

NO. 471-01040-2022

HENRY MISHKOFF
Plaintiff,

V.

SONIA BRYANT,
Defendant.

§ **IN THE DISTRICT COURT**
§
§
§ **DISTRICT COURT NO. 471st**
§
§ **COLLIN COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Henry Mishkoff, hereinafter called Plaintiff, complaining of and about Sonia Bryant, hereinafter called Defendant, and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, Henry Mishkoff, is an individual whose address is 4062 Windhaven Lane, Dallas, TX 75287.
3. Defendant, Sonia Bryant, may be served with process at 4060 Windhaven Lane, Dallas, TX 75287, or wherever she may be found. Service of said Defendant as described above can be effected by certified mail.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.
5. Plaintiff seeks monetary relief not more than \$1,000,000 and injunctive relief.
6. This court has jurisdiction over the parties because Plaintiff and Defendant reside

in Collin County, Texas, and the property subject to this lawsuit is situated in Collin County, Texas.

7. Venue in Collin County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

FACTS

8. On or about June 13, 1984, the Final Plat for the Bently Court subdivision as it pertains to the subject properties of this lawsuit was filed in Cabinet D of Page 150 of the Map Records of Collin County, Texas (the "Subdivision").

9. On or about June 14, 1985, Declaration of Covenants, Restrictions, and Conditions, concerning the Subdivision were recorded in Book 2150, Page 883 of the Deed Records of Collin County, Texas, concerning the property subject to this lawsuit (the "Restrictions").

10. On or about September 30, 1986, Plaintiff purchased the residence located at 4062 Windhaven Lane, Dallas, Collin County, Texas, more formally known as Lot 31, in Block F/8740, of Bently Court, an Addition to the City of Dallas, Collin County, Texas, according to the map thereof recorded in Cabinet D, Page 150 of the Map Records of Collin County, Texas (the "Plaintiff's Property").

11. On or about April 23, 2020, Defendant purchased the residence located at 4060 Windhaven Lane, Dallas, Collin County, Texas, more formally known as Lot 32, in Block F/8740, of Bently Court, an Addition to the City of Dallas, Collin County, Texas, according to the map thereof recorded in Cabinet D, Page 150 of the Map Records of Collin County, Texas (the "Defendant's Property").

12. The Subdivision is uniquely designed so that a portion of certain owners' properties are located in what would ordinarily be another's property. The subdivision was designed in such a manner to meet the requirements of the City of Dallas pertaining to each lot fronting a road. For example, Plaintiff, other lot owners, and Defendant each own a portion of the driveway to access Defendant's Property. And, a portion of Plaintiff's Property is accessible by such driveway, namely, the portion owned by Defendant.

13. Since purchasing Plaintiff's Property in June 1986, Plaintiff has openly, actually and visibly, and continuously used a portion of Defendant's Property, to access a portion of Plaintiff's Property. And, it is important to consider that the circuit breaker and all utility connections for Plaintiff's residence are on such portion of Plaintiff's Property that is accessible by a small portion of the driveway situated on Defendant's Property.

14. Since purchasing Defendant's Property in April 2020, Defendant has attempted to prevent Plaintiff from accessing such portion of Plaintiff's Property by utilizing harassment and placing barriers to prevent access. Namely, Defendant has taken videos of Plaintiff and/or Plaintiff's spouse, called Plaintiff and/or Plaintiff's spouse names, called the police after a surveyor attempted to identify the boundaries of Plaintiff's Property, and placed flower pots to prevent access.

DECLARATORY JUDGMENT – EXPRESS EASEMENT

15. All preceding paragraphs are incorporated by reference as if set out herein.

16. Plaintiff is a party interested in the Plaintiff's Property through the deed conveying Plaintiff's Property to Plaintiff. Plaintiff and Defendant are both interested parties to the Restrictions because the Plaintiff's Property and the Defendant's Property are included within the affected properties in the Restrictions.

