

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 2131

 **RONNIE V. MARTIN, PATSY MARTIN KINSELLA, RUSSELL
ROBERT, BRITTON ROBERT, CHRISTOPHER JAMES
BOURGEOIS AND BRANDI FALGOUST BOURGEOIS**

VERSUS

**BLANE JOSEPH SOLAR, JODI WALKER SOLAR, CYCIL J.
LABAUVE, REGINA RODDY LABAUVE, MONIQUE RENEE
WHITE, LAUREANO SIORDIA SIQUEIROS AND ELVA DIAZ
SIQUEIROS**

Judgment Rendered: May 6, 2011

**Appealed from the
Twenty-third Judicial District Court
In and for the Parish of Ascension, Louisiana
Docket Number 95,530**

Honorable Ralph Tureau, Judge Presiding

**Larry W. Buquoi
Gonzales, LA**

**Counsel for Plaintiffs/Appellees,
Ronnie Martin, Patsy Kinsella,
Russell Robert, Britton Robert,
Christopher Bourgeois and Brandi
Bourgeois**

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**Counsel for Defendants/Appellants,
Blane Solar, Jodi Solar, Cyril
LaBauve, and Regina LaBauve**

BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

WHIPPLE, J.

The dispute between the parties in this appeal centers around the location of a forty-foot right-of-way in Ascension Parish and, consequently, plaintiffs' right to access their property from the right-of-way. The trial court granted a partial summary judgment in favor of the plaintiffs with remaining claims, declaring that the right-of-way had been dedicated to the public, that the road contained within the right-of-way is a public road, that the right-of-way is adjacent to plaintiffs' property, and that plaintiffs have full and uninterrupted access to their property from the right-of way.¹ For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiffs, Ronnie V. Martin, Patsy Martin Kinsella, Russell Robert, Brittni Robert, Christopher James Bourgeois, and Brandi Falgoust Bourgeois, are the owners of immovable property in Section 38, Township 9 South, Range 3 East in Ascension Parish, Louisiana. Plaintiffs filed suit for declaratory judgment against defendants, Blane Joseph Solar, Jodi Walker Solar, Cyril J. LaBauve,² Regina Roddy LaBauve, Monique Renee White, Laureano Siordia Siqueiros, and Elva Diaz Siqueiros, who were all owners of lots in James Lewis Subdivision, also located in Section 38, Township 9 South, Range 3 East in Ascension Parish, Louisiana, and adjacent to plaintiffs' property.

In their petition, plaintiffs contended that all of the lots and tracts of immovable property owned by plaintiffs and defendants were serviced and accessed by a parish road known as Tiger Lewis Road. According to

¹As set forth below, plaintiffs entered into a stipulated judgment with some of the defendants that resolved entirely the claims of some of the plaintiffs.

²In plaintiffs' original petition, defendant LaBauve was improperly named as Cycil LaBauve. However, in their amended petition, plaintiffs correctly named him as Cyril LaBauve.

plaintiffs' petition, Tiger Lewis Road is contained within a forty-foot right-of-way as shown and dedicated as a public right-of-way on a January 11, 1989 survey map prepared by Willard J. Cointment, Jr., when James V. "Tiger" Lewis, defendants' ancestor-in-title, subdivided his property into the lots comprising James Lewis Subdivision. They further averred that the January 11, 1989 survey map, prepared by Cointment, subdividing Tiger Lewis's property and dedicating to the public a forty-foot right-of-way along the western edge of his property, was recorded in the official records of the Clerk of Court of Ascension Parish, and Tiger Lewis Road was later accepted by Ascension Parish as an official roadway for the public.

Plaintiffs also asserted that the forty-foot right-of-way, as clearly depicted on the January 11, 1989 survey map, begins on the western boundaries of the tracts owned by defendants and that the western boundary of the forty-foot right-of-way is also adjacent to and contiguous with the eastern boundaries of plaintiffs' properties, thus allowing plaintiffs access to their property from the right-of-way.

