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FOR PUBLICATION

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

IN RE THE ESTATE OF) **CIVIL ACTION NO. 06-0544**
)
CHARLES PANGELINAN REYES, SR.,) **ORDER GRANTING EASEMENT**
)
Deceased.)

I. INTRODUCTION

This matter came before the Court on January 19, 2010, for a hearing on minor child Akieva C. Reyes’ motion for the establishment of easement by implication or prescriptive easement. Colin M. Thompson, Esq., appeared for Executor Charles P . Reyes, Jr., who failed to appear. Stephen J. Nutting, Esq., appeared with Guardian Ad Litem Maria Candado for minor child Akieva C. Reyes. Matthew T. Gregory, Esq., appeared with heir Gerald P. Reyes. Based on the record, the evidence presented, and the applicable laws, this Court concludes as follows.

II. PROCEDURAL BACKGROUND

Decedent Charles Pangelinan Reyes (“Charles Sr.”) died on September 15, 2006. During his lifetime, Decedent acquired several properties in Chalan Laulau, Saipan.

Decedent’s father, Juan Ch. Reyes, acquired a large piece of property, Lot No. 1970 NEW containing 19,942 square meters, that fronted Beach Road in Chalan Laulau, Saipan.

1 Decedent's brother, Pete P. Reyes, owned another piece of property in the same area known as
2 Lot H-650 containing 2,253 square meters. (Ex. 1 to Mem. of Law in Support of Mot. for Est. of
3 Easement by Implication or Prescriptive Easement (Oct. 9, 2009)) In 1984, Decedent's father
4 subdivided the large property into sixteen smaller lots designated as Lot 1970NEW-1 through
5 1970NEW-16, two right-of-way easements, and one larger parcel. (Ex. 2 to Motion; Decl. of
6 Alfred K. Pangelinan ("Pangelinan Declaration"), ¶ 8) The southern easement, Lot 1970 NEW-
7 R/W2 containing 237 square meters, leads from Beach Road on the west to Lot 35-8 and H-650
8 on the east. (*Id.*, ¶ 8-9)

9 On July 10, 1985, Decedent's brother Pete sold part of Lot H-650 to the Decedent which
10 later became designated as Lot 17-3. (Ex. 5, Warranty Deed) Sometime in 1988, Pete
11 subdivided Lot H-650, Lot 35-8 and Lot 1970NEW-15, which he acquired as a gift from his
12 father. (Decl. of Pete P. Reyes, ¶ 4; Pangelinan Declaration, ¶ 10) Pete divided the three
13 properties into five smaller parcels designated as Lot 1970NEW-17-R1, 1970NEW-17-1 (the
14 Apartment Lot, or "Lot 17-1"), 1970NEW-17-2, 1970NEW-17-3 (Akieva's Lot or "Lot 17-3"),
15 and 1970 NEW-17-4 (Gerald's Lot, or "Lot 17-4"). (Ex. 3 to Motion) This second subdivision
16 created another easement, Lot 1970NEW-17-R/W2 containing 97 square meters ("Lot 17-
17 R/W2"), which was ten feet wide and allowed access to all of the newly subdivided parcels.
18 This easement ended by fronting Lot 17-3, the home of the Decedent. (Pangelinan Declaration, ¶
19 13-14)
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21 Five years later, in 1990, Pete transferred Lots 17-1 and 17-4 to the Decedent as an
22 exchange for Decedent's property in Chalan Piao. (Ex. 5a, Deed of Gift). At the time Decedent
23 acquired the three parcels (Lots 17-1, 17-3, and 17-4), they were essentially unimproved, except
24 for a small concrete residence that was previously constructed and treated as a rental property by
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1 Pete. After the acquisition, Decedent constructed a number of improvements on the parcels,
2 including a small apartment complex on Lot 17-1 and his private residence on Lot 17-3. When
3 he built his private residence, he owned the adjacent parcel with the small house rental property,
4 Lot 17-4, which has been devised to Gerald in this probate action. Decedent paid little or no
5 attention to the actual boundaries of the lots designated in the formal survey. (Pangelinan
6 Declaration, Retracement & As-built Survey Plat) When he constructed his own home, he built
7 the car port entrance in such a location that required free access across the adjacent lot with the
8 small rental property. (*Id.*) A detached rest room for the family residence encroaches over to
9 Lot 17-4, Gerald's lot.

