

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 2155

THE PARISH OF WEST FELICIANA THROUGH
THE WEST FELICIANA PARISH POLICE JURY

VERSUS

JOHN MORGAN THOMPSON

DATE OF JUDGMENT: March 27, 2009

ON APPEAL FROM THE TWENTIETH JUDICIAL DISTRICT COURT
NUMBER 19889, DIVISION B, PARISH OF WEST FELICIANA
STATE OF LOUISIANA

HONORABLE WILLIAM G. CARMICHAEL, JUDGE

* * * * *

Michael L. Hughes
St. Francisville, Louisiana

Counsel for Plaintiff- Appellee
The Parish of West Feliciana through
The West Feliciana Parish Police Jury

Charles E. Griffin, II
St. Francisville, Louisiana

Counsel for Defendant-Appellant
John Morgan Thompson

* * * * *

BEFORE: KUHN, GUIDRY AND GAIDRY, JJ.

Disposition: REVERSED AND RENDERED.

*EGH - Gaidry, J. concurs without REASONS
Guidry, J. concurs in the result.*

Kuhn, J.

Plaintiff, the Parish of West Feliciana (“the Parish”), acting through the West Feliciana Parish Police Jury and its Consolidated Waterworks District Number 13 (“the Water District”), sought to connect a service line to an existing water supply line that traverses the property of defendant, John Morgan Thompson. Mr. Thompson’s attorney challenged the actions of the Police Jury, advising that Mr. Thompson had not granted the Water District a right-of-way or permission to access his property or the water supply line for any tie-ins. The Parish then filed this suit seeking a judgment that declared its rights pertaining to Mr. Thompson’s property with respect to specific documents referenced in the petition. The Parish seeks a declaration that it is entitled to connect a service line to the water supply line on Mr. Thompson’s property to serve property on the east side of Louisiana Highway 421 across from Mr. Thompson’s property. We reverse the trial court’s judgment in the Parish’s favor, because we find the referenced documents do not establish a personal servitude in favor of the Parish that authorizes it to connect one or more service lines to the existing water supply line without Mr. Thompson’s consent. We also render judgment, however, recognizing that the Parish has the right to access a 10-foot utility servitude that runs for 125 feet along Louisiana Highway 10, the southern boundary of Mr. Thompson’s tract, and runs for ninety feet along Highway 421, the eastern boundary of Mr. Thompson’s tract. Additionally, we recognize that the Parish has the right to access the Thompson property for the limited purpose of repairing or maintaining the original water supply line in a manner that is least burdensome to the property.

I. FACTUAL AND PROCEDURAL BACKGROUND

In the late 1970's or early 1980's, the Police Jury obtained permission from Mr. Thompson and his mother, Mrs. Wilma S. Thompson, to place a portion of a four-inch water supply line across a tract of land, known as the "Thomas W. Thompson, Jr. Estate (herein referred to as "the Thompson property.") After digging a small trench, the Water District installed an underground supply line on the Thompson property along the west side of Highway 421.¹ At that time, Mr. Thompson and his two siblings were naked owners of the tract, which encompassed land on both sides of Louisiana Highway 421. The property was subject to a usufruct in favor of Mrs. Thompson.

Mr. Thompson testified that the Parish installed the original water supply line by trenching across his mother's driveway. He had expected the supply line to be installed near a fence located next to the highway, but instead the Parish installed it in the middle of his pasture. While he was not pleased with the location of the placement of the water supply line on the property, he made no protest. He also testified that he performed some dirt-leveling work to cover the supply line so that his cattle did not injure themselves in the pasture.

According to Mr. Thompson's testimony, one water meter was installed around the time that the supply line was installed, servicing his mother's house on the west side of Highway 421, and another one was installed in 1983, servicing his cousin's house on the east side of Highway 421. In 1994, another water meter was installed that serviced a house Mr. Thompson built. Mr. Thompson also

¹ The record establishes the Parish sought access to the flat pastureland within the Thompson tract rather than the State right-of-way in the ditch to simplify the installation of the water supply line.

acknowledged that at one time, there were also some rent houses that were serviced with one or more meters on the east side of the highway. Mr. Thompson testified, however, that both he and his mother understood that the Parish would not access the property in the future unless they obtained their permission. Mr. Thompson stated that Mr. Ray Spillman, the Parish representative who sought access to the land for installing the original water supply line, told him and his mother that the Water District would only need access to the property to read the meters and to repair water leaks. Mr. Thompson did not want the Parish's work to hinder his farming and ranching operations. Neither he nor his mother granted the Parish access to the property after the last water meter was installed, with permission, in 1994.

