granting Pavex a 100-foot-wide easement over the retained property. Prior to the division of the property, one of the Keims’ predecessors in interest granted a 30-foot-wide easement over the entire tract of land. The 100-foot-wide easement was filed with the Rosebud County Clerk and Recorder in September of 2006. There were existing structures and cropland on both easements when they were granted. The Keims then sold the second tract to the Earls. The Earls knew of the 30-foot-wide easement but were unaware of the 100-foot-wide easement when they purchased the tract. The Earls sought to invalidate the 100-foot-wide easement, or, in the alternative, to obtain a ruling that they were not required to move their structures and cropland from the easements.

In determining whether to invalidate the 100-foot-wide easement, the Court found there was no question the easement was recorded prior to the purchase of the property by the Earls. Thus, the issue became whether the easement was recorded in such a way that the Earls should have been found it in a chain-of-title search. The Court identified two approaches to determining whether an easement is in the chain-of-title of a burdened lot: the narrow approach and the broad approach.

In previous cases, the Court had applied the narrow approach. However, the Court overruled those cases and chose to apply the broad approach because it strikes the appropriate balance between the interests of both the owner of the dominant property and the purchaser of the servient property. Under this approach, a prospective purchaser is on constructive notice not
only of conveyances to the prior owners of the parcel, but also of conveyances from the prior owners of the parcel. The rule is based on the principle that a prospective purchaser is chargeable with notice of everything affecting his title which could be discovered by an examination of the records. This approach is more consistent with Mont. Code Ann. § 70–20–302(1), which provides that every conveyance of real property acknowledged or proved and certified and recorded, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers. Therefore, a purchaser cannot fail to search for easements issued by a common grantor under the theory that the easement is outside the servient estate’s chain-of-title. The Court held that a prospective purchaser is on constructive notice of recorded servitudes and encumbrances granted by the existing and prior owners of the parcel in question during the respective periods when each owner held title to the parcel. Thus, the Earls were on constructive notice of the easement, and the easement was enforceable against them.

In determining whether the encroachments needed to be removed from both the easements, the Court stated that unreasonable interference with an easement is a form of trespass. Thus, if the structures and cropland unreasonably interfere with the easement rights, they must be removed. Because the terms of the easements did not speak to the encroachments, a determination of whether there is unreasonable interference must be made. This determination requires balancing the parties’ interests, with reasonableness being the controlling standard. Typically, parties to an easement are deemed to have contemplated both (1) that the easement holder may do whatever is reasonably convenient or necessary in order to fully enjoy the purposes for which the easement was granted, though he may not cause unreasonable damage to the servient estate or interfere unreasonably with its enjoyment, and (2) that the servient owner may utilize the servient estate, including the easement area, in any manner and for any purpose
that does not unreasonably interfere with the easement holder’s enjoyment of the servitude. What constitutes reasonable use and unreasonable interference is often a close call and is a factual question that must be decided by the trial court.

Montana property law practitioners, and prospective property buyers, should be aware that the Court now applies a broad approach to determine whether an easement is in the chain-of-title of a parcel of land. This means that it is the prospective property purchaser’s responsibility to check the property records for recorded easements even when the purchaser’s deed does not reference an easement. Any encroachments that unreasonably interfere with the easement rights need to be removed.

Honorable Joe L. Hegel, District Court of the Sixteenth Judicial District.

For Appellant: Gerry P. Fagan & Brandon Hoskins, Moulton Bellingham PC, Billings, MT.

For Appellees: Steven W. Jennings, Crowley Fleck PLLP, Billings, MT.

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