Accordingly, plaintiffs sought a declaratory judgment against defendants, declaring that: (1) the forty-foot right-of-way containing Tiger Lewis Road and depicted on the January 11, 1989 survey map is dedicated to the public and is a public road; (2) the western boundary of the forty-foot right-of-way is also the western boundary of defendants' tracts of immovable property and is the same line as the eastern boundary of plaintiffs' tracts of immovable property; and (3) plaintiffs, as present owners of immovable property adjacent to the forty-foot right-of-way, and all future owners of those tracts, shall have full and uninterrupted access to their property from the forty-foot right-of-way dedicated to the public in the formation of James Lewis Subdivision.

Additionally, two plaintiffs, Martin and Kinsella, also sought damages against Cyril and Regina LaBauve, contending that the LaBauves had caused them damages by attempting to restrict or prevent them from accessing their property from Tiger Lewis Road. Martin and Kinsella further contended that they had pending purchase agreements for the sale of their property, but that the LaBauves had caused the delay in the sales of their tracts of land by calling the closing attorney and threatening to restrict access to the property being sold by Martin and Kinsella from the forty-foot right-of-way.

Defendants, on the other hand, denied that the right-of-way extended all the way to the western boundary of their lots and, thus, denied that the western boundary of the right-of-way was contiguous with the eastern boundaries of plaintiffs' properties.

However, plaintiffs subsequently entered into a stipulated judgment with three defendants, White, Laureano Siqueiros, and Elva Siqueiros, which was signed by the trial court on June 2, 2010. Pursuant to the stipulated judgment, the trial court rendered judgment in favor of plaintiffs and against those three defendants, declaring that: (1) the forty-foot right-of-way shown on the January 11, 1989 survey map, which contains Tiger Lewis Road, is a public servitude and is affirmed as being dedicated to the benefit of the public and further that Tiger Lewis Road is a public road dedicated to the benefit of the public; (2) the western boundary of the forty-foot right-of-way shown on the January 11, 1989 survey map is also the western boundary of Tract A-8 owned by defendant White and of Tract A-9 owned by defendants Laureano Siqueiros and Elva Siqueiros, and the western boundary of the forty-foot right-of-way is the eastern boundary of Tract Z-2 owned by plaintiffs Russell Robert and Brittnei Robert and of Tract Z-3 owned by plaintiffs Christopher Bourgeois and Brandi Bourgeois; and (3)

that plaintiffs Russell Robert and Brittnei Robert, as the owners of Tract Z-2, and Christopher Bourgeois and Brandi Bourgeois, as the owners of Tract Z-3, and all future owners of said tracts or any parts thereof, shall have free, full, and uninterrupted access to their respective properties from the forty-foot right-of-way as shown on the January 11, 1989 survey map. Having resolved the issues between plaintiffs and these defendants, the consent judgment further dismissed with prejudice all other claims of all plaintiffs against White, Laureano Siqueiros, and Elva Siqueiros. Further, given that the issue of access to the property of Russell and Brittnei Robert and Christopher and Brandi Bourgeois from the forty-foot right-of-way and from Tiger Lewis Road was resolved by the consent judgment, these four plaintiffs had no further justiciable claims pending before the trial court.

Accordingly, the claims remaining to be resolved included Martin and Kinsella's claims for declaratory judgment against the Solars and the LaBauves and for damages against the LaBauves. In that regard, Martin and Kinsella filed a motion for summary judgment, seeking judgment against the Solars and LaBauves declaring the existence of a servitude of passage in favor of the public on the forty-foot right-of-way at issue and their right to use Tiger Lewis Road to access their property. Thus, their motion sought judgment on their declaratory judgment claim only, reserving their damage claims for another day.³

Following a hearing on the motion, the trial court rendered judgment dated July 1, 2010, in favor of Martin and Kinsella and against the Solars and LaBauves, declaring: (1) that Tiger Lewis Road in Ascension Parish is

³In their memorandum in support of the motion for summary judgment, Martin and Kinsella stated that their claims for damages against the Solars and LaBauves "are not addressed herein and are reserved for a later trial date." However, as stated above, these plaintiffs asserted a claim for damages against only the LaBauves in their petition.