Mrs. Thompson died in 2001, and in 2005, Mr. Thompson and his siblings partitioned the property. Mr. Thompson acquired the tract of land on the west side of Highway 421. Mr. Thompson, now the sole owner of the entire parcel of property through which the four-inch water supply line traverses, no longer has any ownership interest in the portion of the Thompson property that lies on the east side of Highway 421. At some point before this suit was filed, Mr. Thompson's siblings sold some or all of the property on the east side of Highway 421 to Mr. Burl Cain.

In June 2007, a Water District work crew was assigned the project of accessing Mr. Thompson's property for the purpose of connecting a three-quarter inch service line to the water supply line located on Mr. Thompson's property. The purpose of the project was to service Mr. Cain's property on the east side of Highway 421, via an underground boring. When Mr. Thompson discovered that

the crew had been on his property without his permission, he contacted his attorney, who sent a June 11, 2007 letter to the Police Jury. The letter advised, in pertinent part:

As you now know, the parish water line for Highway 421 leaves the state right-of-way for Highway 421 and traverses through the property of [Mr. Thompson], pursuant to an oral agreement that Mr. Thompson had with the [Water District] when the line was installed. As you are aware, the only right that the [Water District] has is for the maintenance and repair of the existing line where it lies. Even so, they need the permission of the property owner to properly access the line and permission to be able to use any property outside of what would be approximately a 1 or 2 feet width in which the pipeline lies.

When the line was installed on the Thompson property, Mr. Thompson was assured that there would be no tie-ins to this line on his property, other than the ones for his personal use. Mr. Thompson has not granted the [Water District] any right-of-way or permission to access this line for any tie-ins or any right-of-way through his property from this line back to the public right-of-way on Highway 421.

Should the [Water District] seek to obtain additional access to this line or additional right-of-way, they need to contact Mr. Thompson about negotiating such a right-of-way....

...

Further, regarding the Cain property [originally part of the Thompson tract that lies on the east side of Highway 421], the Police Jury, at the May meeting, stated that this subdivision was approved with the understanding that an 8" line was to be run along [Highway 421] to service this subdivision. Now it appears that the Police Jury is willing to informally waive the above requirement and allow the Cain property to obtain water off of the existing line by attempting to tie-in to said line through the Thompson property, where the Water District does not have a right-of-way or access to do so, nor the permission of the property owner.

Later that month, the Parish filed its petition for declaratory judgment, asserting that Mr. Thompson's property is burdened by one or more servitudes in the Parish's favor. Therein, the Parish asserted that Mr. Thompson had prevented

the Parish from exercising their servitude rights created by three documents: 1) a “Water Users Agreement” dated August 9, 1978, signed by Wilma S. Thompson; 2) the 2005 “Act of Partition” executed by Mr. Thompson and his siblings; and 3) a “Right-of-way Permit” signed by Wilma S. Thompson. The Parish prayed for the declaration of its rights created by these documents.

Mr. Thompson answered the Parish’s suit, generally denying the Parish’s allegations that it has the right to access his property to connect additional service connections to the water supply line that traverses his property.²

During trial, Mr. John C. Hashagen, the utility superintendent for the Water District, testified that there is no existing water supply line on the east side of Highway 421. He explained that the Parish does not know the exact location of the water supply line on Mr. Thompson’s property. The Parish made two unsuccessful

² Mr. Thompson’s answer further stated, “[T]he defendant affirmatively asserts that the petitioner trespassed on the defendant’s property and through gross negligence, cut the defendant’s telephone line and service to his residence and damaged his property, without the defendant’s permission.” Thus, Mr. Thompson’s answer sought damages for trespass. The caption of the answer, however, failed to indicate that the petition was to serve as a reconventional demand in addition to an answer. La. C.C.P. art. 1032 states:

An incidental demand shall be commenced by a petition which shall comply with the requirements of Articles 891, 892 and 893. An incidental demand instituted by the defendant in the principal action may be incorporated in his answer to the principal demand. In this event, the caption shall indicate appropriately the dual character of the combined pleading.

