

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 1764

ROZEL ENERGY II, LLC

VERSUS

LARRY L. COUPEL AND NATALIE L. COUPEL

Judgment rendered JUN 03 2010



Appealed from the
23rd Judicial District Court
in and for the Parish of Assumption, Louisiana
Trial Court No. 28723
Honorable Alvin Turner, Jr., Judge

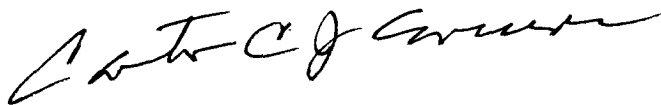
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DEFENDANTS-APPELLANTS
LARRY L. COUPEL AND NATALIE
L. COUPEL

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.



PETTIGREW, J.

In this case defendants and plaintiffs in reconvension, Larry L. Coupel and Natalie L. Coupel (Coupels), appeal a judgment rendered May 29, 2009, in favor of plaintiff and defendant in reconvension, Rozel Energy II, LLC (Rozel), after a trial on the merits. Said judgment provides in part as follows:

IT IS ORDERED, ADJUDGED AND DECREED that Rozel had a legal right to use the (+/-) 200 foot section of the road that is located on the Coupels' property, as it had acquired a right to possess it in accordance with LA. C. C. Art. 3422.

The Coupels did not meet their burden in proving damages for the costs to repair the road. Accordingly, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

- (1) The Coupels' request for damages relating to an alleged trespass is DENIED;
- (2) The Coupels' request for damages for the alleged wrongful issuance of an injunction is DENIED;
- (3) The Coupels' request for road repair damage is DENIED;
- (4) The Coupels' request for loss wages is DENIED;
- (5) The Coupels' request for general damages is DENIED;
- (6) The Coupels' request for all costs of these proceedings and attorney fees is DENIED.

Inherent in the court's judgment, this court finds that the Preliminary Injunction issued February 14, 2005 was properly issued. Accordingly, the [Coupels] are ORDERED to return the \$41,885.00 in Attorney's Fees and the \$9,707.75 representing costs previously paid by Rozel to the Coupels for the alleged wrongful issuance of the Preliminary Injunction. Interest shall accrue at the legal rate on all sums due hereon from date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter shall be dismissed with prejudice and that the Coupels should be taxed with all costs of these proceedings.

FACTS AND PROCEDURAL HISTORY

In July 1950, Stanley Aucoin (Aucoin) granted to Humble Oil and Refining Company (Humble), and its successor and assigns, among other rights, its servitude to build, maintain, operate, use roads and excavate, and use soil for road purposes over a tract of land 35' in width, and approximately 750' in length, covering approximately 0.6 acres in Section 35, Township 13 South, Range 13 East, Assumption Parish, Louisiana. This agreement also granted Humble the right of ingress and egress to access the servitude granted by Aucoin.

Seven years later, in June 1957, Aucoin granted to Humble and its successors and assigns, among other things, a servitude to build, maintain, operate and use roads and excavate and remove soil, and operate and maintain drainage ditches over and across a tract of land 15' in width and 3,250' in length, located in Sections 35 and 41, Township 13 South, Range 13 East, and Section 40, Township 14 South, Range 13 East, Assumption Parish, Louisiana. This agreement also granted Humble the right of ingress and egress to access the servitude granted therein.

In 1992, Exxon Corporation (Exxon), successor of Humble, assigned to Hilliard Petroleum, Inc. (Hilliard) various oil and gas interests and related properties in the East Lake Verret Field, including Exxon's right, title, and interest in and to the 1950 and 1957 servitude agreements (the Servitude Agreements). In 2003, Hilliard and its sister company Hilliard Resources, Inc. assigned to Rozel Energy LLC all of their interest in the East Lake Verret Field, including but not limited to all of Hilliard's right, title, and interest in and to the Servitude Agreements. Shortly thereafter, Rozel Energy LLC assigned to Rozel, its sister company, all of its interest in the East Lake Verret Field including but not limited to all of Rozel Energy LLC's right, title, and interest in and to the Servitude Agreements. Rozel and all of its predecessors in title used a roadway to get to a dock along Lake Verret to service its fields, assuming this roadway was on this designated servitude. This road commonly known as Kafoury Road, amongst other names, is the subject of the dispute between the parties herein.