a public road and that the forty-foot right-of-way, as shown on the January 11, 1989 survey map and in which Tiger Lewis Road is contained, was dedicated to the public; (2) that the western boundary of the forty-foot right-of-way is the same line as the western boundary of Tract A-5 and Lot A-6-A owned by defendants Blane Solar and Jodi Solar, and is the same line as the western boundary of Lot A-6-B and Tract A-7 owned by Cyril LaBauve and Regina LaBauve; (3) that the western boundary of the forty-foot right-of-way is the same line as the eastern boundaries of Tracts Z-4 and Z-5 owned by plaintiffs Ronnie Martin and Patsy Kinsella; and (4) that Martin and Kinsella as owners Tracts Z-4 and Z-5 and all future owners of the tracts at issue herein shall have free, full, and uninterrupted access to their property from the forty-foot right-of-way.

From this judgment, the Solars and the LaBauves appeal.⁴ They list four assignments of error, contending that the trial court erred in: (1) holding that the right-of-way drawing on the 1989 plat controls when that plat expressly defers to an earlier public record showing a different right-of-

⁴Although the judgment was entitled "Final Judgment on Summary Judgment," the judgment did not contain an "express determination that there was no just reason for delay" as required by LSA-C.C.P. art. 1915(B). See R.J. Messinger, Inc. v. Rosenblum, 2004-1664 (La. 3/2/05), 894 So. 2d 1113, 1122-1123. While this matter was pending on appeal, this court issued an interim order remanding this matter to the trial court for the limited purpose of having the trial court incorporate, in a written judgment, an express determination that there was no just reason for delay with a designation that the grant of the summary judgment in favor of Martin and Kinsella and against the LaBauves on the declaratory judgment claim was a final judgment. The record on appeal was subsequently supplemented with said judgment, and based on our *de novo* review, we find that the trial court properly certified this judgment as final for purposes of immediate appeal. See R.J. Messinger, Inc., 894 So. 2d at 1122-1123. Accordingly, this court has jurisdiction to address the trial court's grant of summary judgment in favor of Martin and Kinsella against the Solars and the LaBauves.

way location; (2) dismissing as irrelevant the abundant evidence that Lewis never intended the right-of-way to extend to his property's western boundary, because a drawing on a subdivision plat does not effect a dedication when facts cast doubt on the subdivider's intent to dedicate; (3) improperly weighing the evidence by finding that the 1989 map trumps all other evidence of Lewis's intent even though the 1989 map is demonstrably inaccurate and unreliable; and (4) holding that the 1989 plat effected a statutory dedication of Tiger Lewis Road where the road already existed and does not subdivide any of the property.

BURDEN OF PROOF AND STANDARD OF REVIEW FOR SUMMARY JUDGMENT

A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B). The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. LSA-C.C.P. art. 966(A)(2).

The mover bears the burden of proving that he is entitled to summary judgment. LSA-C.C.P. art. 966(C)(2). However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, he need only demonstrate the absence of factual support for one or more essential elements of his opponent's claim, action, or defense. LSA-C.C.P. art. 966(C)(2). If the moving party points out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense, then the nonmoving party must produce factual support sufficient to satisfy his evidentiary burden at trial. LSA-C.C.P. art.

966(C)(2). If the mover has put forth supporting proof through affidavits or otherwise, the adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. LSA-C.C.P. art. 967(B).

If, on the other hand, the mover will bear the burden of proof at trial, that party must support his motion with credible evidence that would entitle him to a directed verdict if not controverted at trial. Hines v. Garrett, 2004-0806 (La. 6/25/04), 876 So. 2d 764, 766. Such an affirmative showing will then shift the burden of production to the party opposing the motion, requiring the opposing party either to produce evidentiary materials that demonstrate the existence of a genuine issue for trial or to submit an affidavit requesting additional time for discovery. Hines, 876 So. 2d at 766-767.

In ruling on a motion for summary judgment, the trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. Hines, 876 So. 2d at 765. Despite the legislative mandate that summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. Willis v. Medders, 2000-2507 (La. 12/8/00), 775 So. 2d 1049, 1050.

