

CHAPTER XIV

EASEMENTS

STANDARD 14.1

EASEMENT APPURTENANT

STANDARD: AN EASEMENT APPURTENANT IS INCLUDED IN A CONVEYANCE OF THE DOMINANT ESTATE IN THE ABSENCE OF EXPRESS LANGUAGE TO THE CONTRARY.

Problem: The owner of Blackacre and Greenacre deeded Blackacre to Joan Doe together with an easement to use the east 12 feet of Greenacre as a driveway for access to Blackacre. Later, Doe deeded Blackacre to Simon Grant. The deed did not refer to the easement. Did Grant acquire an easement to use the driveway?

Answer: Yes.

Authorities: *Greve v Caron*, 233 Mich 261, 206 NW 334 (1925); *Myers v Spencer*, 318 Mich 155, 27 NW2d 672 (1947); *Von Meding v Strahl*, 319 Mich 598, 30 NW2d 363 (1948); *Haab v Moorman*, 332 Mich 126, 50 NW2d 856 (1952); *Dyer v Thurston*, 32 Mich App 341, 188 NW2d 633 (1971).

STANDARD 14.2

ASSIGNABILITY OF EASEMENT IN GROSS

STANDARD: AN EASEMENT IN GROSS IS NOT ASSIGNABLE, EXCEPT AN EASEMENT WHICH IS COMMERCIAL IN NATURE, SUCH AS AN EASEMENT FOR PIPELINES, TELEPHONE OR TELEGRAPH LINES, OR RAILROADS.

Problem A: Paul Mann, the owner of Blackacre, conveyed an easement for a bicycle path across Blackacre to John Doe, who owned no interest in adjacent real property. Doe assigned the easement to Richard Roe. Did Roe acquire the easement?

Answer: No.

Problem B: Paul Mann, the owner of Blackacre, conveyed an easement for pipeline purposes across Blackacre to Peerless Pipe Line Company. Peerless then assigned the easement to Orient Gas Company. Did Orient Gas Company acquire the easement?

Answer: Yes.

Authorities: Problem A: *Stockdale v Yerden*, 220 Mich 444, 190 NW 225 (1922).

Problem B: *Johnston v Mich Consolidated Gas Co*, 337 Mich 572, 60 NW2d 464 (1953). See also *Mumaugh v Diamond Lake Area Cable TV Company*, 183 Mich App 597, 456 NW2d 425 (1990), suggesting that an electric power line easement was an assignable easement in gross.

Comment A: The law does not favor an easement in gross, and a mere personal right will not be presumed when an easement can be construed as appurtenant to some other estate. *Todd v Nobach*, 368 Mich 644, 118 NW2d 402 (1962).

Comment B: Various statutes provide for the voluntary preservation of certain characteristics existing on a parcel of real property, such as structures of historic significance or natural conditions. These statutes may refer to “historic preservation easements” or “conservation easements.”

However, the devices are not easements, but instead restrictive covenants granting rights of enforcement, which may be transferable, but are beyond the scope of this Standard. See, Restatement of Property: Servitudes, section 1.2, comment h.

Easements granted to public agencies, such as water and sewer easements granted to municipalities, may be in the nature of easements in gross, but they are not entirely commercial in nature. The Committee expresses no opinion as to the assignability of easements in gross held by public agencies.

The reported Michigan cases addressing the transferability of easements in gross predate the advent of wireless communication, cable television and the like. Accordingly, the Committee expresses no opinion as to the assignability of easements for these types of purposes.

STANDARD 14.3

TERMINATION OF EASEMENT CREATED BY RESERVATION OR GRANT

STANDARD: AN EASEMENT CREATED BY RESERVATION OR GRANT MAY NOT BE TERMINATED BY NONUSER ALONE; IT MAY, HOWEVER, BE TERMINATED BY:

(A) NONUSER COUPLED WITH ACTION SHOWING AN INTENT TO ABANDON THE EASEMENT; OR

(B) ADVERSE POSSESSION.

Problem A: Paul Mann deeded the east half of Blackacre to Simon Grant in 1973, reserving an easement for ingress and egress over the south 33 feet. As of 2006 Mann had never used the easement and had taken no action showing an intent to abandon it. Does Blackacre remain subject to the easement?

Answer: Yes.

