

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
WITHIN AND FOR THE COUNTY OF SHERIDAN, STATE OF WYOMING

SHERIDAN COUNTY BOARD OF
COUNTY COMMISSIONERS,
SHERIDAN COUNTY, WYOMING,

Plaintiff,

vs.

WILLARD "BUD" and NORMA GEER,
et al.

Defendants.

Civil Action No. C412-10-94

CERTIFIED COPY

ORDER GRANTING PARTIAL SUMMARY JUDGMENT RE EASEMENT

On June 5, 1995 the following persons appeared for hearing:
Timothy J. Kirven of Kirven and Kirven, P.C., on behalf of William
J. Doenz ("Doenz"); John G. Penn of Yonkee & Toner, on behalf of
defendants ("McNally Homeowners"); Keith R. Nachbar for Harvey
Lattz, Trustee ("Lattz"); and Charles E. Graves of Graves &
Villemez, P.C., for Willard "Bud" and Norma Geer ("Geer"). The
decision of the court was announced from the bench. The Court
finds:

1. March 24, 1995, defendant Doenz filed a Motion for
Partial Summary Judgment against cross claim defendants Lattz and
Geer.
2. April 27, 1995, defendants McNally Homeowners filed a
Motion for Partial Summary Judgment against defendants Lattz and
Geer.
3. May 2, 1995, defendant Lattz filed a Motion for Partial
Summary Judgment against defendant Doenz.
4. May 12, 1995, defendants Geer filed a Motion for Summary
Judgment against defendants McNally Homeowners.
5. All of the foregoing motions were heard by the Court.
6. The motions filed on behalf of defendant Doenz and

defendants McNally Homeowners sought declaration of the existence
of an easement pursuant to language set forth in three record
conveyances as follows:

- A. Executrix Deed dated July 29, 1993, from Lois
McNally, Executrix of the Estate of Robert E.
McNally, conveying the land described therein to
Charles H. Marshall, recorded on July 29, 1993, in

Book 93, page 377 in the office of the County Clerk of Sheridan County, Wyoming.

B. Warranty Deed from Chris Schroeder and Adele Schroeder conveying the lands described therein to Charles H. Marshall, recorded July 29, 1953, in Book 93, page 383 in the office of the County Clerk of Sheridan County, Wyoming.

C. Quitclaim Deed by Lois McNally, widow of Robert E. McNally conveying the lands described there to Charles H. Marshall, recorded July 29, 1953, in Book 93, page 355 in the office of the County Clerk of Sheridan County, Wyoming.

7. Each of the foregoing instruments contained the following identical language:

Excepting and reserving unto the successors in interest of R.E. McNally and Chris Schroeder the graveled roadway extending from U.S. Highway 87 Eastward along the Southerly line of the Northeast quarter of Section 22 above described to the bridge across Little Goose Creek located at or near the Southeast corner of said quarter section.

Granting, however, to the grantee and to his heirs and assigns a permanent right of way and easement over said graveled roadway above mentioned for purposes of ingress and egress to lands owned by grantee in Section 23, Township 55, Range 83 West of the Sixth Principal Meridian.

8. In fact, Grantee's lands were in Section 23, T55 R84 not "R83". Said description in the deeds was a scrivener's error.

9. Notice of existence and location of the easement referenced in #7 above was provided to holders of relevant lands by the "Robert's Plat" and historic usage.

10. The referenced deed language created an express easement appurtenant to lands owned by Charles H. Marshall at the time of conveyance within Section 23 of Township 55 North, Range 84 West, 6th P.M. Sheridan County, Wyoming.

11. The exact location, width and allowable use of said easement is yet to be determined.

12. Except as specifically found above, the motions referenced contain genuine issues regarding material facts and are not ripe for final determination.

NOW THEREFORE

IT IS DECIDED AND ORDERED that an express easement was granted by language in instruments described in 6A, B, and C above,

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"Granting, however, to the grantees, and to his heirs and assigns a permanent right-of-way and easement over said graveled roadway above mentioned for purposes of ingress and egress . . .", and said easement is appurtenant to lands owned by Charles H. Marshall at the time of conveyance within Section 23 of Township 55 North, Range 84 West, 6th P.M. Sheridan County, Wyoming.

IT IS FURTHER ORDERED that the Lattz and Geer motions for summary judgment are denied - and the Doenz and McNally motions are granted as to the findings above cited.

Dated July 20, 1995.

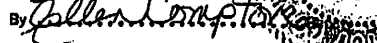
BY THE COURT:


 John C. Brackley, District Judge

Copies to:
 Kirven
 Nachbar
 Graves
 Fenn

Certificate of Clerk of the District Court, Sheridan County, Wyoming, that the foregoing is a true and correct copy of the original instrument which is on file or of record in this court.

Done this . . . 21 . . . day of . . . July . . . 1995 . . .
 DORIS KOBOLD, Clerk

By  Clerk

