

STATE OF MICHIGAN
COURT OF APPEALS

HELEN BURROUGHS,

Plaintiff-Appellee,

v

PAUL G. RAND, III, and BERNADINE M. RAND,

Defendants-Appellants,

and

STERLIGN BANK AND TRUST formerly known as
STERLING SAVINGS BANK, a federal savings
bank,

Defendant.

UNPUBLISHED

November 2, 1999

No. 204279

Calhoun Circuit Court

LC No. 95-003654 CH

Before: Griffin, P.J. and McDonald and White, JJ.

WHITE, J. (concurring).

I concur in the conclusion that the trial court, under the facts presented at trial, did not err in granting plaintiff a lifetime equitable license for the use of the well and driveway.

The court found facts in support of an implied easement arising from the common ownership of the land, and the circumstances that the trailer was placed at the direction of the common owner, the roadway was placed at the most practicable point for access and there was no other practicable access, and the use was open to anyone who cared to observe it. These findings are adequately supported by the record.

The relief granted by the court, however, was not in the form of an easement, but in the form of an irrevocable personal license so long as plaintiff is alive and resides in the trailer. Under the circumstances that 1) the court found facts sufficient to support an implied easement burdening parcel four in favor of parcel six, 2) the title owner of parcel six did not seek to impose that burden on parcel four, and 3) relief in the form of a lesser burden on parcel four --

an irrevocable personal license limited in scope and duration -- was sufficient to protect the interests of the tenant seeking to enforce the implied easement, I conclude the trial court's equitable judgment should be affirmed.

I agree with the lead opinion's disposition of the remaining issues.

/s/ Helene N. White