10 In Decedent's Will, Decedent stated his intent to build a new residence over the adjacent
11 parcel, Lot 17-4, and a fourth property, Lot 1970NEW-17-5 ("Lot 17-5"), containing 157 square
12 meters. (Last Will and Testament, p. 2, ¶A) If the new residence had been constructed at the
13 time of his death, he devised the same to his daughter Akieva. *Id.* If there is no new residence
14 on the two lots at the time of his death, then he devised the existing home on Lot 17-3 to Akieva,
15 and gave Lot 17-4 and 17-5 to his son Gerald. *Id.* During the course of this probate proceeding
16 of Decedent's estate, the Court granted Executor's request for a partial distribution of the
17 properties pursuant to the Will.

18 On November 26, 2007, the Court awarded Gerald Lots 17-4 and 17-5, and Akieva
19 received the family residence on Lot 17-3. After Gerald received title to his lots, he constructed
20 a chain link fence along the outside boundary lines to his two lots. The fence closed off the
21 roadway that led directly into the family residence carport. (Pangelinan Declaration, As-built
22 Survey Plat) The remaining portion of the pre-existing roadway does not lead directly into the
23 residence car port. The eastern fence line comes within inches of the corner of Decedent's
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1 former family residence, and then wraps around the detached restroom to enclose the southern
2 part of the family residence, denying access to the storage room from the front of the house.¹

4 III. ANALYSIS

5 A. Jurisdiction of this Superior Court sitting in probate.

6 In his opposition to Akieva's motion for establishment of easement, the Executor again objected
7 to this court asserting jurisdiction over Akieva's claim of an easement right over a property distributed
8 in the probate case. He raised the issue of whether this Superior Court, sitting in a probate action, can
9 adjudicate the dispute between Akieva Reyes and Gerald P. Reyes, concerning Akieva's claim to a
10 substantive right in a particular piece of real property previously devised to Gerald from this Estate.

11 While there is no express authority under Commonwealth law cited by claimant Akieva or found
12 by this Court, there is ample legal authority to support the assertion of jurisdiction. Under 8 CMC §
13 2202(a), the Court has jurisdiction "over all subject matter relating to estates of decedents." Probate
14 courts have broad jurisdiction over matters properly before it. *In re Estate of Rofag*, 2 N.M.I. 18, 24
15 (1991). The California Supreme Court aptly stated the exceptions to the general rule that limits the
16 court's jurisdiction in probate. In the case of *Estate of Peter Baglione*, 417 P.2d 683 (Cal. 1966), it
17 stated:

18 As a general rule the jurisdiction of superior courts sitting in probate to administer
19 decedents' estates does not encompass power to pass upon assertions of title to property
20 by parties who are not in privity with the estate but are claiming adversely to it. (citations
21 omitted). There are, however, several well-recognized exceptions to this rule "where a
22 controversy has been held to have a sufficient connection with a pending probate
23 proceeding to be properly litigated therein. . . ." (*Central Bank v. Superior Court*, 45
24 *Cal.2d 10, 15 [285 P.2d 906]*.) The connection may arise out of the relationship between
the parties. Thus the superior court sitting in probate can adjudicate a claim to assets
from the estate asserted by an executor or administrator in his individual capacity, and it
can determine whether an assignment or other transfer of the interest of an heir, legatee,
or devisee to a third party is valid and order distribution accordingly. The connection

25 ¹ With the consent of all the parties, the Court conducted a site visit on April 9, 2010, to see the properties with the fence and
have a better sense of its impact after the Court announced its intention to grant easement rights.