Although Mr. Thompson urges his trespass claim on appeal, we pretermitted the issue because we find Mr. Thompson’s claim of trespass was not properly presented to the trial court as a reconventional demand. See *Nelson v. Windmill Nursery of Louisiana, L.L.C.*, 04-2717, p. 4 (La. App. 1st Cir. 9/23/05), 923 So.2d 715, 717. Further, even if we were to reach this issue, the record before us does not establish any compensable damage. Mr. Thompson testified that ruts created on his property were repaired by the Parish. Additionally, although a phone line was accidentally cut within the state highway right-of-way, Mr. Thompson did not establish that he incurred any costs in reestablishing phone service. Further, Mr. John C. Hashagen, the utility superintendent for the Water District, testified that the Parish work crew cut trees and bushes on the State’s right of way, but he denied cutting any trees or bushes on Mr. Thompson’s property.

attempts to find the water line on Mr. Thompson's property. On one occasion, they were accompanied by Mr. Thompson in their efforts to locate the supply line. Afterwards, the Parish ceased work on Mr. Thompson's property, and did nothing. No tie-ins were ever installed; no water service was provided to Mr. Cain's property. The Parish had planned to trench in a perpendicular direction from wherever they found the water supply line on Mr. Thompson's property to the Highway 421 right-of-way, a distance approximated at about twenty feet.

Mr. Hashagen further testified that the existing water supply line runs within the state highway right-of-way for about a quarter of a mile, beginning near the intersection of Highway 10 and Highway 421, and at some point it veers into Mr. Thompson's property. He acknowledged the Parish could tie in at some point within the state highway right of way without accessing Mr. Thompson's property. He also confirmed that he did not work for the Parish when the original water supply line or the service meters were installed.

Mr. Charles Snyder, a professional land surveyor, testified that he performed a survey of the Thompson property when it was partitioned. He stated there was no apparent water line or servitude on the Thompson property lying to the west side of Highway 421. Shortly before the trial, Mr. Thompson dug into the ground to find the supply line in the general location where the Parish had attempted to access it. Mr. Snyder returned to the property for the purpose of locating this portion of the supply line on a map. Mr. Snyder testified that this portion of the water supply line is 52.5 feet from the centerline of Highway 421.

The trial court determined that the Parish acquired a servitude on Mr. Thompson's property when the four-inch supply line was installed based on La.

R.S. 19:14.³ The trial court reasoned in pertinent part:

The servitude in question is classified as a right of use. La. Civ. Code art. 639. A right of use includes the rights contemplated or necessary to enjoyment at the time of its creation as well as rights that may later become necessary, provided that a greater burden is not imposed on the property unless otherwise stipulated in the title. La. Civ. Code art. 642. The servitude was created when the supply line was installed. At that time, at least one service line was attached to the supply line on the west side of Highway 421 to service Ms. Wilma Thompson's residence Sometime later, according to the deposition of Mr. Thompson ..., additional supply lines were attached to the supply line servicing rent houses owned by the Thompsons on the west side of Highway 421. He also testified that two service lines were attached to the supply line to provide water to a customer on the east side of Highway 421 when the four inch supply line was installed

³ Louisiana Revised Statutes 19:14 provides:

A. In any case where the state or its political corporation or subdivision has actually, in good faith believing it had authority to do so, taken possession of privately owned immovable property of another, and constructed facilities upon, under, or over such property with the consent or acquiescence of the owner of the property, such owner shall be deemed to have waived his right to contest the necessity for the taking and to receive just compensation prior to the taking, but he shall be entitled to bring an action for such compensation, to be determined in accordance with the provisions of R.S. 19:9, for the taking of his property or interest therein, the just compensation to be determined as of the time of the taking of the property, or right or interest therein, and such action shall proceed as if the state, its political corporation, or subdivision had filed a petition for expropriation as provided for in R.S. 19:2.1.

B. In the case where any corporation referred to in R.S. 19:2 has actually, in good faith believing it had the authority to do so, taken possession of privately owned immovable property of another and constructed facilities upon, under, or over such property with the consent or acquiescence of the owner of the property, it will be presumed that the owner of the property has waived his right to receive just compensation prior to the taking, and he shall be entitled only to bring an action for judicial determination of whether the taking was for a public and necessary purpose and for just compensation to be determined in accordance with R.S. 19:9, as of the time of the taking of the property, or right or interest therein, and such action shall proceed as nearly as may be as if the corporation had filed a petition for expropriation as provided for in R.S. 19:2.1.