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. East Tangipahoa Development Company, LLC v. Bedico Junction, LLC, 2008-

1262 (La. App. 1st Cir. 12/23/08), 5 So. 3d 238, 243-244, writ denied, 2009-0166 (La. 3/27/09), 5 So. 3d 146.

DISCUSSION

The dedication of a street may be accomplished in four ways: statutory dedication, formal dedication, implied dedication, and tacit dedication. Melancon v. Giglio, 96-2507 (La. App. 1st Cir. 3/13/98), 712 So. 2d 535, 539. At issue herein is the existence of a statutory dedication. A statutory dedication, which is perfected by substantially complying with the requirements of LSA-R.S. 33:5051, imposes on subdividers of land certain duties, including the filing of a map and a formal dedication of all the streets to public use by the owner of the property. Melancon, 712 So. 2d at 539; State, Department of Transportation and Development v. Richardson, 453 So. 2d 572, 574 (La. App. 1st Cir. 1984). Such a dedication vests ownership in the public, unless the subdivider expressly reserves ownership of streets and grants the public only a servitude of use. Stonegate Homeowners Civic Association v. City of Baton Rouge/Parish of East Baton Rouge, 2001-2883 (La. App. 1st Cir. 12/20/02), 836 So. 2d 440, 443, writ denied, 2003-0786 (La. 5/9/03), 843 So. 2d 407.

With regard to the requirements for the map, LSA-R.S. 33:5051(B) provides as follows:

The map referenced in Subsection A of this Section shall contain the following:

- (1) The section, township, and range in which such real estate or subdivision thereof lies according to government survey.
- (2) The dimensions of each square in feet, feet and inches, or meters.
- (3) The designation of each lot or subdivision of a square and its dimensions in feet, feet and inches, or meters.

(4) The name of each street and alley and its length and width in feet, feet and inches, or meters.

(5) The name or number of each square or plat dedicated to public use.

(6) A certificate of the parish surveyor or any other licensed land surveyor of this state approving said map and stating that the same is in accordance with the provisions of this Section and with the laws and ordinances of the parish in which the property is situated.

(7) **A formal dedication made by the owner or owners of the property or their duly authorized agent of all the streets, alleys, and public squares or plats shown on the map to public use.**

(Emphasis added). The dedication of a street pursuant to this statute shall impose no responsibility on the political subdivision in which the property is located until the dedication is formally and specifically accepted by the political subdivision or until the road is maintained by the political subdivision. LSA-R.S. 33:5051(C).

As stated above, substantial compliance has been jurisprudentially deemed to suffice to accomplish a statutory dedication. Thus, inefficiencies in the plat alone, such as a failure to indicate some street names on the plat and the absence of a certificate of a parish surveyor or formal act of dedication, have not vitiated an intent to dedicate. Nevertheless, the intention to dedicate must be clearly established. Stonegate Homeowners Civic Association, 836 So. 2d at 443. In determining the intention to dedicate, a statutory dedication is properly to be gleaned from the instrument or instruments of record, rather than from evidence or purported intention beyond the record. Pioneer Production Corporation v. Segraves, 340 So. 2d 270, 275 (La. 1976). Moreover, the intent to dedicate the streets is generally presumed from the act of filing the subdivision plat. Cavaness v. Norton, 96-1411 (La. App. 1st Cir. 5/9/97), 694 So. 2d 1174, 1178.

However, although a statutory dedication is properly gleaned from the instrument, the instrument must be given a rational construction. When a rational construction negates the intent of the subdividing landowner, the fact that a reference to the land appears on a map does not, of itself, effect a dedication to public use. 6444 Associates, L.L.C. v. City of Baton Rouge, 2002-1779 (La. App. 1st Cir. 5/9/03), 851 So. 2d 1169, 1172, writ denied, 2003-2681 (La. 12/12/03), 860 So. 2d 1164. In such a case where the fact of the dedication is doubtful, the court must then look to the surrounding circumstances to determine whether there was an intent to dedicate. Cavaness, 694 So. 2d at 1177.

