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Easement Implied by Reference to a Plat - Klein v. Dove

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EASEMENT IMPLIED BY REFERENCE TO A PLAT

Klein v. Dove[1]

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Plaintiffs-appellees filed a bill in equity to enjoin the defendants-appellants from obstructing an alleged right of way leading to a beach and lake area. Plaintiffs and defendants are each owners of lots in a fifty-acre waterfront development, having derived title from a common grantor. The lots were described in a plat duly recorded, showing the location of the lots, various projected streets or roads, three piers, and the lake and lake area. Among the roads shown on the recorded plat of the development, a ten-foot road or right of way appears along one side of defendants' lot. This

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[1] 205 Md. 285, 107 A. 2d 82 (1954).

right of way was obstructed by the defendants, and had been previously obstructed by them or by previous owners for some years before the institution of suit. Plaintiffs are owners of interior lots and have no access to the beach area except by way of the alleged right of way or a narrow pier. Plaintiffs' lots abutted upon a central or main road, and the alleged right of way led from that central road to the beach area and lake. However, Plaintiffs' lots were not contiguous to the right of way. The trial court held the plaintiffs entitled to the use of the lake area of the development for recreational purposes and to an unobstructed right of way over the strip along one side of defendants' lot, and granted the injunction for which the plaintiffs' bill prayed. Defendants appealed to the Court of Appeals which affirmed the trial court's decision.

The precise question before the court was whether a purchaser of a lot in a water-front development, of which a recorded plat shows a ten-foot right of way leading to a beach area, acquires an easement in the beach area and the way leading thereto, although the purchaser's lot is not adjacent to the way. The Court of Appeals held that although the plat did not specifically designate the beach area as a "community beach", the sale of a lot in a water-front development by reference to a plat, showing such a beach area and a ten-foot right of way leading thereto, implicitly granted the use of the beach area and of the right of way to the purchaser although his lot was not adjacent to the right of way. There is, at least, an apparent conflict between this result and the rule enunciated and applied in prior decisions of the Court of Appeals. It is the purpose of this note to determine whether that apparent conflict is real, and to analyze some of the decided cases to ascertain the basis upon which an easement will be implied by reference to a plat in the law of Maryland.

In two earlier decisions, *Moale v. Baltimore*[2] and *Hawley v. Baltimore*,[3] the Court had expressly limited the purchaser's easement to the streets or roads upon which his lot abutted. In the *Moale* case, a condemnation proceeding involving the opening of Biddle Street as a public street, the plaintiff had purchased two lots, "A" and "B". Both lots were described as binding on Biddle Street, not yet opened as a public way. Lot "A" was between Cathedral Street, an existing public way, and Decker Street, another existing public way, while lot "B" lay between Decker

[2] 5 Md. 314 (1854).
[3] 33 Md. 270 (1870).

Street and Charles Street. Both lots were purchased by the plaintiff from the same person who had before sold lot "C" (which lay across Biddle Street from lot "A") to a third party. The Court held in that case, that as lot "A" was purchased by Moale after the purchase by the third person of lot "C", which was also described as binding on Biddle Street, it was subject to the rights which the third person had acquired by implication in his previous purchase, among which was the right to the use of Biddle Street *between Cathedral* and *Decker*. Thus, only nominal damages were allowed for lot "A". But lot "B", lying between Decker and Charles Streets, was held not be affected by this implication, because plaintiff himself owned the lots on either side of lot "B",[4] and the lower court's ruling that he was entitled only to nominal damages as to this lot between Decker and Charles Streets was reversed.

In the *Hawley* case,[5] a condemnation proceeding involving facts not materially different from those of the *Moale* case, the holding of this earlier case was followed, and the Court said:

> "The doctrine of implied covenants will not be held to create a right of way over all the lands of a vendor which may lie, however remote, in the bed of a street. The lands must be *contiguous to the lots sold*. . . . The true doctrine is, as we understand it, that the purchaser of a lot calling to bind on a street, not yet opened by the public authorities, is entitled to a right of way over it, if it is of the lands of his vendor, to its full extent and dimensions *only until it reaches some other street or public way*. To this extent will the vendor be held by the implied covenant of his deed and no further."[6]

In the instant case the Court distinguished the *Hawley* case as not controlling saying:

> "Cases such as *Hawley v. Baltimore*, . . . holding that the grant to a purchaser of the right to use the streets shown on a plat filed by a vendor gives the right to the purchaser to use only the street upon which his

[4] The relationship between the private easement implicitly granted and public rights arising from dedication is beyond the scope of this note. *Cf.* in this connection, White v. Flannigan, 1 Md. 525 (1852); Moale v. Baltimore, *supra*, n. 2; Hawley v. Baltimore, *supra*, n. 3; McCormick v. Baltimore, 45 Md. 512 (1877); Tinges v. Baltimore, 51 Md. 600 (1879); Hall v. Baltimore, 56 Md. 187 (1881); Baltimore v. White, 62 Md. 362 (1884); Glenn v. M. & C. of Baltimore, 67 Md. 390, 10 A. 70 (1887).

[5] *Supra*, n. 3.

[6] *Ibid*, 280. Italics supplied.

