**Morrell v. Rice**

**Supreme Judicial Court of Maine**

**622 A.2d 1156 (Me. 1993)**

**Judicial History**

Defendants James and Rita Rice appeal from a judgment entered in the Superior Court (Cumberland County, Alexander, J.) following a nonjury trial. They contend that the court's determination that the plaintiffs, Robert and Nancy Morrell, have an easement by necessity over their land was error because there was no unity of title at the time the easement was found to have been created and because the Morrells' land was and is accessible by land and from the sea. The Rices also contend that the court erred in giving the Morrells the right to install utility lines underground within the easement. The Morrells dispute that part of the court's judgment that restricts the use of the easement to serve only a single-family residence. We find no error in the determination that the Rices' land is subject to an easement by necessity and that the easement allows the Morrells to install underground utilities, and we agree with the Morrells that the court erred in restricting the use of the easement to serving a single-family residence. Accordingly, we modify the judgment to delete that restriction, and, as modified, we affirm.

**Facts**

The Morrells (plaintiffs) own ten acres of land at the tip of a peninsula in Maine. The Rices (defendants) own an immediately adjoining parcel of land on the same peninsula. Their land can be accessed via public road, while the Morrells’ land cannot. The Morrell property can be accessed by either crossing the Rice property, by crossing a tidal marsh, or at certain times by sea. Access by water would be possible only after an expensive dredging operation, and even then would only be possible at certain times of day during the summer. Before the Morrells purchased their land in 1971, it was accessed by an old road across the Rice property. Both parcels of land were once owned by the Given family. In April of 1810, Samuel Given executed a deed conveying the Morrell property to John Given, and John Given executed a deed conveying the Rice property to Samuel Given. Both deeds were recorded in May 1810. The Morrells brought suit to establish an easement of access across the Rice property. The trial court found that the Morrells had established an easement by necessity, holding that the Morrell property was accessed across the Rice property in 1810, and that there was no other realistic way of accessing the Morrell property. The trial court specified the location and conditions of the Morrells’ easement across the Rice property. The Rices appealed, arguing that there was no unity of title and that there was alternative access to the Morrell land. They also claimed that the easement should not have included a right to install underground utility lines across their land. The Morrells in turn claimed that the trial court had erred by restricting the easement to serve only a single-family residence.

 **Issues**

1.Whether the court erred in giving the Morrells the right to install utility lines underground within the easement.

2.Whether an implied easement exists or is determined by examining the circumstances existing at the time the landlocked parcel is severed from the parcel with access. Frederick, 573 A.2d at 389.

 **Holding**

For the same reasons, we are persuaded that the court's decision to limit \*1161 the easement to serve only a single-family use of the Morrell property is not justified on this record. An easement by strict necessity should benefit the dominant estate for any lawful and reasonable use. There was no evidence that the only lawful use of the Morrell land would be for one single family home. Nor was there evidence as to the extent of the burden on the Rice land should the Morrell land be used by more than one family, or for other than residential purposes. Whether the use of the easement for a particular purpose in the future will cause an undue burden on the Rice property would have to be determined in the context of that use. See Traders, Inc., 459 A.2d at 980.

 **Reasoning**

At trial, Robert Morrell testified that a portion of his land abuts that of the Rices, that his land is bordered by marshes and tidal flats on two sides,[1] and that the only access to his property by land is from the Harpswell Road, across the Rice land. Although a portion of the Morrells' land fronts on tidal marsh, at low tide the water recedes approximately 1000 yards and the \*1158 flats freeze in the winter months, thereby severely limiting the times when access by boat is possible. Morrell testified that at the time he bought his land in 1971, he understood that access over the Rice property to his land had existed for many years. There is evidence of an old roadway going through the Rice property to the Morrell parcel.

The court determined that the Morrells established the existence of an easement by necessity.[2] The court found the intrafamily land transfers as evidenced by the deeds of 1810 to be "essentially contemporaneous," that the Harpswell Road existed in 1810, and the obvious access from the Harpswell Road to what is now the Morrell parcel was across the Rice land. The court also found that, except for the Rice land, the Morrell land was surrounded by marsh, and although there was tidal frontage, access to the sea was not realistic.

The Superior Court found that for all practical purposes the Morrell parcel is "landlocked or locked in a way that really does not provide access." That finding is supported by Rice's own testimony that the Morrells' only access is across his land or from the sea. In addition, the Morrells introduced in evidence two maps, one a geological survey map and the other a nautical map of Casco Bay. Morrell drew lines on the maps indicating where his property was located. Those lines were not disputed by the Rices and indicate that the only way for the Morrells to obtain road access is across the Rices' land. The Morrells' land is located on the peninsula in such a way that, even if the common grantor still owned land at the time when the present Morrell and Rice parcels were originally conveyed, that land was separated from the Morrell parcel by tidal marsh. Therefore, the Morrells' predecessor in title could not have used the grantor's remaining land to access the Harpswell Road.[3]

 **Decision**

Judgment modified to delete restriction on use of easement to single-family residence. modified, affirmed.

 **Concurring Decisions**

All concurring.

Berry, a retired sailor, has an amusement park in the middle of 40 acres on the edge of town. The park, known as "Berry's Knot Farm", has a unique collection of sailors' knots from around the world.

In need of money, Berry sells the southern portion of his land, 20 acres, to Sam. In the deed to Sam, Berry reserves a right-of-way across Sam's land to provide access to the park from the main highway.

Berry also deeds the northern-most 10 acres of his land to Nan.

Shortly thereafter, Nan and Sam both sell their respective north and south portions to a mutual friend, Fred. No reference is made in either Nan's or Sam's deed to any encumbrance on the deeded land.

Fred discovers that the chair-ride on Berry's Knot Farm when in operation causes the individual chairs, which are connected by cables to a center post, to swing out over his land (the north portion) by 2 feet, frightening his cows. Fred demands that Berry cease operating the chair ride immediately so that the chairs no longer encroach over his property.

Fred also finds that the unique knot collection has become very popular causing the traffic across his land (the south portion) to increase several times over. Fred seeks to close this access road from the main highway to Berry's Knot Farm.

Berry seeks your advice on the following:

Can Berry continue the chair ride, a very popular money maker, or must he cease?

Can Fred deny Berry the use of the right-of-way across Fred’s land?

Easement by Implication

An implied easement would exist when an owner sells part of his/her land to someone else and retains title to the remainder but did not express an easement, with the only means of access to the sold portion being across the retained portion. The purchaser acquires an implied easement across the seller's land to his/her land.