17. “‘Maintenance Area’ shall mean and refer to that portion of each Affected Lot, and areas adjacent thereto, designated by number on Exhibit A attached hereto and incorporated herein by reference for all purposes, the maintenance and repair responsibilities for which shall be borne by the Owner of the Affected Lot numbered with the same number as such Maintenance Area.” Article I, Section 8 of the Restrictions.

18. “Each Owner shall have a nonexclusive easement ... over and upon the portions of the Affected Lots within the Maintenance Area associated with such Owner’s Affected Lot for the purposes specified in Article IV, Section 1.” Article II, Section 6 of the Restrictions.

19. “... Each Owner shall also maintain in an attractive manner and repair when reasonably necessary the grass, shrubbery, trees, other landscaping and sidewalks within the Maintenance Area designated on Exhibit A hereto with the same number as the Affected Lot owned by him.” Article IV, Section 1 of the Restrictions.

20. Plaintiff is the owner of an affected lot, namely, the Plaintiff’s Property. Defendant’s Property is adjacent to Plaintiff’s Property. The Restrictions provide an easement to Plaintiff over a portion of Defendant’s Property for the maintenance of Plaintiff’s Property.

21. Defendant has taken affirmative steps to prevent Plaintiff from accessing and maintaining Plaintiff’s Property, namely by utilizing harassing behavior and blocking access.

22. Defendant is usurping the non-exclusive easement rights of Plaintiff to access and maintain Plaintiff’s Property.

23. Plaintiff requests this Court to declare that the Restrictions grant Plaintiff an express easement across a portion of Defendant’s Property to access and maintain Plaintiff’s Property. Plaintiff further requests this Court to declare that Defendant has prevented the Plaintiff’s use and enjoyment of such express easement.

DECLARATORY JUDGMENT – PRESCRIPTIVE EASEMENT

24. All preceding paragraphs are incorporated by reference as if set out herein.

25. A prescriptive easement is available if Plaintiff used the easement for at least ten years and the use was: (1) open and notorious; (2) continuous; (3) exclusive; and (4) adverse.

26. Plaintiff has used a portion of Defendant's Property to access Plaintiff's Property for more than thirty-five years. Plaintiff's use was open and notorious, continuous, exclusive, and adverse to Defendant and all prior owners.

27. In the alternative to an express easement, Plaintiff requests this Court to declare a prescriptive easement to Plaintiff across a portion of Defendant's Property for the purpose of accessing a portion of Plaintiff's Property. Plaintiff further requests this Court to declare that Defendant has prevented Plaintiff's use and enjoyment of such prescriptive easement.

TEMPORARY INJUNCTION

28. All preceding paragraphs are incorporated by reference as if set out herein.

29. Plaintiff requests the Court to set its application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendant (i) from preventing or impeding access to the portion of Plaintiff's Property accessible from Defendant's Property; and (ii) to cease and desist from harassing Plaintiff and Plaintiff's spouse until the eventual judgment in this lawsuit is final and binding.

ATTORNEY'S FEES

30. All preceding paragraphs are incorporated by reference as if set out herein.

31. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems

equitable and just as provided by Chapter 37.009 of the Texas Civil Practice and Remedies Code.

CONDITIONS PRECEDENT

32. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

REQUESTS FOR DISCLOSURE

33. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Henry Mishkoff, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant, for the Court to declare the existence of an express easement in favor of Plaintiff over and across a portion of Defendant's Property for the purpose of accessing portions of Plaintiff's Property; or, in the alternative a prescriptive easement in favor of Plaintiff over and across a portion of Defendant's Property for the purpose of accessing portions of Plaintiff's Property; issue a temporary injunction against Defendant (i) from preventing or impeding access to the portion of Plaintiff's Property accessible from Defendant's Property; and (ii) to cease and desist from harassing Plaintiff and Plaintiff's spouse until the eventual judgment in this lawsuit is final and binding; costs of court; and attorney's fees.

Respectfully submitted,

The Law Office of Robert Newton, P.C.

By: /s/ Robert Newton

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