> land abuts and such other street or streets shown on the plat and owned by the vendor as may be necessary to reach a public street, have no application here."[7]

The Court relied primarily upon the authority of *Williams Realty Co. v. Robey*[8] for its decision. In the *Williams* case the grantor sold lots in a water-front development. The development was described in two plats, the first of which was not recorded but showed an area marked off as "community Beach and Park". The second plat was prepared one month after the first and was recorded, showing the same (unplatted) open space as the first, but did not designate the area as a community beach and park. The evidence showed, however, that the grantor continued to sell by showing buyers the first plat and orally representing that the community area would be provided. In a suit by the purchaser to enjoin sub-division of the area designated as a community area on the first plat, the plaintiffs succeeded in the lower court, and the Court of Appeals affirmed saying:

> ". . . when a buyer is persuaded, as in this case, by the assurances of restricted facilities in a community beach lying immediately across his front road or street, the advantages appear with sufficient clearness and certainty to have been sold to him as an incident. . . ."[9]

The *Williams* case is authority for raising an easement in a beach area shown upon a plat of a water-front development by reference to which the grantees are pursuaded to purchase lots in the development. This seems to be in accord with the weight of authority, as set forth in Corpus Juris:

> "Where land is sold with reference to a map or plat showing a park, beach, or open square, the purchaser acquires an easement that such area shall be used in the manner designated, and an easement over the streets which afford access to such area."[10]

It was apparently upon this principle that the court decided the *Williams* case and the instant case. The result seems correct and properly distinguishable from the case of an easement raised in a street or way to be used as a route of access to public ways. The apparent conflict arises from the broad language used by the Court in explaining its

[7] *Supra*, n. 1, 292.
[8] 175 Md. 532, 2 A. 2d 683 (1938), noted 5 Univ. of Pitt. L. Rev. 195 (1939).
[9] *Ibid*, 540.
[10] 28 C. J. S. 708, Easements, Sec. 44.

decision of the *Hawley* case, that, "the lands must be contiguous to the lot sold . . ." However, a later case with different facts may demonstrate a need for restricting language in an earlier case to the particular result it supported; and, judicial flexing of the doctrine of *stare decisis* to meet the need of a later case is to be anticipated.[11]

Various bases have been suggested by the courts for raising easements by implication from recorded or unrecorded plats.[12] In some cases language has been used which suggest that the easements arise from the grantor's implied covenant that areas or streets shown on the plat will be available to the grantee for their apparent purpose.[13] Courts have sometimes indicated that the rights protected arise as a consequence of the application of the doctrine of equitable estoppel, *i.e.*, the grantor, having represented by the plat that the streets or areas will be laid out and available for an apparent purpose, is estopped to deny his representations. Other courts have sometimes reasoned that the easements raised rest in implied grant.[14] Whatever the basis in legal philosophy may be, it appears in each case that the Court is attempting to give effect to the grantor's intention as it must have reasonably appeared to the grantee. For this reason it is not inconsistent for the same Court to hold that while a grantee of a lot sold by reference to a plat showing streets or roads takes an easement only in the streets upon which his lot abuts, a grantee of a lot in a water-front development, sold by reference to a plat showing a beach area and a right of way leading thereto, takes an easement in the beach and way though his lot abuts on neither. In the former case the grantee has all of the benefits implicitly appurtenant to his premises if he has access by continguous roads to the nearest public way. In the water-front case the benefit for which he bargains certainly includes the beach area itself whether or not it abuts on his premises.[15] At all events, this seems to represent the

[11] *Cf.* Coleman v. Miller, 307 U. S. 433, 452-3 (1939), dealing with language in Dillon v. Gloss, 256 U. S. 368 (1921).

[12] For an extended discussion of this problem see 3 TIFFANY, REAL PROPERTY (3rd ed. 1939), Sec. 800.

[13] This seems to be the view of the Court of Appeals of Maryland. See Moale v. Baltimore, *supra*, n. 2, and Hawley v. Baltimore, *supra*, n. 3.

[14] "When a lot conveyed by a deed is described by reference to a map, such map becomes a part of the deed . . . The making and filing of such a map duly signed and acknowledged by the owner . . . is equivalent to a declaration that such right is attached to each lot as an appurtenance."
Danielson v. Sykes, 157 Cal. 686, 109 P. 87 (1910).

[15] Cases on the extent of the easement are collected in 28 L. R. A. (N. S.) 1024. See also 5 Univ. of Pitt. L. Rev. 195 (1939).

current law upon the point in this jurisdiction, for, in the words of the trial judge, quoted with approval by the Court of Appeals:

> " 'After all is said and done, a water-front development cannot be a water-front development without a water-front'."[16]

[16] *Supra*, n. 1, 292. For other Maryland cases involving easements implied by reference to a plat, or by language in a deed calling the lot conveyed to bind upon an unopened sheet see the following: White v. Flannigan, 1 Md. 525 (1852); Pitts v. Baltimore, 73 Md. 326, 21 A. 52 (1891). For an early case refusing to apply the doctrine because of the parole evidence rule see Howard v. Rogers, 4 H. & J. 278 (Md., 1817).