Title Insurance Client Alert â?? Important Court of Appeals of Virginia Opinion Concerning the Ownership and Use of Certain Easements

Description

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In July of 2025, the Court of Appeals of Virginia issued a significant 24-page opinion in David Tidwell, *et al*. v. Kenneth. M Goldsmith, *et al*., Record No. 0629-24-1 and Record No. 0666-24-1, in consolidated cases concerning the ownership and use of certain easements. In this appeal, both parties appealed the judgment of the Circuit Court of the City of Williamsburg and James City County. The Court of Appeals affirmed the judgment in part, reversed and vacated in part, and also remanded in part. This matter involves a classic land dispute between neighboring landowners which includes dogs running wild, burn barrels, a trash hut, unauthorized parking, fences, carports, encroachments and the like over the course of nearly five years!

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Relevant Facts

The Tidwells and Goldsmiths own and occupy adjacent properties in James City County. These parcels were originally part of a single parent tract, owned by the Snyders, the parents of Rachael Tidwell, one of the parties to this action. In 1965, the original 21-acre parent tract was subdivided. A 2.75-acre parcel was conveyed in 1965 to Blanche Roberts. The 1965 subdivision plat reflected a 60-foot-right-of-way giving the Snyders access to a public road. In 1975, the Snyders deeded a 0.642-acre parcel to their daughter Rachael, which included an easement across the 60-foot-right-of-way reflected on the 1965 plat, extended to the south along the eastern boundary of Rachaelâ??s lot, and an additional easement across a 15-foot area between Rachaelâ??s lot and Blanche Robertsâ?? lot.

After the conveyance from her parents, Rachael, while living on the property, married David Tidwell (party to this matter) and they constructed a carport in the late 90s/early 2000s. In 2012, the executor to Rachaelâ??s fatherâ??s estate conveyed what was left of the original Snyder parcel to John and Debra Reese. After acquiring their parcel, the Reeses discovered the carport constructed by the Tidwells encroached on their parcel, however, the Reeses did not object. Seven or eight years later, in 2019, the Reeses sold their property to the Goldsmiths, the other parties to this matter. This is where things began to unravel.

Initially, the Tidwells and Goldsmiths did not have any problems. The disagreements allegedly arose between the once peaceful neighbors when another neighbor allowed his large dog to run loose and in the Goldsmithsâ?? yard but asked the Goldsmiths to keep their dog on the Goldsmithsâ?? property. Apparently, the Goldsmiths were not comfortable with such a large dog running loose and decided to hire a contractor in 2021 to build a barbed wire fence as a barrier to keep the dog from entering their yard. In constructing the barbed wire barrier, the Goldsmiths and their contractor relied on a survey of the parcel when the Goldsmiths purchased the parcel in 2019. This 2019 survey reflected the boundary lines, easements, and the encroaching Tidwell carport. Further examination of the survey and parcel reflected, among other things, the placement of a burn barrel not belonging to the Goldsmiths on the

Goldsmithsâ?? parcel. The Goldsmiths requested the Tidwells to remove their items from the Goldsmithsâ?? property. Some items were removed; others were not. Prior to the Goldsmithsâ?? demand for removal of the Tidwellsâ?? items, the Goldsmiths constructed a trash hut within the 60-foot easement.

The Circuit Court Decision

By November 2021, the issues between the landowners had reached a boiling point and the Goldsmiths filed suit against the Tidwells for trespass and declaratory judgment regarding the scope of the â??rights conferredâ?• in relation to the easements. In their complaint, the Goldsmiths stated the carport structure physically encroached on their property by approximately eight feet. The Goldsmithsâ?? complaint also alleged the Tidwells had trespassed, used the road (easements) in a manner that exceeded their granted rights to use them by 1) dumping burned material, trash and other materials in the easement; 2) parking vehicles and trailers within the easement; and 3) storing farm equipment and other automotive parts in the easement. The Tidwells responded to the complaint by filing an answer and counterclaim asserting a claim of adverse possession in regard to the carport and further alleged the Goldsmiths themselves had obstructed the easement by installing fences, posts and piling wood debris in the easement.

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In January 2023, during the pendency of the action, the Goldsmiths erected an eight-foot-tall metal fence in place of the existing barbed wire fence. Ensuing events included an amended counterclaim citing the new metal fence as a nuisance and an encroachment on the easement, several continuances, leave of court to amend pleadings, and a motion for partial summary judgment heard in August of 2023. At this hearing, the court addressed the scope and locations of the respective 60-foot and 15-foot easements. Additionally, the court concluded the five-year statute of limitations of the Goldsmithsâ?? trespass claim had expired, and the Goldsmithsâ?? time for amendment of pleadings to include a presumption of permission as an affirmative defense to the Tidwellsâ?? counterclaim due to the parent-child relationship between Rachael and the Snyders had passed.