C. The provisions of Subsection A of this Section shall apply only to privately owned immovable property over which the state or its political corporation or subdivision has exercised actual possession in good faith for ten years and has completed construction of facilities upon, under, or over such property. The provisions of this Section shall not be deemed to authorize the acquisition of any interest in privately owned immovable property adjoining such facilities, including but not limited to a servitude, right of use, or any right of passage across or access to the private immovable property adjoining such facilities.

... and at least one more service line for the east side of the highway was attached later. Despite Mr. Thompson's testimony to the contrary, it is unreasonable to conclude that the attachment of service lines to a four inch water supply line was not contemplated at the time the supply line was placed on his property. That is especially so considering his testimony that at least two such lines were attached simultaneously with the installation of the supply line and more were attached later with his knowledge and acquiescence. Even assuming that the attachment of service lines was not contemplated by Mr. Thompson, such a use of the supply line was certainly necessary to the enjoyment of the right of use at the time of its creation. The sole purpose of the supply line is to provide water to citizens of the Parish. If Mr. Thompson could control access, the purpose would be thwarted and the water supply line would have little utility to anyone other than Mr. Thompson. In other words, there would be no right of use in favor of the Police Jury.

The [Police Jury] has a right of use of that portion of the property owned by [Mr. Thompson] necessary for access to the buried four inch water supply line sufficient to maintain the line and to attach such service lines as are required to meet the needs of the residents of [the Parish] whose property is intended to be served by the supply line. Representatives of the Police Jury are authorized to enter that part of the property owned by [Mr. Thompson] required for access to the water line for those purposes without his permission.

The trial court's judgment ordered that the Parish has a "right of use of that portion of the property owned by [Mr. Thompson] described as, Tract 1 of the [Thompson property] ... necessary for access to the buried 4" water supply line belonging to [Mr. Thompson] sufficient to maintain the line and to attach such service lines as are required to meet the needs of the residents of [the Parish] whose property may be served by the said water pipeline." The judgment further authorized representatives of the Police Jury to enter Mr. Thompson's property "as may be required for access to the waterline ... without his further permission."

Mr. Thompson suspensively appealed the trial court's judgment urging the trial court erred in: 1) disregarding a written servitude agreement between the parties; 2) interpreting La. R.S. 19:14; 3) failing to consider the intent of the

parties regarding the right of use pertaining to the servitude; and 4) ordering Mr. Thompson's property to be confiscated by the Parish without compensation.

II. ANALYSIS

There are two kinds of servitudes: personal servitudes and predial servitudes. La. C.C. art. 533. Personal servitudes of right of use confer upon a person a specified use of an estate less than full enjoyment. La. C.C. arts. 534 and 639. The right of use may confer only an advantage that may be established by a predial servitude. La. C.C. art. 640.⁴ A right of use may be established in favor of a legal entity. La. C.C. art. 641. Rights of use are real rights which confer limited advantages of use or enjoyment over an immovable. *Richard v. Hall*, 03-1488, p. 17 (La. 4/23/04), 874 So.2d 131, 145. A right of use includes the rights contemplated or necessary to enjoyment when the servitude was created. La. C.C. art. 642. Additionally, rights that may later become necessary are included in the right of use, provided that a greater burden is not imposed on the property, unless the title stipulates otherwise. La. C.C. art. 642. Further, a right of use is regulated by application of the rules governing predial servitudes to the extent that their application is compatible with the rules governing a right of use servitude. La. C.C. art. 645.

