SUPREME COURT OF NOVA SCOTIA
Citation: *Boudreau v. Boudreau*, 2024 NSSC 166

Date: 20240604
Registry: Port Hawkesbury
Docket: SPH 527986

Between:

Clifton Boudreau

Applicant

and

Connie Frances Boudreau, Lisa Maureen Kinslow, Joanne Marlene Conrod, Kenneth Hall, Andrea Louise Doyle

Respondents

DECISION

Judge: The Honourable Justice Jamie Campbell

Heard: May 17, 2024, in Port Hawkesbury, Nova Scotia

Counsel: Paul Wadden and Grace MacCormick, for the Applicant
Connie Francis Boudreau, self-represented Respondent
Lisa Maureen Kinslow, self-represented Respondent
Wayne MacMillan, for the Respondents (Joanne Conrod and Kenneth Hall)
Andrea Louise Doyle, self-represented Respondent

By the Court:

[1] This is a parking dispute among siblings. When a disagreement about who can park where finds its way into court some might wonder whether the issue is really just about parking. But as odd as it may seem, this kind of "litigation" is not a one-of-a-kind thing. It would even be a stretch to call it rare. There has been an entire body of law built up around who can park where and when on a right of way or easement.

[2] Clifton Boudreau visits his undeveloped land in Sampson's Cove, Richmond County, 10 or 15 times each year. He has a right of way over his sisters' property, which had been the family home. One of the sisters, Joanne Conrod, lives on that property. She parks her car in the right of way. She says it only partially blocks the right of way and Clifton Boudreau can easily drive his truck around her car. Clifton Boudreau says that he can't get around her car without going off the 15-foot wide right of way. He says he shouldn't have to go into the house and ask her to move her car because she has already shouted at him and refused to move her car. And into the mix comes another sister, Andrea Doyle. She doesn't live on the property but is still one of the owners. She claims that there is no right of way at all. Their mother gave it to Clifton Boudreau and when she died, the right of way would have to be granted by the new owners, including her.

[3] Andrea Doyle represented herself and cited the 1897 case of *Knock v. Knock*, (1897) 27 S.C.R. 664, the *Building Code*, the *Building Code Regulations*, the *Land Surveyors Act*, and the *Land Surveyors Regulations.* Clifton Boudreau and Joanne Conrod have retained lawyers. Briefs, affidavits, and rebuttal affidavits have been filed. Books of legal authorities have been produced. The parties have gone through the usual ritual of making a motion to have portions of the affidavits struck. The remedies sought are a declaration and an injunction. The declaration would be a court order confirming that what Clifton Boudreau claims is a right of way and Joanne Conrad agrees is a right of way, is in fact a right of way. The injunction would be to stop members of the family involved in the dispute from "blocking, obstructing, or in any way limiting" the use of the right of way. But what it all comes down to is asking the court to tell Joanne Conrod to stop blocking the driveway so that her brother can use the right of way.

Evidence

[4] In 2008 Evelyn Boudreau gave a piece of property to her son, Clifton Boudreau. With that property she also granted a 15-foot wide right of way over the

property on which her own home was located. It was the driveway used for the home. The right of way was given so that Clifton Boudreau could access his land without having to construct another driveway. In 2014 Clifton Boudreau had a gravel laneway constructed that extended the existing driveway further into his land. He also built a parking pad next to the driveway so that his mother could park cars without blocking the right of way. The house lot also has some parking spots that do not overlap with the right of way.

[5] When Evelyn Boudreau died in 2020 her daughters Joanne Conrod, Connie Boudreau and Andrea Doyle became the owners of the home. Joanne Conrod and her partner, Kenneth Hall moved into the house and still live there.

[6] When their mother was alive the right of way seems to have caused no issue. Sometimes Evelyn Boudreau would park her car on the right of way and when Clifton Boudreau needed access to his land, he would just get his mother's car keys and move her car. No problems.

