CECIL EUGENE GATES and : NUMBER: 533,628, “B”

JUDY BARDWELL GATES

VERSUS : FIRST JUDICIAL DISTRICT COURT

CLARENCE ANDERSON, JR. and

ERNESTINE P. ANDERSON : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT**

 Trial was held April 3, 2013. The court heard testimony from Cecil E. Gates, Clarence Anderson, Jr. Gerald Brunson, Jim Yarborough, Rick Gates, Jennifer Henderson and Jeffrey Draper. Evidence was admitted, including numerous deeds, maps, photographs, a Judgment rendered in Caddo Docket No. 505,111, and a related enforcement order. In addition, on April 5, 2013, Plaintiffs’ Counsel Robert M. Davis, III, Defense Counsel Charles J. Neupert, Jr. and the undersigned judge met at Oak Hill Baptist Church on Jefferson Paige Road and altogether drove both routes at issue in this suit – the one which tracks the section line across the west 30 feet of the Anderson’s property to the Gates’ tract and the route which begins on Clim Lane, ultimately traverses the Hatcher property and enters into the Gates’ property. Finally, the Court has reviewed the post hearing memorandum filed by plaintiff counsel. After carefully and thoroughly reviewing the evidence and applicable law, and for reasons which follow, the Court concludes that Judgment should be rendered in favor of the plaintiffs and against the defendants.

**APPLICABLE LAW**

The Court has reviewed the following applicable law:

Louisiana Civil Code Art. 646: A predial servitude is a charge on a servient estate for the benefit of a dominant estate. The two estates must belong to different owners.

Louisiana Civil Code Art. 689: The owner of an estate that has no access to a public road or utility may claim a right of passage over neighboring property to the nearest public road or utility. He is bound to compensate his neighbor for the right of passage acquired and to indemnify his neighbor for the damage he may occasion.

Louisiana Civil Code Art. 690: The right of passage for the benefit of an enclosed estate shall be suitable for the kind of traffic or utility that is reasonably necessary for the use of that estate.

Louisiana Civil Code Art. 692: The owner of the enclosed estate may not demand the right of passage or the right-of-way for the utility anywhere he chooses. The passage generally shall be taken along the shortest route from the enclosed estate to the public road or utility at the location least injurious to the intervening lands. The location of the utility right-of-way shall coincide with the location of the servitude of passage unless an alternate location providing access to the nearest utility is least injurious to the servient estate and intervening lands. The court shall evaluate and determine that the location of the servitude of passage or utility shall not affect the safety of the operations or significantly interfere with the operations of the owner of the servient estate or intervening lands prior to the granting of the servitude of passage or utility.

Louisiana Civil Code Art. 740: Apparent servitudes may be acquired by title, by destination of the owner, or by acquisitive prescription.

Louisiana Civil Code Article 742: [T]he laws governing acquisitive prescription of immovable property apply to apparent servitudes. An apparent servitude may be acquired by peaceable and uninterrupted possession of the right for ten years in good faith and by just title; it may also be acquired by uninterrupted possession for thirty years without title or good faith.

Further the Court has considered the following applicable jurisprudence: Wetzel v. Khan, 2000-1083 (La. App. 4 Cir. 9/19/01), 797 So.2d 122; Pearson v. Theriot, 87-894 (La. App. 3 Cir. 11/09/88); 534 So. 2d 35; Morris v. Nesbitt, 6492 (La. App. 2 Cir. 06/19/42); 9 So. 2d 75; and Mercer v. Daws, 5822 (La. App. 2 Cir. 01/10/39); 186 So. 877