In the instant case, Martin and Kinsella had the burden of proving their entitlement to a declaratory judgment. Thus, they were required to support their motion for summary judgment on the declaratory relief claim with credible evidence that would entitle them to a directed verdict if not controverted at trial. See Hines, 876 So. 2d at 766. In support of their motion for summary judgment, Martin and Kinsella submitted, *inter alia*, (1) the January 11, 1989 survey map depicting the location of and containing the dedication language for the forty-foot right-of-way at issue; (2) a list of parish roads demonstrating that Tiger Lewis Road was accepted by Ascension Parish as a public road; (3) subsequent acts of sale regarding the lots in James Lewis Subdivision, all referencing the January 11, 1989 survey map; (4) subsequent survey maps depicting the location of the forty-foot right-of-way at issue; and (5) the affidavit and deposition of Cointment, the licensed surveyor who prepared the January 11, 1989 survey map depicting the location of the forty-foot right-of-way.

This evidence establishes that Cointment performed a survey and prepared the January 11, 1989 survey map at Tiger Lewis's request because

Lewis, who is now deceased, wanted to subdivide a portion of his property and sell the lots. Cointment told Lewis that a road would be necessary to provide access to the lots, and, for that reason, the forty-foot right-of-way for Tiger Lewis Road was established, and Cointment laid it out at the western boundary of Lewis's property.

Likewise, the January 11, 1989 survey map laying out the location and dimensions of the lots of James Lewis Subdivision depicts the forty-foot right-of-way containing Tiger Lewis Road as contiguous with the western boundary of Lewis's property and with the eastern boundary of the property now owned by Martin and Kinsella.⁵ Also contained on the January 11, 1989 survey map is a dedication of the right-of-way for Tiger Lewis Road, which states, in pertinent part, "The right of way of streets shown hereon, if not previously dedicated, are hereby dedicated to the perpetual use of the public." As indicated on the survey map, it was approved by the Ascension Parish Planning Commission, and the survey map was duly recorded. Moreover, the forty-foot right-of-way containing Tiger Lewis Road was accepted by the parish as a public road.

With regard to the dedication of the right-of-way, we note that the language of the dedication on the survey map and the location of the right-of-way are clear. Giving this instrument (including the clear language of dedication and the clear depiction of the right-of-way) a rational construction, we conclude that Martin and Kinsella made the requisite affirmative showing of their entitlement to declaratory judgment as to the location of the right-of-way for Tiger Lewis Road. See 6444 Associates, L.L.C., 851 So. 2d at 1172. Thus, based on this affirmative showing as to the

⁵The forty-foot right-of-way was incorporated into the lots that were formed to subdivide this portion of Lewis's property.

existence and location of the forty-foot right-of-way containing Tiger Lewis Road and the acceptance of Tiger Lewis Road by Ascension Parish as a public road, the burden of production then shifted to the Solars and the LaBauves, as the parties opposing the motion, to produce evidentiary materials that demonstrate the existence of a genuine issue for trial. See Hines, 876 So. 2d at 766-767.

In opposing the motion, the Solars and LaBauves challenged the location of the right-of-way, contending that Tiger Lewis intended to place the right-of-way at issue **near** the common boundary between what is now plaintiffs' and defendants' properties, but that he intended to reserve a four-foot "spite strip" at the far western boundary of his property that would not be subject to the right-of-way in an effort to deny plaintiffs' predecessor-in-title access to Tiger Lewis Road.⁶ In support of this assertion, the Solars and LaBauves submitted, among other things: (1) the affidavits of Renee LaBauve, defendant Blane Solar, and Lewis's daughter, attempting to establish the purported intent of Lewis in dedicating the right-of-way for Tiger Lewis Road; (2) a document purporting to grant a right-of-way in 1973⁷; and (3) a January 19, 2010 survey map and a February 22, 2010 survey map, indicating that, at two particular points depicted on these maps, the center line of Tiger Lewis Road ranges from 23.9 to 24.1 feet from the western boundary of the property previously owned by Lewis.