[7] Clifton Boudreau said that in the summer after their mother's death things changed. He would arrive and find his sister Joanne Conrod's car parked in the right of way taking up over half the width of the easement. His truck could not pass without going over the boundaries of the right of way and onto the house lot and there is a slight drop off at the side of the right of way. The first time he asked Ms. Conrad to move her car she did. The second time she began shouting at him and telling him to just drive around her car. He said that he told her he had a right to use the right of way and would have her car towed. She moved it. The third time, Ms. Conrad refused to move at all. He says that she has insisted that he travel around her car since then. He said that he found his sister's car parked in the right of way on September 11, October 3, and November 28, 2021, April 27, June 23, July 8, July 9, August 18, and September 11, 2022, and May 24, June 21, July 29, and July 30, 2023.

[8] Mr. Boudreau tried to reach a resolution, but he said that Ms. Conrad firmly refuse to move her car.

[9] Clifton Boudreau also said that he began finding screws on the right of way. In the summer of 2022, he found 26 screws of different sizes and lengths along the right of way. There is no evidence at all about how those screws might have got there and no inference can be drawn from it. Mr. Boudreau has also found the right of way obstructed by two 2x4 pieces of wood and a water hose. Ms. Conrod said that the water hose was a small hose for her greenhouse and the wood was placed

on either side of the hose to protect it as vehicles drove over it. It was hardly an obstruction.

[10] Joanne Conrad said that after the easement was developed in 2014 and before Eveyln Boudreau died in 2021, vehicles were parked in the driveway. The car would just be moved if it obstructed the right of way or Clifton Boudreau would just drive around the parked vehicle. She said that there is no reason why that can't just continue. Clifton Boudreau can drive around the cars because they do not entirely block the right of way. The evidence from photographs shows that a truck can make it past a parked car.

Issues

[11] Is there an easement or right of way?

[12] Does the easement include the right to use it to bring heavy equipment onto Clifton Boudreau's land?

[13] Does parking cars on the easement amount to substantial interference with the rights of Clifton Boudreau?

The Easement or Right of Way

[14] Clifton Boudreau and Joanne Conrod agree on one thing at least. They both acknowledge that there is an easement or right of way over the land that Joanne Conrod now occupies. Their sister, Andrea Doyle, with the apparent agreement of two other sisters, Lisa Kinslow and Connie Boudreau, argued that there is no easement or right of way over the land. Lisa Kinslow and Connie Boudreau did not file a Notice of Contest but were permitted to make some representations in court with the consent of Clifton Boudreau's counsel, Mr. Wadden.

[15] Ms. Doyle's argument was that there was no grant of easement. There was no stand-alone document granting the easement. The easement however was granted by the deed in which Eveyln Boudreau conveyed a lot to her son, Clifton Boudreau. The deed dated April 15, 2008, grants Lot 5 on Highway 206, Sampson's Cove, Richmond County, to Clifton Boudreau. It is PID 75091496, registered as Document # 92745042, in the Richmond County Land Registration office, on February 11, 2009. Schedule A to that deed refers to the "Plan of survey showing subdivision & consolidation of lands deeded to Evelyn Marie Boudreau and Allister Keith Boudreau and Blair Boudreau". The plan is registered as #

92695031. The deed states that PID 75091496 is conveyed together with "a 15 foot Right of Way as evidenced on the above noted plan". On July 24, 2020, the house lot was conveyed to Evelyn Boudreau, Joanne Conrod, Connie Boudreau, Andrea Doyle, and Lisa Kinslow, as part of the subdivision and consolidation, by a Quit Claim deed, which notes the existence of the right of way as set out on the plan.

[16] There was a grant of easement. That easement is the 15 foot wide easement as drawn on the survey plan.

[17] Ms. Doyle also contended that when the driveway was extended beyond the house lot and into Clifton Boudreau's land it was improperly done. There had been no approval for a change in the grade or elevation of the road. That has nothing to do with whether the easement exists. What Clifton Boudreau did on his own land with regard to constructing a driveway or access road has nothing to do the 15-foot-wide easement over the house lot.

[18] Ms. Doyle's request was that "the court by Judgement Role (sic) remove the Burden or Benefit so an amended Parcel Description Certification can be filed with the *Lands Registration Act*". It is not entirely clear what that request means. There is a right of way, and it was legally conveyed to Clifton Boudreau. That right of way is for the benefit of his land. It was not a personal agreement between Evelyn Boudreau and her son that would be extinguished on the death of Evelyn Boudreau.