Allegedly, Exxon, Hilliard, Rozel, and their employees and contractors used the subject road and the right of ways for approximately 50 years in conjunction with the operation of their oil and gas properties in the East Lake Verret Field. Since 1991, Exxon, Hilliard, Rozel, and its employees and contractors used the subject road and right of ways on an almost daily basis, and regularly maintained and repaired the subject road and the adjacent drainage ditches. From at least 1991 to 2004, no claims were made or asserted against any of the above referenced parties concerning their use of the subject road or the right of ways.

In September 2001, the Coupels purchased a house and approximately 1.036 acres located to the east of the subject road. In April 2003, the Coupels purchased two additional tracts, which according to the Coupels, includes the subject road and right of ways, but certainly at least 300' of which includes the subject road. From 2001 through and up to 2004, the Coupels did not disturb the use of the road adjacent to their home by Hilliard and Rozel. In April 2004, the Coupels began complaining to Rozel and other certain third parties about the use of the subject road by Rozel and its employees. The Coupels began demanding compensation from Rozel for its use of the subject road, and, on or about December 17, 2004, the Coupels placed their own lock on a gate, effectively limiting and denying Rozel use of the subject road and right of ways.

On December 21, 2004, Rozel filed suit against the Coupels seeking damages, declaratory judgment, and injunctive relief to prohibit the Coupels from interfering with Rozel's, its employees', contractors' and agents' use of the subject road. In connection with said petition, a temporary restraining order was issued by the 23rd Judicial District Court, December 21, 2004, restraining, enjoining, and prohibiting the Coupels and their agents from interfering with Rozel's, its agents', employees' and contractors' use of the right of ways created by the Servitude Agreements and by the history of use and possession over and through the Coupels' properties.

On January 14, 2005, the Coupels filed an answer and reconventional demand to Rozel's lawsuit. In said reconventional demand the Coupels allege that Rozel violated the terms of the Servitude Agreements, made use of property not allowed by the Servitude Agreements, and used property belonging to Coupels and not subject to the Servitude Agreements. Further, the Coupels ask for various damages for the wrongful issuance of the temporary restraining order and for trespass. After a hearing on January 18, 2005, a preliminary injunction issued on February 14, 2005, in the form and substance of the previous temporary restraining order in favor of Rozel and against the Coupels. After various preliminary and amending pleadings and exceptions, the trial court, on June 27, 2005, appointed Williard J. Cointment, Jr., Surveyor, to do a survey of the property in question in the matter. This matter came to a trial of the merits for

the first time on August 23, 2006. This is reflected by the trial court's judgment rendered October 6, 2006, which, in part, reads as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the demands of the plaintiff, Rozel Energy II, L.L.C., for a permanent injunction be rejected, at the plaintiff's costs, and the preliminary injunction issued herein on February 14, 2005, be dissolved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the 1957 Servitude granted Rozel Energy II, L.L.C.'s ancestor in title, Humble Oil & Refining Company, by the Coupels' ancestor in title, Stanley Aucoin, has not been extinguished by non-use, and Rozel Energy II, L.L.C. retains the right to use said servitude.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, Larry and Natalie Coupel, are hereby awarded reasonable attorney's fees for services rendered in connection with the dissolution of the preliminary injunction, to be set at a later date on a Rule to Fix Attorney Fees, which shall be filed by the Coupels within fifteen (15) days of the mailing of notice of this judgment, or attorney's fees with be waived.

A Motion to Amend Judgment or For a New Trial was filed by Rozel, and the trial court granted Rozel's new trial *ex parte*, on October 24, 2006, and rendered an amended judgment without a contradictory hearing with the Coupels. Said amended judgment, in part, provided:

