

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

RICHARD J. THOMAS,	:	
Plaintiff	:	
	:	
v.	:	NO. 98-01,757
	:	
CHARLES H. FRAZIER and	:	
THOMAS M. FRAZIER,	:	
Defendants	:	

**OPINION and ORDER**

Richard Thomas came to north central Pennsylvania from Washington, D.C., seeking peace and quiet after a successful career in the military. It is therefore highly ironic that he is directly responsible for creating a great deal of contention and strife. Since learning of an easement on his property, he has declared war on his neighbors and launched a fierce attack on their right to use the road. First he blocked it, posted it with “no trespassing signs,” planted trees over the entrance, and chopped down the beautiful old pines that lined it. Later he dragged his neighbors into court in this ridiculous attempt to reform the deed to limit use of the road to emergencies only.

Mr. Thomas produced no evidence whatsoever to convince this court that the deed should be altered, and we wish all the cases brought before us were this easy to decide. If that were the case, however, surely the public would demand a “loser pays” legal system like England’s, where the person who loses a suit is responsible for the winner’s counsel fees. After hearing a case such as this one, we cannot help but feel that there is a great deal of wisdom in such a system—at least in the case of groundless suits like this one.

## Findings of Fact

On 13 July 1982, Edwin and Arlene Frey purchased a property in Plunketts Creek from Theodore R. Walters. As part of this conveyance the Freys and their successors in title were granted a perpetual easement over two existing roads running through Mr. Walters' property, that connected their land to State Route 87. The deed prepared by Mr. Walters' attorney contained the following unequivocal language:

Theodore R. Walters, Grantor herein, further grants the right, privilege and use, including ingress, egress and regress along roads existing from the within above described premises to the Pennsylvania Highway Route 87, to Edwin H. and Arlene L. Frey, Grantees, their heirs and assigns forever. . . . It is understood that Grantees (Frey) shall be entitled to have a perpetual easement over existing roads from the above described premises to Route 87. It being further understood that there are two (2) roads and it is further understood that this is a perpetual easement to be used in common with other persons who are entitled to use said private roads.

On 30 June 1989 Mr. Thomas purchased property close to the Freys' land and began residing there. On 30 June 1993 he purchased from Mr. Walters the tract of land containing one of the roads in which the Freys had been granted an easement. This road was distinct and visible, and was frequently used by the Freys.

All of that stopped, however, when Mr. Thomas became the owner. Almost immediately he launched a campaign to prevent them from using the road and blocked it with various materials. He caused the Freys such consternation and irritation that they decided to sell the property.

On 10 October 1994 the Freys conveyed the land to Charles and Thomas Frazier. The deed contained the full recital of the easement. The Frazier brothers were fully aware of their nasty neighbor, but they apparently felt they were made of

sterner stuff than the Freys. Their mettle was indeed tested in the years to come, as Mr. Thomas continued the warfare. The Fraziers, apparently more peace-loving than their neighbor, drove on the road once (to preserve the easement and prevent adverse possession) and used the alternate road the rest of the time. Throughout the last four years Mr. Thomas has continued to block the road, has planted trees where it meets Route 87, and has attempted to conceal it by chopping down the mature pine trees that once lined it.

### Conclusions of Law

1. A valid and enforceable easement was created in the 13 July 1982 deed of conveyance from Theodore R. Walters to Edwin and Arlene Frey.
2. This deed granted the Freys and their successors in title a perpetual easement in a road that ran from their cabin to Route 87, over what is now Richard Thomas's property.
3. There is no legal basis upon which to reform the deed and restrict it to emergency use only. The plaintiff has failed to show there was a mistake of fact on the part of either the Freys or Mr. Walters when the easement was created.
4. As successors in title to the Freys, Charles and Thomas Frazier have a valid and enforceable easement in the road in question, which is not limited to emergency purposes..
5. Richard Thomas has improperly interfered with the Fraziers' use of their easement.
6. Charles and Thomas Frazier are entitled to an injunction to protect them from further interference with their right to use the road in question.