Interpretation of the Right of Way

[19] The location of the right of way is clear. It is set out on the plan of subdivision. The size is clear. The question is use. There is a distinction between the purpose of a right of way and its mode of usage. The purpose would relate to the intended activity on the land in favour of which the easement has been granted. That might be to do something like harvest seaweed, as Justice Fichaud noted in *Knock v. Fouillard*, [2007] N.S.J. No. 77. The mode of usage is how the passage is accomplished over the other land. That might be for example pedestrian or vehicular. The right to walk over someone's land is quite a different thing to driving an excavator over it.

[20] In this case, the purpose of the easement is clear. It is to allow Clifton Boudreau to access the land that his mother gave him. There are no restrictions placed on it. It is not just to allow access for camping or going to the beach. There

was some suggestion that it was for alpaca farming because Clifton Boudreau had considered using his land for that purpose. But there is nothing in the easement that limits its use to alpaca farming specifically or ranching or farming more generally. When the grant of a right of way is not limited to any particular purpose, a general right of way may be inferred. *Anger and Honsberger Law of Real Property*, Third Edition, 17-26. The mode of usage is not addressed. The grant of easement does not contain any limitation with regard to the mode of use. It does not say whether access is only to be by foot or may include vehicles and if vehicles whether heavy equipment is included.

[21] Justice Fichaud in *Knock v. Fouillard* referred to *Anger and Honsberger* in which four rules were set out to guide the interpretation of grants of easement. The grant must be construed in the light of the situation of the property and the surrounding circumstances. That is done to determine and give effect of the intention of the parties. If the language of a grant is clear and free from doubt, that language is not the subject of interpretation. No resort to extrinsic facts and circumstances can be made to modify the clear terms of the grant. The past behaviour of the parties dealing with the use of the right of way may be considered. In case of doubt, construction should be in favour of the party who granted the easement.

[22] The surrounding circumstances are such that access by vehicle was clearly intended and Ms. Conrod does not dispute that. There would be no reason to have a pedestrian walkway over the house lot. Ms. Conrod says that Evelyn Boudreau did not intend to grant an easement that would allow the use of heavy equipment. She says that the presence of a well next to the right of way would have been a concern. Bringing in heavy equipment close to the well would have raised concerns for the structural integrity of the well.

[23] There is no evidence that Evelyn Boudreau expressed such a concern. And the well is a 200-foot deep artesian well which would be unlikely to have been affected by passing heavy equipment. The land was undeveloped. Any use by Clifton Boudreau that would involve development, even building of a structure of some kind, would require having access by some heavy equipment. After the easement was granted and while Evelyn Boudreau was still alive, heavy equipment was brought over the easement to construct the access road into Clifton Boudreau's property. There were no complaints from his mother Evelyn Boudreau or from anyone else about trucks and excavators coming too close to the well or about anything else. The witnesses agreed that had their mother been concerned about the

presence of heavy equipment she would certainly have made those concerns known. The circumstances surrounding the granting of the easement suggest that the mode of usage would include access by vehicles and heavy equipment for the purpose of developing the land and placing buildings on it. If there were any doubt of that the doubt would be resolved in Clifton Boudreau's favour.

[24] The easement in favour of Clifton Boudreau's property includes the right of access by vehicles including heavy equipment or construction equipment for the reasonable purposes of landscaping and construction. It should be noted the excessive use of a right of way is a trespass.

What is Substantial Interference?

[25] Having a right of way does not mean having the right to have it always kept entirely free of obstructions. The person who owns the land over which the right of way runs is entitled to use the land. They just can't block the easement in a way that unreasonably restricts the use of it. To be a legal issue the obstruction must be such that the easement or right of way cannot be used substantially and practically as conveniently as it was. *Forgeron v. Garner*, 2024 NSSC 80. It certainly does not have to make use of the easement impossible. But it must make it less convenient in a real and practical way. Placing a wall on an easement would without much question qualify as a substantial interference. A fence with a gate may sometimes be a substantial interference.