IT IS ORDERED, ADJUDGED AND DECREED that the demands of the plaintiff, Rozel Energy II, LLC, for a permanent injunction be partially rejected, at the plaintiff's costs, and the preliminary injunction issued herein on February 14, 2005, be partially dissolved as to the +/- 200' Section of the Subject Road not covered by the 1950 or 1957 Servitude;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the preliminary injunction of Rozel Energy II, LLC issued herein on February 14, 2005 be made permanent in part, and the Larry L. Coupel and Natalie L. Coupel [and on] their beneficiaries, agents, successors and/or assigns be prohibited from interfering, in any way, with Rozel Energy II, LLC's, or its beneficiaries, agents, permittees, successors, and assign's use of the 1950 and 1957 servitudes or from interfering with Rozel's use of any part of the Subject Road situated off the Coupel Tract or off of the +/-200' Section of the Subject Road not covered by the 1950 or 1957 Servitudes;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the 1957 Servitude granted to Rozel Energy II, LLC's ancestor in title, Humble Oil & Refining Company, by the Coupels' ancestor in title, Stanley Aucoin, has not been extinguished by non-use, and Rozel Energy II, LLC retains the right to use said Servitude.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, Larry and Natalie Coupel, are hereby awarded reasonable attorney's fees for services rendered in connection with the partial dissolution of the preliminary injunction, to be set at a later date on the Rule

to Fix Attorney Fees, which shall be filed by the Coupels within fifteen (15) days of the mailing of notice of this judgment, or attorney's fees will be waived.

A Motion to Fix Attorney Fees and Costs was filed by the Coupels on October 19, 2006, and after contradictory hearing, the trial court, on January 12, 2007, rendered judgment in favor of the Coupels, as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the Attorney Fees awarded to the Defendants in the Amended Judgment rendered on October 24, 2006, are hereby set at Forty-One Thousand, Eight Hundred Eighty-Five Dollars and Zero Cents (\$41,885.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs awarded to the Defendants in the Amended Judgment rendered on October 24, 2006, are hereby set at Nine Thousand, Seven Hundred Dollars and Seventy-Five Cents (\$9,707.75).

The Coupels previously appealed the judgment of October 6, 2006, and the amended judgment of October 24, 2006. This court in a previous decision vacated and set aside the amended judgment, rendered by the trial court on October 24, 2006, and remanded the matter for a contradictory hearing on the motion for new trial, pursuant to La. Code Civ. P. art. 1977.¹ Pursuant to said remand, the trial court granted the new trial, and the judgment of the trial court dated May 29, 2009, is the result of said new trial and is the subject of this appeal.

ASSIGNMENT OF ERROR

The Coupels raise the following assignment of error in their appeal.

1. The Trial Court erred in determining that Rozel had a legal right to use the approximately 200 feet section of roadway located on the Coupel's property.

DISCUSSION

Louisiana Constitution of 1974 provides that the appellate jurisdiction of the courts of appeal extend to both law and facts. La. Const. art. V, §10(B). A court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. **Stobart v. State, Dept. of Transp. & Dev.**, 617 So.2d 880, 882, n.2. (La. 1993). When the court of appeal finds that a reversible

¹ See **Rozel Energy II, LLC vs. Larry L. Coupel**, 2007-0610 (La. App. 1 Cir. 12/21/07) (unpublished).

error or a manifest error of material fact was made in the trial court, it is required to redetermine the facts *de novo* from the entire record and render a judgment on the merits. **Rosell v. ESCO**, 549 So.2d 840, 844, n.2 (La. 1989).

The trial court made certain findings of fact and conclusions of law as are reflected in its reasons for judgment, which are attached hereto and made a part hereof by reference. After a thorough review of the record in this proceeding, we cannot find any manifest error or legal error on the part of the trial court.

For the above and foregoing reasons, we affirm the judgment of the trial court and assess all costs associated with this appeal against the Coupels. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

AFFIRMED.

ROZEL ENERGY II, LLC

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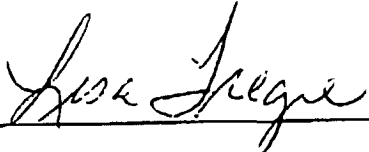
LARRY COUPEL AND
NATALIE COUPEL

23RD JUDICIAL DISTRICT

PARISH OF ASSUMPTION

STATE OF LOUISIANA

FILED: APR 15 2009


DEPUTY CLERK OF COURT

REASONS FOR JUDGMENT

I. FACTS AND PROCEDURAL POSTURE

This case arises out of a Petition for Injunction filed by Rozel Energy II, LLC (hereinafter referred to as "Rozel") in December of 2004 which sought to prohibit Larry and Natalie Coupel (hereinafter collectively referred to as "the Coupels") from interfering with Rozel's use of some alleged rights-of-way. The Coupels filed a reconventional demand seeking damages from Rozel for an alleged trespass and wrongful issuance of an injunction.