## Discussion

A deed may be reformed when the party asking for reformation proves by clear and convincing evidence that the deed contains a mutual mistake, and does not reflect the intentions of the parties at the time of the conveyance. Rusciolelli v. Smith, 195 Pa. Super. 562 (1961); Kutztown Fair Association v. Frey, 183 Pa. Super. 516, 132 A.2d 912 (1957).

Mr. Thomas has failed miserably to carry his burden of proof. He presented no convincing evidence whatsoever that either Mr. Walters or the Freys intended to restrict use of the road to emergencies. Mr. Walters, now ninety-eight years old, testified that he told the Freys the road should only be used for emergencies. However, there are several problems with his testimony.

First, Mr. Walters never meant to absolutely prohibit any other use. Indeed, his testimony led this court to infer that any statement in this regard Mr. Walters made to the Freys was meant more as a cautionary warning, because Mr. Walters believed the road to be unsafe. He repeated several times during his testimony that no one would want to drive the road anyway, because the alternative road to 87 was much better. Mr. Walters also stated that he liked the Freys very much, and had told them they could use the road for emergencies to make them feel safe in case a flood or other natural disaster rendered the alternative road impassible.

Second, Mr. Walters stated that his attorney prepared the deed, according to his instructions, and that the attorney fully reviewed the deed with him prior to closing. Mr. Walters did not offer an explanation why the recital of the deed did not restrict use of the easement to emergencies, and neither counsel asked him for an explanation.

Third, Mr. Walters could not remember whether he discussed the emergency use before or after closing on the property—despite counsel’s best efforts to lead him into saying it was before closing.<sup>1</sup> Mr. Walters is an elderly man, with obvious memory difficulties, yet he laudably refused to be coerced into saying something other than what he knew to be the truth.

And finally, although the court does not believe Mr. Walters deliberately made any misstatement of fact, his memory problems prevent him from being a completely credible witness. To the extent his testimony differs from the testimony of Mrs. Frey, the court finds it to be uncredible.

Mr. Thomas’ failure to prove by clear and convincing evidence that at the time of the conveyance Mr. Walters intended the easement to be limited to emergency use is matched by his utter failure to prove a similar intention on the part of the Freys. Mrs. Frey, an extremely credible witness, testified that Mr. Walters never told her or her husband that the road could be used only for emergencies, either before the closing or after. She further stated that while living there they used the road frequently, without any problem—until Mr. Thomas arrived, of course.

### **Conclusion**

Finding no convincing evidence of a mistake of fact, Mr. Thomas’ complaint

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<sup>1</sup> Mr. Walters eventually concluded that the discussion probably occurred after closing.

will be dismissed and the Frazier's counterclaim for an injunction will be granted.<sup>2</sup>

We only regret that we cannot grant them counsel fees as well, for we feel that Mr. Thomas' legal action, like his physical actions in blocking the road, was completely unjustified and possibly undertaken only in an attempt to bully the Fraziers into abandoning their easement.

While it is true that his real estate attorney should have discovered the easement in a title search, Mr. Thomas must accept part of the blame for buying land in which there was a clear, distinct road leading directly from Route 87 to another person's cabin. In any case, it is a mystery to this court why Mr. Thomas could not have been more accommodating to his neighbors after learning of the easement. Even given his desire for solitude, use of the road would surely cause only a minor disruption, especially as the Fraziers use their cabin only a dozen times a year. One of the benefits of country living over city existence is that neighbors can more easily turn into friends; such contentious legal battles, however, often poison relations forever.

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<sup>2</sup> Because we find no mistake of fact we need not address the question of whether the Fraziers would be bound by a mistake in the deed.

**ORDER**

AND NOW, this \_\_\_\_\_ day of October, 1999, for the reasons stated in the foregoing opinion, the complaint is dismissed and the counterclaim is granted.

Richard J. Thomas is hereby ordered to remove all obstacles from the roadway that is the subject of this litigation, including but not limited to planted saplings. Mr. Thomas is further ordered to refrain from interfering in any way with the right of Charles and Thomas Frazier, and their successors in title, to use the roadway.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk  
Hon. Clinton W. Smith  
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