[26] Parked cars have been the subject of several cases. In *Cobalt Investments Ltd. v. Panko*, 2012 NSSC 34, the owner and tenants of the property over which the right of way ran parked a car and left items on the right of way. In that case there was no dispute about the existence of the easement, so no declaration was required. Justice Wood, as he then was, then considered whether an injunction should be granted. Mr. Panko, the owner of the property over which the right of way ran, said that the planters and bins had not blocked the easement or made it impassable. But when the issue was brought to his attention, he made physical changes to the property to make sure that Cobalt Investments and their tenants could access their parking. Justice Wood noted that the owner of the servient tenement still has legal title to the property and is entitled to use it provided that the use does not undermine the rights of the holder of the easement. "There will have to be some balancing of the respective interests of the parties in their use of this common area." (para. 29) The degree of interference necessary to trigger

intervention by the court was described as interference that is substantial having regard to all the circumstances.

[27] Justice Wood referred to Justice Hart's decision in *Miller v. MacLean*, 7 N.S.R. (2d) 371. In that case parking and dismantling of old vehicles, depositing brush and logs, placing lunch boxes on the road, and playing street hockey were all activities that would not be permitted and would amount to substantial interference with the use of the private access road. Justice Wood considered the evidence of the parking of vehicles by Mr. Panko. It "could" amount to substantial interference, but it was not clear how long the easement was obstructed and who was inconvenienced by it. The obstructions could justify injunctive relief if they occurred "with any degree of regularity"(para. 34) Justice Wood noted that it should not be up to Cobalt Investments to respond after the fact when their rights have been interfered with. "If they can satisfy the Court that there has been a substantial interference with their rights, and there is a risk that this will continue, they should be granted an injunction" (para. 34).

[28] But Justice Wood in that case did not grant an injunction. He noted that an injunction is a discretionary remedy. There had only been two alleged obstructions in the previous ten months, they were temporary, and Mr. Panko said that he would have removed the vehicles had he known there was a problem. Mr. Panko testified that he would not obstruct the easement in the future. An injunction was not necessary.

[29] In the case of Mr. Boudreau and his sisters, there has been no promise to keep the right of way clear in the future. Ms. Conrod insists that Mr. Boudreau should just drive around her car and stop making such a federal case out of it.

[30] In *Riis v. Wallman*, (1987), 47 R.P.R. 87, 1987 CarswellOnt 688, the issue was whether the owner of the land could park cars in a driveway over which there was a right of way. There was no way for the driver of a vehicle to get around the cars parked in the driveway and each time the person driving the vehicle had to go into the owner's home and ask for the car to be moved. There was no dispute that each time the request was made the cars were moved. That could be at any hour of the day or night. The court held that requiring someone to go into the home and ask for the car to be moved amounted to a substantial interference with the reasonable use of the right of way.

[31] In *Driedzic v. West* (2000), 196 Nfld. & P.E.I.R. 84, the only access to the rear of the Driedzic house was a right of way, granted by the Wests to the former

owner of the Driedzic property. The Wests parked their car in the right of way. They agreed to move it whenever the Driedzic's needed access. Justice Adams held that the requirement to ask the Wests to move their car was a substantial interference with the use of the right of way.

[32] There has to be some room for nuance though. When the interference happens regularly and the user of the right of way each time, whether daily or weekly, has to schlep their way into the house, ask for the car to be moved, and wait while the owner gets it out of the way, that is a substantial interference. When it happens a few times a year, that may be annoying or may offend one's principles, but it is hardly a substantial interference. In *Campbell v. Bishop*, 2003 NLSCTD 83, twice a year David Bishop brought a crane in for his yacht supply business and blocked access to the right of way that provide beach access to William Campbell. Each of those times Mr. Bishop provided a convenient alternative for Mr. Campbell to access the beach. The right of way was blocked infrequently and with notice and importantly, in the view of Justice Goulding, alternative access was provided. No injunction was granted. The circumstances matter.

[33] In this case the right of way has not been entirely blocked. The cars were parked in the right of way, but they were both obviously impermanent, and usually not entirely blocking access. There was a dispute about whether Clifton Boudreau could safely drive around the parked cars.