In July of 1950 and June of 1957, Stanley Aucoin (hereinafter referred to as "Aucoin") granted to Humble Oil & Refining Company (hereinafter referred to as "Humble") and its successors and assigns, among other rights, a servitude to build, maintain, operate and use roads and excavate and use soil for road purposes. The servitudes also granted Humble the right of ingress and egress to access the servitudes granted by Aucoin. At some point thereafter, Rozel acquired the right, title and interest in and to the aforementioned servitude agreements. The 1950 and 1957 servitude agreements are the only two (2) written documents that grant servitudes to Rozel over the road at issue.

Rozel, and its predecessors in title, accessed its oil properties in East Lake Verret Field in Assumption Parish since the early 1950's and has had to access the subject road in connection therewith without interruption until 2004. In September of 2001 and thereafter in 2003, the Coupels acquired property, some of which encompasses the road at issue in the instant litigation. In December of 2004, the Coupels, believing that Rozel had no right to use the road at issue, blocked Rozel's access to the road from Highway 401. Thereafter, the instant lawsuit was filed. During the discovery phase of the litigation, the Court ordered that the subject road and rights-of-way be surveyed by William Cointment Jr., PLS (hereinafter referred to as "Cointment"). Cointment determined that the portions of the road situated on the Coupel tract but not covered

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by the servitude agreements consisted of a small section of the subject road measuring approximately 200' to 225' (hereinafter referred to as "the (+/-) 200 foot section").

On August 23, 2006, before then presiding Judge Thomas Kleibert, a trial was conducted on the issue of Rozel's right to the injunction only¹. The trial court rendered judgment and later amended its judgment. Thereafter, the Court of Appeals vacated and set aside the Amended Judgment of the trial court and remanded the case for a contradictory hearing on the motion for new trial pursuant to Article 1977.

Pursuant to a successful recusal, the case was re-allotted to Judge Alvin Turner, Jr. On November 25, 2008, this Court held a trial wherein the issues were as follows: (1) Whether Rozel had the legal right to use the (+/-) 200 foot section of the road at issue; and (2) if not, the amount, if any, of damages to which the Coupels are entitled for Rozel's use of that portion of the road from April 2003 through June of 2005.

II. APPLICABLE LAW

Rozel argues that despite the absence of a written agreement evidencing a servitude over the (+/-) 200 foot section of the road, it has the right to use it without interference and such right is supported by four (4) separate and distinct legal theories, which can be described as follows:

- (1) Rozel has the right to use the (+/-) 200 section of the road because Rozel was in legal possession of it pursuant to La Civil Code 3422;
- (2) La R.S. 9:2971, a title curative statute, affords Rozel rights in the (+/-) 200 foot section of the road at issue;
- (3) Pursuant to La Civil Code Articles 689 and 694, Rozel was entitled to a Right of Passage over and across the (+/-) 200 foot section of the road;
- (4) Jurisprudence establishes Rozel's right to use the (+/-) 200 foot section of the road is mandated by the servitude agreements and the rights of ingress and egress provided for therein.

III. APPLICATION AND ANALYSIS

La C.C. Art. 3422 states in pertinent part, "one who has possessed a thing for over a year acquires the right to possess it." La. Civ. Code. Ann. art. 3422 (West 2008). As reasoned by

¹ At that time, the parties stipulated that all issues relating to damages, attorneys fees or any other relief would be deferred to a later time after a determination was made on the issue of Rozel's right to an injunction.

Justice Lemmon in concurring with the majority in *Kizer v. Lilly*, “a cause of action exists for a possessor of an apparent servitude to protect his right to possess the servitude by means of the possessory action.” 471 So.2d 716 at 721 (La. 1985). To that end, La C.C.P. Art. 3658, which sets forth the criteria for a possessory action states,

To maintain the possessory action the possessor must allege and prove that:

- (1) He had possession of the immovable property or real right therein at the time the disturbance occurred;
- (2) He and his ancestors in title had such possession quietly and without interruption for more than a year immediately prior to the disturbance, unless evicted by force or fraud;
- (3) The disturbance was one in fact or in law, as defined in Article 3659; and
- (4) The possessory action was instituted within a year of the disturbance.