The trial court relied on La. R.S. 19:14 to support its finding that a servitude was created when the original water supply line was installed. We pretermitted a finding regarding the applicability of La. R.S. 19:14 as the legal basis for the original water supply line servitude. As the trial court noted, the parties do not

⁴ A predial servitude is a charge on a servient estate for the benefit of a dominant estate, where the two estates belong to different owners. La. C.C. art. 646. The obligation of the owner of the servient estate is to abstain from doing something on his estate or to permit something to be done on it. La. C.C. art. 651.

dispute that the Parish has a servitude over Mr. Thompson's property at the location of the original water supply line. Mr. Thompson concedes, based upon the intent of the parties when the original water supply line was installed, that the Parish has access to his property to maintain the original supply line. Mr. Thompson objects to the Parish's claim that it has the right to attach additional service lines for prospective users, by tying into the original line via unrestricted access across any portion of his property. The Parish seeks a declaration that it is entitled to connect a service line to the water supply line on Mr. Thompson's property based on the three above-referenced documents.⁵ We turn to these documents to evaluate their significance with respect to the facts of the present case and to determine the nature and extent of the servitude in question.

At trial, plaintiffs introduced into evidence an undated document, purportedly bearing the signature of Wilma A. Thompson, entitled "Right-Of-Way Permit Water Lines," which purports to grant certain rights to the Parish and is certified as filed in the conveyance records of the Parish on October 12, 1982.

In the absence of a contrary provision, the usufructuary may not burden property with a real right in favor of another person. 3 A.N. Yiannopoulos, Louisiana Civil Law Treatise, Personal Servitudes, § 102 (2000). The usufructuary may not establish on the estate of which he has the usufruct any charges in the nature of predial servitudes. La. C.C. art. 711. The installation and continued use of the water supply line by the Parish is in the nature of an affirmative predial servitude, benefiting the public. See La. C.C. art. 706. Because the "right-of-way" permit was not signed by Mr. Thompson and his

⁵ The Parish does not seek to expropriate ownership of any portion of Mr. Thompson's property

siblings, and there is no evidence establishing that Mrs. Thompson acted as a mandate for her children, the permit has no bearing on the existence of the servitude or the extent of the rights granted when the servitude was created.

The Parish also relies on two “Water Users Agreements.” The first water user agreement that is referenced in the petition is dated August 9, 1978, and is an agreement between Wilma S. Thompson, as “Member,” and the Water District. An unidentifiable signature underneath Mrs. Thompson’s name indicates that someone other than her executed the agreement on her behalf. For the same reasons that the right-of-way permit document executed by Mrs. Thompson does not burden the Thompson property with a servitude, the water user agreement executed on her behalf also has no effect.

At trial, the Parish also introduced another “Water Users Agreement,” dated February 22, 1994, bearing the signature of Mr. Thompson. This agreement sets forth that as “Member,” Mr. Thompson agrees to pay for water at the rates, time, and place determined by the Water District and agrees to install and maintain at his own expense a service line which shall begin at the meter and extend to the dwelling or place of use.” Further, the agreement specifies that the Water District “shall purchase and install a cutoff valve and may also include a water meter in each service.” Additionally, the agreement includes the following pertinent language, relied on by the Parish to support its claim:

The District shall furnish ... such quantity of water as the Member may desire in connection with his occupancy of the following described property.

(Continued . . .)
pursuant to this litigation.

The Member hereby grants the District, its successors or assigns, a perpetual easement in, over, under, and upon the above described land with the right to erect, construct, install, and lay, and thereafter use, operate and inspect, repair, maintain, replace and remove water pipelines and appurtenant facilities, together with the right of ingress and egress over adjacent land for the purpose mentioned above. ...

Nonapparent servitudes may be acquired by title only. La. C.C. art. 739.

Personal servitudes affecting immovable property which are created by agreement between the parties must be in writing. *Richard v. Hall*, 03-1488 at p. 18, 874 So.2d at 145; see also La. C.C. art. 2440; Yiannopoulos, *Personal Servitudes*, § 238. Conventional predial servitudes and personal servitudes are established by all acts by which property can be transferred. See La. C.C. art. 722; see also *Langevin v. Howard*, 363 So.2d 1209, 1214 (La.App. 2d Cir.1978), *writ denied*, 366 So.2d 560 (1979). The creation of a servitude is an alienation of a part of the property to which the laws governing alienation of immovables apply. La. C.C. Art. 708. For a deed to be translative of title to real estate, it must contain such a description as to properly identify the property so as to transfer its ownership. *McClendon v. Thomas*, 99-1954, p. 4 (La. App. 1st Cir. 9/22/00), 768 So.2d 261, 264. One must be able to identify and locate the property from the description in the deed itself or from other evidence appearing in the public records. *McClendon*, 99-1954 at p. 4, 768 So.2d at 264.