1 may also arise out of the nature of the claim to the property. The superior court sitting in
2 probate can ... adjudicate *a dispute between claimants to property "conceded . . . to be or
to have been acquired . . . in the course of probate proceedings."* (citations omitted)

3 417 P.2d at 686-687 (emphasis added).

4 The California Supreme Court went on to recognize a third type of exception based on the nature of the
5 claim and the claimant's relationship to the estate. It stated,

6 When a party invokes the jurisdiction of a court sitting in probate by asserting a
7 substantive right in a particular piece of property or in certain assets as an heir, legatee, or
8 devisee, he may also obtain a judgment in that court determining any additional claims
9 that he asserts against those in privity with the estate in the same property. (citations
omitted). *The rationale for this exception is the conservation of time, energy, and money
of all concerned. To deny a superior court sitting in probate the power to determine the
whole controversy between the parties before it is pointless.*

10 *Id.* at 687 (emphasis added). This Court concludes that Akieva's assertion of a substantive right to
11 Gerald's Lot in this action based on their joint acquisition of properties from the Decedent brings her
12 claim under the exception to the general rule. Accordingly, this Court asserts jurisdiction to adjudicate
13 Akieva's claim to an easement over Gerald's Lot.

14 **B. Easement by implication.**

15 Despite the fact that Decedent's Will devised the family residence and Gerald's lots based on the
16 formal survey descriptions without reference to any reservations to any easement, Akieva claims a right
17 of an implied easement over Gerald's Lot 1970NEW-17-4 by virtue of the driveway that was used by
18 the Decedent during his lifetime and that led directly into the carport of the family residence she
19 acquired under the Decedent's will, Lot 1970NEW-17-3.

20 The parties are in agreement that the applicable law on Akieva's claim for an easement is the
21 Restatement (Third) of Property § 2.12 (2000). Section 2.12 of the Restatement provides:

22 Unless a contrary intent is expressed or implied, the circumstances that prior to a
23 conveyance severing the ownership of land into two or more parts, *a use was made of one
part for the benefit of another, implies that a servitude was created to continue the prior
24 use if, at the time of the severance, the parties had reasonable grounds to expect that the
conveyance would not terminate the right to continue the prior use.*

1 The following factors tend to establish that the parties had reasonable grounds to expect
2 that the conveyance would not terminate the right to continue the prior use:

- 3 (1) the prior use was not merely temporary or casual; and
- 4 (2) continuance of the prior use was reasonably necessary to enjoyment of the
5 parcel, estate, or interest previously benefited by the use, and
- 6 (3) existence of the prior use was apparent or known to the parties, or
- 7 (4) the prior use was for underground utilities serving either parcel.

8 The Executor and Gerald argue that Akieva has failed to establish the elements of easement. In
9 particular, they contend that factor (2), which requires proof that “continuance of the prior use was
10 reasonably necessary to enjoyment of the parcel, estate or interest previously benefited by the use” is
11 not satisfied. First, they contend that Decedent’s intent to create an easement to serve both Akieva and
12 Gerald’s property is shown by his 2002 dedication of easement to the Commonwealth of the Northern
13 Mariana Islands. (Decl. Dolores A. Bisnar, Ex. A) However, the Dedication pertains to the southern
14 easement of Decedent’s father’s large property, Lot 1970 NEW-R/W2 containing 237 square meters,
15 that fronts Beach Road. The dispute between Akieva and Gerald pertain to lots adjacent to the inner
16 easement described as Lot 1970NEW-17-R/W containing 97 square meters. (Ex. 3 to Akieva’s Reply).
17 The Dedication, therefore, does not bear on Decedent’s intent on his prior use of Gerard’s Lot as a
18 driveway to his residence on Akieva’s lot.