[34] The narrowing of an easement can amount to a substantial interference. In *St. Hilaire v. 0772255 BC Ltd*., 2022 BCSC 2168, a trailer was parked on an easement so that it occupied almost 40% of the total area of the 45-foot-long easement. That was a substantial interference.

[35] The Court cited the English Chancery Division case of *Celsteel Ltd. v. Alton House Holdings Ltd. (1984)*, [1985] 1 W.L.R. 204 (Eng. Ch. Div.), in which the issue was whether narrowing a right of way from 9 metres to 4.14 metres was considered. The party who wanted to do that said that 4.14 meters was all that was really needed to pass over the right of way. The Court did not agree. The grantor who granted a 9 metre right of way cannot reduce its width by almost half and then claim that it is all that the other party really needed anyway. The reduction would materially and permanently detract from the quality of the rear driveway and the plaintiffs' rights over it. It would not be as convenient for the reasonable use of the

plaintiffs as it had been before. The plaintiffs were entitled to the "relative luxury" of a 9 metre right of way because, that, after all was what they had paid for.

[36] Driving around a parked car may seem like a sensible resolution. But it has the effect of moving the right of way. The approaching vehicle has to drive onto the lot on which the house sits or come very close to the parked vehicle. Justice Van den Eynden in *Shea v. Bowser*, 2016 NSCA 18, observed that once the location of a right of way has been decided, neither party can unilaterally change it. Increased costs and effort to open a new way or the existence of an alternative way are not a basis upon which a court can move a right of way. "Property law has its own particular, and at times rigid, set of rules. Courts uphold these rules even though that might result in overturning what may otherwise be a fair result and of benefit to both parties." (para. 27)

Was There Substantial Interference with the Use of the Right of Way?

[37] Those particular and sometimes rigid rules to which Justice Van den Eynden referred must be applied. There are good reasons for that. Asking people to use their good sense to work out a compromise sounds fine but if compromise were within reach this case would not have made it to court. While it may seem to be a relatively minor inconvenience to either drive around a parked car or to ask your sister to move her car, there are other considerations.

[38] The easement is a property right. It attaches to Clifton Boudreau's lot. It is not a just personal matter between Clifton Boudreau and his sisters. Clifton Boudreau may sell his lot. His sisters may sell their lot. Strangers who have no relationship with each other would be left to try to work out a compromise on the vexing issue of parking in the right of way. Having a right of way running past one's front door affects the value of the house lot. Having to negotiate access through a right of way or building a new access from the main road, both affect the value of Clifton Boudreau's land. The subsequent owners may be less, or perhaps more, reasonable than the current ones.

[39] Requiring Clifton Boudreau to ask if he may use his right of way is not consistent with his legal right to access his property using that right of way. If he found that to be less hassle, he might agree to that. It was fine until his mother died. But it has now become a source, or perhaps a further source, of conflict among the siblings.

[40] Parking cars so that they do not block the right of way is not a significant inconvenience either. Clifton Boudreau's evidence was that there are several other places to park on the house lot. That was not disputed. It is not as if Joanne Conrod would have no place to put a car. Someone needs to give way, and no one is prepared to budge on that. If someone needs to give way, it is not the person with the legal right to use the right of way to access his land.

[41] This is not something that happens daily or even weekly. But it is not a one-time occurrence. And if there is no remedy it will keep happening. Joanne Conrod did not offer to keep the right of way clear in the future.

[42] The obstruction is not permanent, and it could be possible for Clifton Boudreau to drive his truck close enough to the car in the right of way to just get by. He might have been prepared to do that. But given the animosity about the issue he has reason to be concerned about the potential for a claim should he accidentally damage the car parked on the right of way. It also amounts to a unilateral relocation of the right of way.

[43] In these circumstances the parking of cars on the right of way amounts to a substantial interference with the use of the right of way. A declaration with be issued and the named parties will be enjoined from blocking, obstructing or in any way limiting Clifton Boudreau's right to access his land using the right of way.

[44] The parties may contact the court in writing within 30 days of this decision to make submissions on costs.

Campbell, J.