In this matter, the Water Users Agreement contains no description of the property, despite the language of the form agreement referencing “the following described property” and “the above described land.” The Water Users Agreement signed by Mr. Thompson includes a notation in the left-hand corner, which states, “Hwy 421 next to trailer & Wilma Thompson Place.” Because this description

would not be adequate to transfer title to any portion of the Thompson property, we also conclude that it is insufficient to establish a new servitude beyond what was established when the original water supply line was installed.⁶

The Parish also references the 2005 Act of Partition executed by the Thompson siblings as one of the documents supporting its claim of a servitude on the Thompson property. This partition includes the following pertinent language:

The above conveyances and transfers are made subject to all reservations, restrictions, covenants, easements, servitudes and rights-of way, which are filed of record with the Clerk of Court for the Parish of West Feliciana or shown on a map of survey of the subject property, or any easement or servitude that would be visible upon a physical inspection of the premises.

A map attached to the petition includes a notation, signed by the Thompson's siblings, which states, in pertinent part, "A 10' SERVITUDE AND 125' B/L ALONG THE LA HWY 10 R/W AND A 10' UTILITY SERVITUDE AND 90' B/L ALONG THE LA HWY 421 R/W AS REQUIRED BY THE WEST FELICIANA PARISH PLANNING AND ZONING COMMISSION IS HEREBY DEDICATED." While this language supports a finding of a ten-foot servitude on Mr. Thompson's property that runs for 125 feet along Louisiana Highway 10, the southern boundary of Mr. Thompson's tract, and that runs for ninety feet along Highway 421, the eastern boundary of Mr. Thompson's tract, it does not establish a servitude that would authorize the Parish to connect a service line to the water supply line traversing Mr. Thompson's property. That is so because, according to the evidence presented, the supply line does not lie within the ten foot servitude referenced in the 2005 partition map. While the evidence does not establish the

⁶ Although the 2005 act of partition was recorded in the Parish several years later, it has no bearing on the previously-executed Water Users Agreements.

entire route of the water supply line on Mr. Thompson's property, it is undisputed that the point of the supply line where the Parish seeks to attach its service line is beyond the ten-foot utility servitude shown on the map.

The Parish further claims that its servitude rights arise by virtue of the known and unopposed installation of the original water supply line, and that these rights encompass the right to tie into the supply line.

Generally, the use and extent of a servitude is regulated by the title by which it is created. La. C.C. art. 697. The "title" creating the servitude does not necessarily mean a written document, but may refer to the intent of the parties. *Marina Enterprises v. Ahoy Marine Services*, 496 So.2d 1080, 1083 (La. App. 4th Cir. 1986). The rights that are necessary for the use of a servitude are acquired at the time the servitude is established. La. C.C. art. 743. If the title is silent as to the extent and manner of use of the servitude, the intention of the parties is to be determined in the light of its purpose. La. C.C. art. 749.

Louisiana Civil Code article 642 controls the extent of the servitude, explaining that a right of use includes "the rights contemplated or necessary to enjoyment at the time of its creation as well as rights that may later become necessary, provided that a greater burden is not imposed on the property unless otherwise stipulated in the title." Based on the service lines that had been installed through the years, the trial court concluded it was unreasonable to conclude that the attachment of service lines to the water supply line was not contemplated when the supply line was originally installed.

(Continued . . .)

According to the defendant's uncontested testimony, however, the intent of the parties when the supply line was installed was that the Parish would obtain permission before any future service lines were attached to the supply line that traversed the Thompson property. This permission had been sought by the Parish on several occasions and was granted on several occasions prior to 1994, primarily because it benefitted Mr. Thompson or his relatives, since all of the property impacted was owned by him and his siblings. While the trial court acknowledges the fact that all of these service lines were installed with Mr. Thompson's knowledge and acquiescence, the court fails to recognize that the acquiescence would likely not have occurred if the access had not been for the benefit of Mr. Thompson or his relatives, or in a location that was not considered burdensome by the Thompson family.⁷ The Parish representative, Mr. Spillman, who spoke to the Thompsons at the time the supply line was installed, was the only other person referenced in the record who might have been able to testify regarding the intent of the parties at the time of the servitude's creation. The Parish did not offer Mr. Spillman's testimony; the record does not establish whether it was unavailable. Mr. Hashagen, the only Parish representative who testified, was not employed by the Parish when the original line or subsequent service tie-ins were installed, so he could not address the intent of those involved when the servitude was created.