Problem B: The manufacturing plant of Atlas Company was located on Greenacre, adjacent to Blackacre, over which Atlas had been granted an easement for a private road. After constructing the road and using it for some years, Atlas ceased operations, its buildings were torn down, the road was removed, and Greenacre was sold for non-manufacturing purposes. Is Blackacre subject to the easement?

Answer: No.

Problem C: Paul Mann, the owner of Blackacre, granted an easement to John Doe over a 50-foot-wide strip of land across Blackacre in 1986. Mann deeded Blackacre to Simon Grant in 1987. Grant fenced in all of Blackacre in a manner which adversely prevented Doe's use of the easement for the next 19 years. Does Blackacre remain subject to the easement?

Answer: No.

Authorities: Generally: *McDonald v Sargent*, 308 Mich 341, 13 NW2d 843 (1944); *Kraft v Miller*, 314 Mich 390, 22 NW2d 857 (1946).

Problem A: *Lathrop v Elsner*, 93 Mich 599, 53 NW 791 (1892); *Jones v Van Bochove*, 103 Mich 98, 61 NW 342 (1894); *First National Trust & Savings Bank v Smith*, 284 Mich 579, 280 NW 57 (1938); *Choals v Plummer*, 353 Mich 64, 90 NW2d 851 (1958).

Problem B: *Jones v Van Bochove*, 103 Mich 98, 61 NW 342 (1894); *MacLeod v Hamilton*, 254 Mich 653, 236 NW 912 (1931); *Bricault v Cavanaugh*, 261 Mich 70, 245 NW 573 (1932); *Michigan Department of Natural Resources v Carmody-Lahti Real Estate Inc*, 472 Mich 359, 699 NW2d 272 (2005).

Problem C: MCL 600.5801. *Matthews v Lake Shore & Mich Southern R Co*, 110 Mich 170, 67 NW 1111 (1896); *Carr v Bartell*, 305 Mich 317, 9 NW2d 556 (1943).

Comment: An action showing intent to abandon an easement can be (1) an act that abandons the purpose for which the easement was created or (2) the act of employing some other means to accomplish the purpose of the easement. *Jones v Van Bochove*, 103 Mich 98, 61 NW 342 (1894); *MacLeod v Hamilton*, 254 Mich 653, 236 NW 912 (1931).

Caveat: The termination of a railroad easement by nonuser may require additional acts not otherwise required for non-railroad easements. See, *Michigan Dept of Natural Resources v. Carmody-Lahti Real Estate Inc, supra*.

Note: See Standard 14.4 regarding the termination of a prescriptive easement by nonuser alone. See also Standard 14.5 regarding termination of an easement by merger of the dominant and servient estates.

STANDARD 14.4

TERMINATION OF PRESCRIPTIVE EASEMENT

STANDARD: A PRESCRIPTIVE EASEMENT IS TERMINATED BY CONTINUOUS NONUSER FOR THE PERIOD REQUIRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

Problem: John Doe, the owner of Blackacre, dammed a stream on Blackacre in 1969, causing water to flow onto Whiteacre, owned by Richard Roe. Roe did not grant flowage rights over Whiteacre. The dam was maintained until 1989 when it washed out. Doe rebuilt the dam in 2006, claiming a prescriptive easement for the flowage of water over Whiteacre. Does Doe have a prescriptive easement over Whiteacre?

Answer: No. Doe's prescriptive easement was terminated by nonuser for a period of more than 15 years.

Authorities: MCL 600.5801. *McDonald v Sargent*, 308 Mich 341, 13 NW2d 843 (1944); *Kraft v Miller*, 314 Mich 390, 22 NW2d 857 (1946); *Cook v Grand River Hydroelectric Power Co*, 131 Mich App 821, 346 NW2d 881 (1984).

Comment A: A prescriptive easement may also be terminated in the same way as an easement created by reservation or grant. See, Standard 14.3. See also Standards 1.5 and 1.6.

Comment B: Unlike easements created by reservation or grant, a prescriptive easement may be terminated by continuous nonuser alone.

STANDARD 14.5

EXTINGUISHMENT OF EASEMENT BY MERGER OF DOMINANT AND SERVIENT ESTATES

STANDARD: AN EASEMENT IS EXTINGUISHED BY MERGER WHEN TITLE TO BOTH THE DOMINANT AND SERVIENT ESTATES BECOMES VESTED IN THE SAME OWNER. HOWEVER, A LATER CONVEYANCE OF EITHER ESTATE, WITHOUT REFERENCE TO AN EASEMENT, MAY INCLUDE AN IMPLIED EASEMENT.