Although the January 11, 1989 survey map laying out the location and dimensions of the lots of James Lewis Subdivision depicts the forty-foot

⁶A "spite strip" is a piece of land left in private ownership between a dedicated right-of-way and the owner's property line.

⁷The date on the document entitled "Grant of Right-of-Way for Parish Highways" is "the _____ day of _____, 1973," with the blanks not having been filled in with a specific date. Nonetheless, since the year 1973 is typed into the document, we will refer to the document as the "1973 Grant of Right-of-Way" herein.

right-of-way for Tiger Lewis Road as contiguous with the western boundary of Lewis's property, the Solars and LaBauves contend that Lewis had previously dedicated, in 1973, a right-of-way to the parish at the same general location, but set off approximately four feet from the western boundary of his property. They further contend that the dedication language in the January 11, 1989 survey map (stating "if not previously dedicated") expressly deferred to, and thus did not change, any earlier dedications, *i.e.*, the 1973 Grant of Right-of-Way. Thus, they contend, a rational construction of the evidence of record demonstrates that Tiger Lewis did not intend to grant a right-of-way extending all the way to the western boundary of his property, or, at the very least, a question of fact remains as to the exact location of the forty-foot right-of-way for Tiger Lewis Road.

The 1973 Grant of Right-of-Way upon which the Solars and LaBauves rely purports to grant to Ascension Parish "a right-of-way or servitude for the construction, improvement and maintenance" of "modern parish highway" extending in a "[n]ortherly direction along the Norwood Parish Road, a distance of 1400 ft. ... to Dead End."⁸ The document further provides that the "right-of-way hereby conveyed ... shall have a width not to exceed 40 feet, measuring 20 feet in width on each side of the center-line of the existing roadway along said Parish Highway within the limits of said Highway Project No. _____, as hereinabove set forth." The document was signed by Tiger Lewis and purportedly by R. S. Settoon, Lewis's son-in-law.⁹

The Solars and LaBauves contend that the fact that the center line of

⁸The 1973 Grant of Right-of-Way was subsequently recorded in 1979.

⁹In an affidavit submitted in opposition to the motion for summary judgment, Theresa Settoon (Lewis's daughter and Settoon's wife), attested that Theresa Settoon actually signed her husband's name on the 1973 Grant of Right-of-Way.

Tiger Lewis Road measures between 23.9 and 24.1 feet from the western boundary of the property formerly owned by Lewis (at least at two points along the roadway) together with the fact that the 1973 Grant of Right-of-Way specifically provides that the right-of-way granted therein "shall not exceed 40 feet, measuring 20 feet in width on each side of the center-line of the existing roadway" demonstrates that Lewis, in the 1973 Grant of Right-of-Way intended to maintain ownership of a four-foot "spite strip" on the western boundary of his property.¹⁰ On review, we find no merit to the defendants' claims.

At the outset, we recognize that the precise location of the right-of-way granted in the 1973 Grant of Right-of-Way is never set forth therein. Indeed, the document does not set forth the section, township, or range in which the right-of-way is located. Moreover, the only reference in the document as to the location of the right-of-way is a reference to Norwood Road, with the 1973 Grant of Right-of-Way specifically providing that the modern parish highway for which the right-of-way was granted "extends in (a) (an) Northerly direction along the Norwood Parish Road." However, the survey maps of record clearly demonstrate that Tiger Lewis Road runs perpendicular to, and not "along," Norwood Parish Road. Thus, the 1973 Grant of Right-of-Way simply does not identify the location of the right-of-way granted therein as being in the same location as the right-of-way granted in the January 11, 1989 survey map for Tiger Lewis Road.