La. Code of Civ. Proc. Ann. art. 3658 (West 2008).

This court finds that Rozel has met its burden of proof with respect to all the elements necessary to maintain a possessory action in accordance with La C.C.P. Art. 3658 and as such has acquired the right to possess the subject road in accordance with La C.C. Art. 3422. Specifically, Uncontested Issue of Fact numbers 17 through 21 establish that at the time of the disturbance, i.e., when the Coupels blocked Rozel’s access to the Road in December of 2004, Rozel and its contractors had been using the Road without interference from the Coupels. As such, Rozel had possession of the servitude. To that end, the pertinent stipulations state the following:

16. Of the approximately three hundred feet (300’) of the Subject Road located on the Coupel Tract, approximately two hundred (200’) to two hundred twenty five (225’) feet is not covered in the property description found in either the 1950 Servitude Agreement or 1957 Servitude Agreement.
17. From the purchase of the property by the Coupels, Rozel and its contractors, used the Subject Road without interference by the Coupels until 2004. However, in or around April of 2004 the Coupels began to question Rozel’s right to use the Subject Road.
18. In April of 2004, the Coupels began complaining to Rozel about Rozel’s (and certain third parties’) use of the Subject Road. To accommodate the Coupels, Rozel placed a lock on the gate that traverses the Subject Road to prevent third parties from using the Subject Road.
19. In December of 2004, the Coupels, believing that Rozel had no right to use the Subject Road, blocked Rozel’s access to the road.
20. On or about December 17, 2004, the Coupels placed their own lock on the gate, denying Rozel access to the Subject Road from La. Highway 401.

21. On December 21, 2004, Rozel filed suit for injunctive relief, and at present, a preliminary injunction is in place enjoining the Coupels, their agents, employees, and all other persons, firms, or corporations acting or claiming to act on their behalf from interfering in any way with Rozel or its beneficiaries, trustees, agents, employees, permittees, successors and assigns use of the rights-of-ways created by the Servitude Agreements over and through the Coupel's properties.

Uncontested Issues of Fact ¶¶ 16-21 (undated).

Uncontested Issue of Fact number 25 established that Rozel had possession of the servitude quietly and without interruption for more than a year immediately prior to the disturbance. It states,

25. Since at least 1991, Exxon, Hilliard, Rozel and their contractors have used the Subject Road² and the servitudes created by the 1950 Servitude Agreement on a regular basis and have maintained and repaired the same.

Uncontested Issues of Fact ¶ 25 (undated).

Further, the testimony of Glenn Madine was consistent with Uncontested Issue of Fact number 25 in that he testified that as an employee of Action, since 1992, he used the Subject Road on a daily basis in connection therewith and thereafter for Rozel.

With regard to the third element necessary to maintain a possessory action, La. C.C.P. Art. 3659 states the following in pertinent part,

Disturbances of possession which give rise to the possessory action are of two kinds: disturbance in fact and disturbance in law. A disturbance in fact is an eviction, or any other physical act which prevents the possessor of immovable property or of a real right therein from enjoying his possession quietly, or which throws any obstacle in the way of that enjoyment.

La. Code of Civ. Proc. Ann. art. 3659 (West 2008).

Clearly, as established by the stipulation and the testimony adduced at trial, Coupels' act in blocking Rozel's access to the servitude constituted a disturbance in fact.

Lastly, Rozel brought the instant action within approximately four (4) days after the disturbance, clearly within the year as allowed by Article 3658.

Having determined that Rozel had the right to use the (+/-) 200 section of the road because Rozel was in legal possession of it pursuant to La Civil Code 3422, this court will not

² It is important to note that Uncontested Issue of Fact 22 states, "The location of the Subject Road is reflected in Blue, Pink and Green on Exhibits "F" and "G" attached hereto." Further, at the trial in this matter, Larry Coupel testified that the section of the road at issue was the pink section located on his property.

make a determination as to the applicability of the remaining three (3) legal theories Rozel relies on.