19 The Executor and Gerald next contend that Akieva fails to establish the second factor that
20 requires the continuance of the prior use to be “reasonably necessary.” The photos in Exhibits B-1
21 through B-5 of the Declaration of Gerald Reyes do show that a vehicle is capable of entering and exiting
22 all three garage spaces in Akieva’s house. There is no dispute, however, that in order for a car to enter
23 the carport previously served by the roadway closed off by the fence, the car must make a sharp, 90
24 degree turn from the roadway and then carefully maneuver into the carport. It is even more challenging
25 to exit the carport. It requires usage of the other neighbors’ lots. Decl. of Maria Candado, ¶ 10. The
second factor that requires proof of “reasonably necessary” is not just for roadway access for ingress and
egress, but to the *enjoyment* of the parcel to utilize the property as close to the circumstances as when

1 the Decedent was using it. *Cassidy v. Cassidy*, 309 Ill. 465, 141 N.E. 149 (Ill. 1923) (Where a man who
2 had used a driveway on his farm with his wife conveyed the land by four deeds to their four children, the
3 use of the driveway would continue by implication, and it was *not* necessary to show that the way was
4 one of necessity.) In this case, allowing the fence to stand as erected would deny Akieva any access to
5 the detached restroom and storage room from the front, even by foot. Furthermore, the fence has
6 blocked the roadway from the reasonably necessary driveway into the carport. *Goodall v. Godfrey*, 53
7 Vt. 219, 225, 1880 Vt. LEXIS 111 (Vt. 1880) (“a case where the owner had created and impressed a
8 peculiar quality to the different parts of his estate, so that one portion became, as the building was
9 constructed, visibly dependent upon another for the means of access thereto.”)

10 Movant initially proposed Exhibit 8 attached to the motion as a possible easement boundary.
11 This Court finds this proposal excessive. It severs the entire roadway used for Akieva’s lot *and* Gerald’s
12 lot for Akieva’s sole use thereby taking about half of Gerald’s lot 17-4.² Movant then offered Exhibit 3
13 attached to her Reply brief. This proposal reduces the roadway area taken from the front of Gerald’s lot
14 to only that portion used for Akieva’s lot, and then provides for a six foot, narrow strip of land along the
15 eastern boundary of Gerald’s lot. It gives some movement space in front of Akieva’s lot, and recognizes
16 the detached restroom as being a part of Akieva’s lot. This proposed Lot 1970NEW-17-4 easement
17 totals 81 square meters. After the site visit, Movant submitted yet a third, alternative proposal for
18 easement of subdivision. This third proposal, submitted on April 12, 2010, alters the boundary of the
19 lots belonging to Akieva and Gerald to provide for an exchange of two parcels of 94 square meters. It
20 again enlarges the front roadway area so that it is greater than the second proposal but is still less than
21 the original, Exhibit 8 proposal. It also gives Gerald the area containing the detached rest room and
22 storage room. Gerald thereafter submitted his response to an alternative proposal for the easement
23 subdivision on May 19, 2010. This Court finds the second proposal, Exhibit 3 attached to the December
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25 ² The pre-existing roadway maps, such as Exhibit 4 to Akieva’s motion, show that the roadway also ends at the concrete house on Lot 17-4, indicating usage to benefit Gerald’s lot on the eastern side.

1 31, 2009 Reply, as fair and reasonably necessary for the continued enjoyment of the family residence. It
2 grants Akieva unimpeded access from the roadway to the driveway of the carport, and preserves the
3 restroom previously constructed by Decedent for the family residence. The six foot distance from the
4 house structure is also reasonably necessary. Despite this grant of easement that affects Gerald's lot,
5 Gerald's total land area for the two lots he received under the Will is still greater than Akieva's lot with
6 the easement.

7 **IV. CONCLUSION**

8 Based on the foregoing reasons, this Court grants Akieva's motion for establishment of easement
9 by implication or prescriptive easement as shown in Exhibit 3 to her Reply filed on December 31, 2009.
10 This area is more particularly described as Lot 1970NEW-17-4-R/W containing 81 square meters.

11 IT IS SO ORDERED this 25th day of May, 2010.

12
13 /s/ 
14 RAMONA V. MANGLOÑA, Associate Judge