Accordingly, the existence of the 1973 Grant of Right-of-Way is simply not sufficient to create a question of fact as to the existence and

¹⁰However, regardless of whether the center line of Tiger Lewis Road measures in excess of twenty feet from the western boundary of the property formerly owned by Tiger Lewis, it is undisputed that Tiger Lewis Road lies entirely within the forty-foot right-of-way if measured from the western boundary of said property.

location of the right-of-way specifically created in the January 11, 1989 survey map for Tiger Lewis Road. Moreover, giving a rational construction to the January 11, 1989 survey map, depicting the location of the right-of-way as being contiguous with the western boundary of the property previously owned by Tiger Lewis, and to the dedication language set forth therein, we further must conclude that there is nothing therein to negate or cast doubt upon the intention of Tiger Lewis to grant a right-of-way extending to the western boundary of his property.¹¹ Because the fact of dedication of the forty-foot right-of-way in the January 11, 1989 survey map is not doubtful, we must further conclude that it would be inappropriate to

¹¹We also find no merit to the Solars' and the LaBauves' reliance on the Louisiana Supreme Court opinion in Segraves as support for their argument that the January 11, 1989 survey map and dedication could not effect a statutory dedication of Tiger Lewis Road because Tiger Lewis Road was a preexisting road that merely ran across the lots created rather than running "between the lots and squares," as contemplated by LSA-R.S. 33:5051(A). In Segraves, the owner of property subdivided a portion of his property lying adjacent to and contiguous with an eighty-foot strip of land over which he had previously granted a servitude to the state for the construction or improvement of U.S. Highway 90. Segraves, 340 So. 2d at 271-272. In the subsequent survey map, the owner dedicated to public use "the [s]treets shown on this [m]ap," which included a depiction of the previously granted eighty-foot servitude for Highway 90 as well as streets running between the lots to provide access thereto. Segraves, 340 So. 2d at 272. The issue presented in Segraves was whether the owner had granted a fee interest in the eighty-foot servitude to the City of Jennings merely by depicting it on the subsequent survey map dedicating the streets for the subdivision. Segraves, 340 So. 2d at 272-273.

In holding that the owner had not conveyed any ownership rights in the eighty-foot servitude to the City of Jennings in the dedication of streets on the survey map for the subdivision, the Court relied on many facts, including the absence of surveyor marks delineating the eighty-foot strip on the survey map, the position of the highway right-of-way **on the border of the subdivision** rather than traversing it, the owner's non-compliance with certain statutory requirements, the absence of any indication of the exact location of the eighty-foot servitude, and the fact that the property was subject to a pre-existing conventional servitude granting use to the public. Segraves, 340 So. 2d at 276.

However, while one factor relied upon in Segraves was the fact that the right-of-way bordered the subdivision, rather than traversing it, the established facts of the instant case are readily distinguishable. Despite the fact that the forty-foot right-of-way runs across the western edge of the subdivided lots, rather than "between" them, we note that the right-of-way provides the **only means of access** to these lots that were subdivided on the January 11, 1989 survey map. Thus, regardless of whether Tiger Lewis Road existed in some fashion prior to the January 11, 1989 dedication and regardless of whether it runs across the western edge of these lots, Tiger Lewis Road was clearly intended on that survey map to be the means of public access to the lots therein. Accordingly, we find Segraves to be factually distinguishable, and thus inapposite, herein.

look to surrounding circumstances to determine whether there was an intent to dedicate. See Cavaness, 694 So. 2d at 1177.

Considering the foregoing and the record as a whole, we must conclude that the Solars and LaBauves failed to produce evidentiary material that demonstrates the existence of a **genuine issue of material fact** for trial. See Hines, 876 So. 2d at 766-767. Accordingly, we find no error in the trial court's partial summary judgment declaring the existence and location of the forty-foot right-of-way as it exists in relation to the property of Martin and Kinsella and the Solars and LaBauves.

CONCLUSION

For the above and foregoing reasons, the April 13, 2011 partial summary judgment, declaring the existence and location of the forty-foot right-of-way in relation to the property of plaintiffs Martin and Kinsella and defendants Blane and Jodi Solar and Cyril and Regina LaBauve as well as the right of Martin and Kinsella and any future owners of their property to access their property from said public right-of-way, is affirmed. Costs of this appeal are assessed equally against defendants, Blane and Jodi Solar and Cyril and Regina LaBauve.

AFFIRMED.