

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1139

CARLTON K. ROBERTS

VERSUS

LAURIN ELISE BYARS

Judgment Rendered: March 23, 2007

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Appealed from the  
Twenty-First Judicial District Court  
In and for the Parish of Livingston, Louisiana  
Trial Court Number 108,779

Honorable Bruce C. Bennett, Judge

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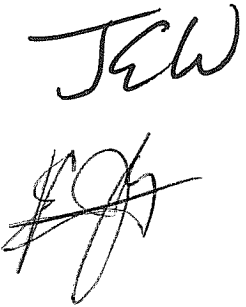
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KUHNS, J. CONCURS

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.



WELCH, J.

The plaintiff, Carlton K. Roberts, appeals a judgment of the trial court that denied his request for recognizing and establishing a predial servitude of passage in favor of his enclosed estate over the property of the defendant, Laurin Elise Byars. After a thorough review, we affirm the judgment of the trial court.

### **PREDIAL SERVITUDE OF PASSAGE**

When an estate has no access to a public road, the owner of the enclosed estate may claim a right of passage over neighboring property to the nearest public road. La. C.C. art. 689. The right of passage for the benefit of an enclosed estate shall be suitable for the kind of traffic that is reasonably necessary for the use of that estate. La. C.C. art. 690. The owner of the enclosed estate may not demand the right of passage anywhere he chooses; the passage generally shall be taken along the shortest route from the enclosed estate to the public road at the location least injurious to the intervening lands. La. C.C. art. 692; see also **Watts v. Baldwin**, 95-0260 (La. App. 1<sup>st</sup> Cir. 10/6/95), 662 So.2d 519, 521.

### **FACTUAL SUMMARY**

Carlton Roberts owns a parcel of land comprising 37.52 acres located in Livingston Parish, on which he has plans to develop a residential subdivision. His property is part of a larger tract of land owned by his father, Truman Roberts, which originally fronted on U.S. Highway 190, having full access to that public road. Plaintiff's parents originally purchased this property as a 60-acre parcel on January 19, 1907, from Lewis T. Spears. (Mr. Spears had acquired this parcel from Jacob Chambers on September 15, 1905.)

Prior to the sale of the property to the plaintiff's parents, on December 5, 1906, Mr. Spears sold a portion of the parcel to the Baton Rouge Hammond and Eastern Railroad, presently Canadian National Railroad. This sale "landlocked" the 37-acre parcel at issue herein, which is bound on the south by the

aforementioned railroad, on the west by Gray's Creek, on the north by a private subdivision whose streets have been dedicated to public use, and on the east by the property of the defendant, Laurin Elise Byars. The Byars Tract comprises 10.94 acres immediately east of the Roberts Tract. To the east of the Byars Tract, separating it from Eden Church Road, are two parcels of land owned by Joseph Earl Landry, Jr., Ruth Landry, and the Ruth Landry Trust. Ms. Byars has access to Eden Church Road by a conventional servitude of passage granted her by the Landrys, which presently consists of a 50-foot wide road, known as Line Drive, through the Landry Tract to Eden Church Road.

Plaintiff seeks a servitude of passage from the defendant, Ms. Byars, over what he alleges to be the most direct and convenient access to Eden Church Road – the Byars Tract, via Line Drive, which would include the use of Ms. Byars' conventional servitude over the Landry Tract – Line Drive.

### ANALYSIS

The trial court denied the plaintiff's request initially finding he had no cause of action against the defendant, Ms. Byars, because her property does not front on a public thoroughfare, and plaintiff's request included subsuming Ms. Byar's conventional servitude allowing her a right of passage through her neighboring estate. The Landrys were not made parties to these proceedings. Although the trial court noted that this finding "is dispositive to the case without the necessity of an analysis of the other issues presented," he gratuitously made several other factual findings related to the other issues presented, each of which resulted in the denial of the plaintiff's request for a servitude of passage over the defendant's property. Appellant has raised each of these findings as assignments of error on appeal. However, we agree with the trial court that plaintiff has no cause of action against Ms. Byars whose property *does not* front the public road to which the plaintiff seeks access. We also agree that the resolution of this issue is dispositive

of the case, without the necessity of addressing the other issues raised. Therefore, we address that issue, as stated by the trial court: “Is petitioner entitled to relief at all, since the defendant’s [tract of land] does not abut a public road, but accesses only by way of an existing private conventional servitude [with another property owner]?”

The trial court found petitioner was not entitled to relief. Our review of the record and the applicable law convinces us that the result reached by the trial court was correct. In pertinent part, we reiterate and borrow from the trial court’s detailed written reasons for judgment:

This [Mr. Roberts’] 37[-]acre parcel is presently isolated from access to any public highway and has apparently been so isolated since the sale to the Railroad in 1906. The property is presently bounded on the south by the railroad lines of Canadian National Railroad, on the west by Gray’s Creek, on the East by defendant Laurin Elsie (sic) Byars; and on the north by other unnamed and (sic) parties, including a private subdivision whose streets have been dedicated to public use.

Plaintiff alleges that the most direct and conventional access to a public road would be to Eden Church Road which runs north and south and is located east of the defendant’s property. ***It is very important to note that the defendant’s property does not directly access nor front on Eden Church Road, but defendant’s access is by way of an existing private roadway known as Line Drive... . However, Line Drive does not directly access Eden Church Road, but defendant has been granted a conventional servitude by Joseph Earl Landry, Jr., ... over the Landry property continuing to Eden Church Road.***

(Emphasis added.)

The language of La. C.C. art. 692 is clear and unequivocal and provides that the right of passage must be taken along the shortest route from the enclosed estate *to the public road* at the location least injurious to the intervening lands. Thus, the plaintiff has no cause of action against Ms. Byars for access to the nearest public road, since the defendant’s land does not front a public road. As noted and relied on by the trial court, in the case of **Rockholt v. Keaty**, 256 La. 629, 237 So.2d 663 (La. 1970), the supreme court held that the right of an enclosed estate to claim a

right of passage on the estate of his neighbor on the nearest public access applies to public access and *not* to access to intervening parcels.

In the context of a servitude granting a right of passage, a court may not grant passage over lands of neighbors who are not parties to the suit. **Stephenson v. Nations Credit Financial Services**, 98-1689 (La. App. 1<sup>st</sup> Cir. 9/24/99), 754 So.2d 1011, 1018 (citing, **Vermillion Parish School Board v. Broussard**, 263 La. 1104, 1112, 270 So.2d 523, 526 (1972); see also **Vincent v. Meaux**, 325 So.2d 346 (La. App. 3<sup>rd</sup> Cir. 1975); **Warner v. Clarke**, 232 So.2d 99 (La. App. 2<sup>nd</sup> Cir.), writ refused, 255 La. 918, 233 So.2d 565 (1970).

It is undisputed that the passage being sought by Mr. Roberts requires access over the Byars property as well as the Landry property. The owners of the Landry Tract, which would be affected by the requested servitude, if granted, were not named parties to this suit. The trial court was correct in determining the plaintiff has no cause of action against Ms. Byars under these circumstances. Accordingly, that judgment is affirmed. Costs of this appeal are assessed to the appellant, Mr. Roberts.

**AFFIRMED.**