**FINDINGS OF FACT**

1. The plaintiffs, Cecil and Judy Gates, purchased their 65 acre tract and a predial servitude over the Hatcher property in 1986.
2. The Gates’ property is enclosed without access to a public road.
3. Plaintiffs and their ancestors in title have enjoyed the ownership, possession and use of a legal servitude for a right of passage and right of way in the form of an unimproved road from the south boundary of their enclosed tract over their neighbors land to the closest public highway, Jefferson Paige Road.
4. The road crosses five tracts of land that are owned by Oak Hill Baptist Church, the Andersons, the Martin Heirs (property upon which Joe Willis Thomas lives), the McAlpine Heirs and, finally, it crosses into the Gates property, which is bounded, in effect, by Cross Lake.
5. The road has served as a legal servitude and right of way for each of the five tracts for more than thirty years.
6. The access has never been legally interrupted and the legal servitude was judicially recognized by Judgment rendered December 27, 2006 in Caddo Docket No. 505,111.
7. Cecil Gates operated a plant farm for many years and thereafter Gerald Brunson assumed the inventory during which time both men, their agents and employees traversed the road, using large trucks on a regular, perhaps frequent basis. In addition, the road was used by Rick Gates in connection with timber cuttings from the Gates and Hatcher tracts.
8. The road is relatively straight and consistent with the section line, with only a few relative small holes and ruts.
9. Clim Lane is a roadway and has an overlay to a point and the overlay abruptly ends. It joins the predial servitude granted by Mr. Hatcher, it turns into a muddy and winding road, full of deep and perilous mud holes and ruts, which was very difficult to traverse even in the undersigned judge’s 4-wheel drive pickup truck. The Court concludes that the road is impassable for a regular automobile and at best perilous for a truck that does not have 4-wheel drive.

**CONCLUSIONS OF LAW**

1. Mr. and Mrs. Gates and their ancestors in title have acquired by acquisitive prescription a servitude of passage and right of way across Mr. and Mrs. Anderson’s property.
2. Irrespective of the acquisitive prescription finding, because the Gates’ property is legally enclosed, the Gates are entitled to a legal servitude of passage across the entire existing road that runs from Jefferson Paige Road to their property.
3. The fact that there is a conventional servitude of passage in favor of the Gates across the Hatcher tract does not preclude the Gates from having a legal servitude of passage from their property across the Anderson’s property because the Clim Lane/Hatcher route is essentially impassable for any vehicle other than a 4 wheel drive truck.
4. Finally, and significantly, the Andersons will suffer absolutely zero harm and zero damages by the Gates having a judgment as sought because that servitude is presently being used by Joe Willis Thomas; it was previously used by Gerald Brunson and his plant company employees as well as by Rick Gates’ logging trucks on at least two occasions. The positioning of Mr. and Mrs. Anderson’s house is such that their quiet enjoyment is not disturbed or threatened to any extent by the servitude used by Joe Willis Thomas or the Gates.

**A FINAL OBSERVATION**

As stated at the close of evidence, the Court deems both Mr. Gates, a retired fireman of 28 years, and Mr. Anderson, a retired educator of 42 years, to be excellent citizens who have an unfortunate communication dispute probably emanating from Mr. Anderson’s perception that his property rights have been cavalierly disrespected by Mr. Gates. That perception was most likely exacerbated by the event which took place during a service at Oak Hill Baptist Church (Mr. Anderson’s church) in which loggers apparently hauling timber from the Gates’ tract asked members of the congregation to move their cars – all as testified to by Mr. Anderson.

 It is the view of this Court that Mr. Gates should apologize to his neighbor Mr. Anderson and that the two men should shake hands as gentlemen.

 Furthermore, counsel should explore the issue raised by Mr. Anderson regarding garbage dumping and perhaps the need for a gate for the benefit of Joe Willis Thomas, the plaintiffs and the environment so that more obnoxious garbage is not dumped by third parties on the servitude.

In light of all the circumstances, court costs shall be borne equally between the sides. Counsel shall submit a formal Judgment in accordance with this ruling and in conformity with La. Dist. Ct. R. 9.5.

Signed this 16th day of April, 2013 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

Robert M. Davis, III, Counsel for Cecil Eugene Gates and Judy Bardwell Gates

Charles J. Neupert, Jr., Counsel for Clarence Anderson, Jr. and Ernestine P. Anderson