Supreme Court of Alabama
Case Number 1130875

Overview

In circuit court, Plaintiff/Appellee claimed an easement by necessity and/or an easement by prescription over a road across land owned by Defendant/Appellant. In a final ruling on a motion for summary judgment, the trial judge ordered that Plaintiff/Appellee had an easement by necessity over the road.

The case was then assigned to a second trial judge who ruled, on a subsequent motion for summary judgment, that Plaintiff/Appellee also had an easement by prescription over the road on the land owned by Defendant/Appellant. This second trial judge declared that maintenance and improvement of the road, including "dozer work, grader work and *the blasting of ditches with dynamite*", constituted adverse use.

Defendant appealed the ruling by the second trial judge, arguing that the use of his road could not be adverse because the road was on an easement by necessity. Defendant also argued that genuine issues of material facts precluded summary judgment.

The Supreme Court of Alabama affirmed the ruling by the second trial judge, in a five-to-four split decision, citing no authoritative references, citing no case law, citing no statues, and providing no opinion. The Court indicated that it had determined that an opinion in the case would serve no significant precedential purpose.

Defendant/Appellant applied for rehearing on the basis that a written opinion was merited, since the decision created a conflict in Alabama real estate law, and was contrary to law in other states, and was contrary to the following rule promulgated by the American Law Institute:

> "Uses made pursuant to licenses are not adverse, nor are uses made pursuant to servitudes created expressly, by implication, or by necessity."

Defendant/Appellant argued that this rule was consistent with the general interests of land owners and the orderly conduct of their affairs in Alabama, and that this rule was consistent with common sense.

The Supreme Court of Alabama overruled Defendant/Appellant's application for rehearing in an identical five-to-four split decision, citing no authoritative references, citing no case law, citing no statues, and providing no opinion.

The ALI rule stated above, and other authorities relating to easement law, are discussed extensively in *O'Dell v. Stegall*, 703 SE.2d 561 (WVa.2010) at page 33 (page 40 in the pdf document). See also Restatement (Third) of Property (Servitudes) § 2.16 (2000) at page 4, paragraph f.