Problem A: Blackacre lies west of a public highway which is the only access to Blackacre. By a recorded easement, John Doe, the owner of the west half of Blackacre, owned an easement for ingress and egress over a clearly visible paved road located across the east half of Blackacre. Doe later acquired title to the east half of Blackacre. Was the easement extinguished?

Answer: Yes.

Problem B: Same facts as in Problem A, except that Doe and his wife later deeded the west half of Blackacre to Paul Mann. The deed did not refer to an easement. The paved road was continuously used in the same manner as a means of access to the west half of Blackacre. Does Mann have an easement to use the paved roadway as a means of access to the west half of Blackacre?

Answer: Yes. Because the visible paved roadway was continuously used in the same manner as a means of access to the west half of Blackacre, the deed to Mann included an implied easement over the road.

Problem C: John Doe, the owner of Blackacre, deeded the west half of Blackacre to James Jones. There was no means of access to the west half of Blackacre except over the east half of Blackacre. Does Jones have an easement over the east half of Blackacre as a means of access to the west half of Blackacre?

Answer: Yes. Jones had an implied easement by necessity because he had no access to the west half of Blackacre except over the east half of Blackacre.

Authorities: Problem A: *Morgan v Meuth*, 60 Mich 238, 27 NW 509 (1886); *Bri-cault v Cavanaugh*, 261 Mich 70, 245 NW 573 (1932); *Dimoff v Laboroff*, 296 Mich 325, 296 NW 275 (1941).

Problem B: *Bean v Bean*, 163 Mich 379, 128 NW 413 (1910); *Kamm v Bygrave*, 356 Mich 189, 96 NW2d 770 (1959); *Rannels v Marx*, 357 Mich 453, 98 NW2d 583 (1959); *Harrison v Heald*, 360 Mich 203, 103 NW 2d 348 (1960); *Ketchel v Ketchel*, 367 Mich 53, 116 NW2d 219 (1962); *Siegel v Renkiewicz Estate*, 373 Mich 421, 129 NW2d 876 (1964).

Problem C: *Moore v White*, 159 Mich 460, 124 NW 62 (1909); *Goodman v Brenner*, 219 Mich 55, 188 NW 377 (1922); *Waubun Beach Ass'n v Wilson*, 274 Mich 598, 265 NW 474 (1936).

Comment: The Committee expresses no opinion as to the scope of an easement created by implication or whether the easement is considered a new easement or a revival of an old easement.

STANDARD 14.6

EASEMENT CREATED BY GRANT

STANDARD: AN EASEMENT MAY BE CREATED BY GRANT.

Problem: Whiteacre, owned by Simon Jones, was located west of a public highway. Jones deeded the west half of Whiteacre to Paul Pack, together with an easement for ingress and egress across the south 20 feet of the east half of Whiteacre for the benefit of the west half of Whiteacre. Did Pack acquire an easement across the south 20 feet of the east half of Whiteacre?

Answer: Yes.

Authorities: *Tappert v Detroit G. H. & M. Co*, 50 Mich 267, 15 NW 450 (1883); *Von Medling v Strahl*, 319 Mich 698, 30 NW2d 363 (1948).

STANDARD 14.7

EASEMENT CREATED BY RESERVATION

STANDARD: AN EASEMENT MAY BE CREATED BY RESERVATION.

Problem: Whiteacre, owned by Paul Mann, lies west of a public highway. Mann deeded the east half of Whiteacre to Simon Grant. The deed stated “reserving an easement for ingress to and egress from the west half of Whiteacre across the south 20 feet of the east half of Whiteacre.” Did Mann retain an easement across the south 20 feet of the east half of Whiteacre?

Answer: Yes.

Authorities: *Von Meding v Strahl*, 319 Mich 598, 30 NW2d 363 (1948); *Choals v Plummer*, 353 Mich 64, 90 NW2d 851 (1958); *Mott v Stanlake*, 63 Mich App 440, 234 NW2d 667 (1975).

Comment: A reservation for the benefit of a stranger to the conveyance is ineffective. *Peck v McClelland*, 247 Mich 369, 225 NW 514 (1929); *Choals v Plummer*, 353 Mich 64, 90 NW2d 851 (1958).