Mr. Thompson testified that Mr. Spillman assured him and his mother that the Parish would not access his property unless it had permission to do so. Because each time the Parish accessed the property in the 1980's and 1990's to install water meters, it was with the Thompson's express permission and to benefit

⁷ Some of the meters installed serviced rent houses located on the Thompson property. This

them or others living on the Thompson property, we find the trial court was manifestly erroneous in concluding that the original servitude contemplated future access for the Water District to tie-in to the supply line without permission.

Based on the testimony, the only finding supported by the record is that when the servitude was created for the water supply line, the parties did not contemplate that the Parish would have access to the Thompson property without permission for the purpose of attaching a service line to the water supply line.

Although the Parish asserts the right to tie into the water supply line is necessary for the enjoyment of the original servitude, the record does not support that conclusion. Plaintiffs did not establish that the purpose of locating the original supply line on the Thompson property was so that service lines could be attached to it for the purpose of providing water to property on the eastern side of Highway 421. From the evidence presented, the Parish sought access to the Thompson property to obtain a more convenient route for installing its supply line; Mr. Thompson testified that the Parish did not want to have to install the supply line in the ditch that bordered Highway 421. Further, based on the evidence presented, it is as likely that the Parish accessed the Thompson property to avail itself of a more convenient and presumably less costly terrain across which to traverse in its efforts to deliver water to users in areas to the north or to the south of the defendant's property.

Despite the Parish's claim that the access is necessary now, the proposed service tie-ins obviously impose a greater burden on Mr. Thompson's property and, as such, is not included within the original servitude. La. C.C. art. 642. Such

(Continued . . .)
service ultimately benefited the Thompson family.

access requires trenching in a perpendicular direction across a previously-
unaffected portion of Mr. Thompson's property to reach the supply line. Because
the right to access the supply line traversing Mr. Thompson's property to connect
the proposed service line in question is one that became necessary after the
servitude was created, and because doing so imposes a greater burden, not
stipulated in the servitude's title on Mr. Thompson's property, the Parish does not
have the right to install the service line without Mr. Thompson's permission.

Based on the record before us, the Parish has established that it is entitled to
a ten-foot servitude on Mr. Thompson's property that runs for 125 feet along
Louisiana Highway 10, the southern boundary of Mr. Thompson's tract, and that
runs for ninety feet along Highway 421, the eastern boundary of Mr. Thompson's
tract. However, the Parish has not established that it is entitled to access Mr.
Thompson's property beyond this 10-foot servitude for the purpose of connecting
a service line to the four-inch water supply line that traverses his property. We
recognize that the parties do not dispute that the Parish has a servitude over Mr.
Thompson's property at the location of the original water supply line, and Mr.
Thompson concedes that the Parish has access to his property to maintain the
original supply line. Accordingly, we recognize that the Parish has the right to
enter Mr. Thompson's property with its workmen and equipment for the purpose
of repairing or maintaining the original water supply line. La. C.C. art. 745. The
Parish is further obliged to cause the least possible damage and to remove their

materials and any debris that might result as soon as possible after the work is performed. *Id.*⁸

III. CONCLUSION

For the above reasons, we reverse the trial court's judgment, because we find the documents referenced in the Parish's petition do not establish a personal servitude in favor of the Parish that authorizes it to connect service lines to the existing water supply line without Mr. Thompson's consent. We also render judgment, however, recognizing that the Parish has the right to access a 10-foot utility servitude that runs for 125 feet along Louisiana Highway 10, the southern boundary of Mr. Thompson's tract, and runs for ninety feet along Highway 421, the eastern boundary of Mr. Thompson's tract. Additionally, we recognize that the Parish has the right to access the Thompson property for the limited purpose of repairing or maintaining the original water supply line, but that work must be done in such a manner as to cause the least possible damage to the property and the Parish's materials and debris must be removed as soon as possible after the work is performed.

Costs of this appeal in the amount of \$1,088.77 are assessed against the Parish of West Feliciana.

REVERSED AND RENDERED.

⁸ At trial, the Parish did not establish the exact route of the water supply line, so we do not attempt to establish its exact location on the Thompson property, herein.