By final order entered in March 2024, the circuit court held:

1. The Tidwells were perpetually enjoined and restrained from dumping or disposing of anything in the Goldsmithsâ?? property, from storing anything on the Goldsmithsâ?? property, and from burning trash or other items on the Goldsmithsâ?? property.
2. The Tidwellsâ?? easement was for ingress and egress only and the Tidwells and the Goldsmiths were perpetually enjoined and restrained from parking in the easement, dumping any material in the easement, and storing any equipment or blocking the easement.
3. The trash hut did not obstruct the easement and did not need to be removed.
4. The Tidwells had acquired title by adverse possession of the land under the portion of the carport that encroached on the Goldsmithsâ?? property.
5. The Goldsmiths did not have to remove the metal fence, and the fence was not a nuisance.

Both parties appealed various aspects of the decision of the circuit court.

Court of Appeals Decision

1. *Adverse Possession* â?? The Goldsmiths argued that the trial court erred in finding that permissive use should have been pleaded as an affirmative defense to adverse possession and also erred in refusing to grant the Goldsmiths leave to amend the amended complaint to include

an argument of a presumption of permissive use because of the parent-child relationship to defend against the Tidwellsâ?? claim of adverse possession. The Court of Appeals found that the trial court erred in ruling that permission had to be pled by the Goldsmiths given that it was the Tidwellsâ?? burden to prove all the elements of adverse possession â?? including that the adverse possession they alleged was hostile. The adverse possession claim was remanded to the circuit court for a full hearing on the merits.

2. *The Partiesâ?? Use of the Easements* â?? The Tidwells argued the trial court erred in failing to require the Goldsmiths to remove the trash hut, plantings, debris, posts, and other permanent improvements placed or installed by them within the easement; erred in failing to consider whether occasional limited duration parking within the easement does not impede use of the easement for ingress or egress, is a reasonable use of the easement, and is not a burden on the servient estate; and erred in its treatment of the fence and failing to require its removal. In contrast, the Goldsmiths contended the trial court erred by finding that the Goldsmiths were prohibited from parking in the easement if such parking did not unreasonably interfere with Tidwellsâ?? ingress and egress.
3. The appellate court found that both the Tidwells and Goldsmiths had placed obstructions within the easement.

    b. The appellate court affirmed the circuit courtâ??s ruling that neither party can use the easement for parking.

    c. However, the circuit courtâ??s ruling that the Goldsmithâ??s did not need to remove the trash hut from the easement was vacated and remanded to the circuit court to enter an order directing the Goldsmiths to remove the trash hut.

    d. The appellate court held the metal fence erected by the Goldsmiths did not amount to a material encroachment. The fence could remain in place because it was entirely on the Goldsmithsâ?? land and because there was no evidence that the fence prevented the Tidwells from using the easement for ingress and egress and took up as little space of the easement as practically possible due to being located adjacent to the property line.

    e. The appellate court also found that the circuit court did not err in its interpretation of the scope of the 60-foot easement.

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III. Conclusion/Findings

1. No error in defining the dimensions of the Tidwellsâ?? easements.
2. No error in ruling that neither the Tidwells nor Goldsmiths can park in the easement, even on a temporary basis.
3. No error in ruling the Goldsmithsâ?? fence can remain in place.
4. Error in ruling that permission had to be pled by the Goldsmiths as a defense to a claim of adverse possession.
5. Error in ruling that the Goldsmiths do not need to remove their trash hut from the easement.

Note: *Many thanks to a friend and colleague, Sheldon M. Franck (Geddy, Harris, Franck & Hickman, L.L.P.), counsel for the Tidwells, for sharing his insight and comments regarding this interesting appellate decision.*



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James L. Windsor is a member with Kaufman & Canoles, P.C. and is based in the firmâ??s Virginia Beach office. He is the Chairman of the firmâ??s Real Estate Claims & Title Insurance Solutions Group. Jim is rated an AV Preeminent lawyer with over 39 years of experience and expertise in counseling, mediation, and litigation involving construction, mechanicâ??s liens, real property, title insurance, mortgage lending, and creditorsâ?? rights. Jim has co-authored a published text book, Modern Real Estate Practice; written a law review article regarding mechanicâ??s liens and many other articles; authored the â??Mechanicâ??s Liensâ?• chapter in Enforcement of Liens and Judgments in Virginia for 22 years and in other Virginia CLE publications; and has given over 120 seminars on topics involving construction and real estate law. Jim has received many recognitions and honors including being listed in Best Lawyers in America, Real Estate, 2018-2024; Best Lawyers in America, Litigation-Construction, 2022-2024; Virginia Business Magazine; CoVaBiz magazine; Virginia Super Lawyers. In 2016, Jim received the Distinguished Service Award from the Virginia Land Title Association and, in 2024, received the Traver Scholar Award presented by the Real Property Section of the Virginia State Bar.

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