The Coupels claim they are entitled to damages which they allege resulted from Rozel's use of the subject road from 2003 to 2006. To that end, Larry Coupel stated that with the exception of small potholes, in 2003 the road was in good shape and he was able to drive down the road with a small pickup truck even when the road was wet. Larry Coupel further testified that no maintenance had been done on the road from 2003 to 2006, despite Rozel and Action's daily use of the road, and that the potholes are worse today than they were in 2003, preventing him from driving down the road in wet conditions.

Kenneth Rodrique, an Action employee, testified that in 2003 the road was in good condition and he is unaware of Action making any repairs or performing any maintenance on the subject road between 2003 and 2006. Kenneth Rodrique further testified that he last saw the road in February of 2006 and that in his opinion, the road was slightly worse than it was in 2003.

Glenn Medine, an employec of Action, testified that in 2003 the road was in good condition and that Action used pick-up trucks daily and larger trucks a few times a month without any problems. However, in direct contrast to Larry Coupel's testimony, Glenn Medine testified that Action stopped using the road in 2005 and at that time, no repairs were needed on the road. Glenn Medine stated that one could drive a Cadillac down the road going fifty miles per hour. When questioned by counsel for Rozel, Glenn Medine stated that if no work had been done on the road in two (2) years since Action stopped using the road, the road would deteriorate and if no repairs had been done, particularly if there had been a lot of rain, it is possible the road would need repairs. Glenn Medine further stated that in his opinion, based on his experience in repairing roads, repairing this type of damage, would take no more than ten (10) hours.

With regard to the cost of repair to the road, Coupel presented the testimony of Dale Theriot (hereinafter referred to as "Theriot"), of Dale's Dozer Service. Theriot testified that he never went out to the property to inspect the road and that his estimate for \$91,510.00 was based solely on what Larry Coupel told him. Theriot further testified that he did not even know if in fact the Subject Road needed to be repaired. Notwithstanding the obvious issues with regard to the Theriot's testimony, the court feels that there are problems with Theriot's estimate as it relates to the damages that the Coupels are entitled to recover, if any. First, the coupels are not

entitled to recover the cost for a new and improved road³. Rather, should the Coupels prove their entitlement to damages, they are only entitled to recover the costs to repair the damages for the portion of the subject road that they owned from 2003 through 2006, the relevant time period. Further, the testimony has established that Rozel and several other contractors, including Action among others, used the road on a daily basis. As such, Rozel would only be liable for the portion of damages, if any, that it caused to the 200 strip of the Subject Road. While there was some evidence presented to the court regarding the condition of the road deteriorating from 2003 to 2006, there were conflicting reasons as to why that may have been the case. There was no competent evidence presented to the this court as to what damages, if any, Rozel's use caused to the road, nor what the cost of such repairs would be⁴. Accordingly, without meeting its burden of proof, the court cannot award the Coupels any damages for the cost to repair the road.

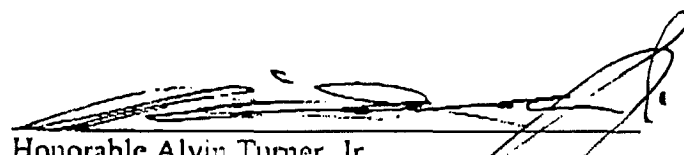
IV. CONCLUSION

For the above and foregoing reasons, judgment is rendered herein in favor of Rozel Energy II, declaring that Rozel had a legal right to use the (+/-) 200 foot section of the road that is located on the Coupels' property, as it had acquired the right to possess it in accordance with La C.C. Art. 3422. Accordingly, the Coupels' request relating to an alleged trespass and wrongful issuance of an injunction is DENIED.

The Clerk of Court for the Parish of Assumption is ordered to provide all counsel of record with notice of the filing of these Reasons for Judgment.

Counsel for Rozel shall prepare a judgment consistent with these reasons and submit same within 10 days.

Thus done and signed this 15th of April, 2009.


Honorable Alvin Turner, Jr.
23rd Judicial District Court
Division "E"

³ The testimony established that Theriot's claim was based on laying a six inch layer of limestone on the subject road when unequivocally, everyone familiar with the Subject Road testified road never had a six inch layer of limestone.

⁴ Counsel for Coupel argues Theriot's testimony provides the industry standard for determining the cost to resurface roads with a six inch layer of limestone. While this may be true, the testimony clearly has established that the Coupels are not entitled to recover the cost to resurface the portion of the road with a six inch layer of limestone.