In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-17-00118-CV

PISARSKI, INC., APPELLANT

V.

HONG BUI, APPELLEE

On Appeal from the 99th District Court
Lubbock County, Texas
Trial Court No. 2015-518,691, Honorable William C. Sowder, Presiding

August 24, 2018

MEMORANDUM OPINION

Before CAMPBELL and PIRTLE and PARKER, JJ.

Pisarski, Inc., appeals the trial court's judgment granting an easement by necessity to Hong Bui. Pisarski contends the easement granted is larger than necessary. We affirm the trial court's judgment.

Background

Bui and her former husband, Thao Nguyen, owned Budget Tune Auto Repair, Inc. The corporation owned a tract of land on 50th Street in Lubbock, Texas, on which two

businesses operated: an auto repair shop and a nail salon. On May 16, 2005, Budget made two conveyances, severing the tract. Budget conveyed 0.24 acres in the southeastern corner of the tract to Bui, and the remaining 0.64 acres to Thao Nguyen, the daughter of Bui and Nguyen. In 2007, Nguyen conveyed her 0.64-acre tract to Pisarski, Inc., an auto repair business operated by Theodore Pisarski.

Bui operated a nail salon and tanning business in a building on the eastern edge of her property. The west side of Bui's building was approximately twenty feet from the boundary line of the Pisarski property. The western and northern sides of Bui's tract were used for parking and the southern side was a grassy, landscaped area. The 50th Street access road ran along the southern boundary of both Bui's and Pisarski's property. The curb cut providing access from the roadway was located on Pisarski's tract. Consequently, Bui and her customers drove onto and across the Pisarski property driveway from the 50th Street curb cut to access Bui's parking area. This use of the Pisarski property continued openly for years.

In 2015, Pisarski parked two vehicles near the entrance to his property, partially obstructing Bui's use of the driveway. Bui eventually sued Pisarski, seeking a declaration that she was entitled to an easement by necessity over Pisarski's property to afford ingress and egress to her property. After a bench trial, the trial court found that Bui was entitled to an easement by necessity. The court granted Bui a 2,506-square-foot easement, approximately nineteen feet wide and one hundred twenty-five feet long, on the east side of Pisarski's property for ingress and egress. Pisarski filed this appeal.

Analysis

The party seeking an easement by necessity must demonstrate: "(1) unity of ownership of the alleged dominant and servient estates prior to severance; (2) the claimed access is a necessity and not a mere convenience; and (3) the necessity existed at the time the two estates were severed." *Hamrick v. Ward*, 446 S.W.3d 377, 382 (Tex. 2014). On appeal, Pisarski does not claim that Bui is not entitled to an easement, but contends that the easement granted by the trial court is excessive in its scope. Pisarski contends that Bui "never established as a matter of law that the full 124' length of the easement granted is truly *necessary* to the productive use of her property." We construe Pisarski's argument to be a challenge to the legal and factual sufficiency of the evidence supporting the judgment.

A party appealing from a nonjury trial in which the trial court made findings of fact and conclusions of law should direct his attack on the sufficiency of the evidence at specific findings of fact, rather than at the judgment as a whole. *Thompson & Knight, LLP v. Patriot Expl., LLC*, 444 S.W.3d 157, 162 (Tex. App.—Dallas 2014, no pet.). However, a challenge to an unidentified finding of fact may be sufficient if an appellate court can fairly determine from the argument which specific finding of fact the appellant challenges. *See Copeland v. Cooper*, No. 05-13-00541-CV, 2015 Tex. App. LEXIS 49, at *7 (Tex. App.—Dallas Jan. 7, 2015, pet. denied) (mem. op.).

Here, Pisarski's argument on appeal that "the oversized easement is a mere convenience and not a true necessity," implicates the trial court's twelfth finding of fact: "The amount and location of an easement to provide reasonable access to the Bui tract,

for its intended use, is identified by a survey and plat provided by Abacus Engineering and Surveying, dated January 22, 2017, and attached to the Judgment in this case." Also pertinent is the trial court's finding that the landscaped area on Bui's tract could not "reasonably be utilized for parking or access to parking on that property . . . ."

The standard for legal sufficiency is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review." *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We consider the evidence in the light most favorable to the verdict and indulge every reasonable inference that supports it. *Id.* at 822. When a party attacks the factual sufficiency of the evidence supporting an adverse finding on which that party did not have the burden of proof, the party must demonstrate there is insufficient evidence to support the adverse finding. *Flying J Inc. v. Meda, Inc.*, 373 S.W.3d 680, 690-91 (Tex. App.—San Antonio 2012, no pet.).

At trial, engineer-surveyor John Cieszinski testified that Bui could not use her building for its intended purpose unless parking space was available. He further testified that an easement was necessary for Bui to utilize the only parking spaces on her property. Specifically, he explained that, at a minimum, a parking space was eighteen feet in depth and that additional space was needed to pull into and out of a space. Cieszinski stated that Bui therefore needed an area forty-two feet wide on the west side of her building to enable vehicles to drive into and out of the property's parking spaces. He stated that the easement shown in his plat (and ultimately granted by the trial court) was required for the convenient and beneficial use of Bui's property.

Pisarski asserts that "the full 124' length of the easement granted" is not necessary to Bui's continued productive use of her property as an ongoing business. Here and at trial, Pisarski has suggested that instead of using the narrow strip of property on the west side of her building for parking, Bui could create new parking spaces out of the landscaped area on the south side of her building. Then, she would only require a smaller easement across the width of Pisarski's driveway, rather than the longer length granted by the trial court, to access a parking area on her property. Pisarski also suggested that Bui could remove her sidewalk or replace her existing building with a smaller structure and thereby create more space for access to parking.

Cieszinski testified that Pisarski's suggestion of creating a smaller, ten-foot easement at the entrance of the 50th Street access road would provide access to Bui's tract but would not provide access to the property's parking spaces and would severely restrict Bui's usage of her property. Cieszinski further stated that removing the sidewalk would reduce the size of the easement needed, but would be inconvenient and could create an unsafe condition.

The "necessity" element for an easement by necessity "means that the use of the easement must be economically or physically necessary for the use of the land and not merely desirable." *Payne v. Edmonson*, 712 S.W.2d 793, 796 (Tex. App.—Houston [1st Dist.] 1986), writ ref'd n.r.e.). The scope and extent of an easement by necessity should be no more than is reasonably necessary to the use and enjoyment of the property as it existed at the time the dominant and servient estates were severed. *Daniel v. Fox*, 917 S.W.2d 106, 110 (Tex. App.—San Antonio 1996, writ denied). Bui presented evidence, in the form of Cieszinski's testimony, that the 2,506-square-foot easement was necessary

to facilitate the continued productive use of her landlocked tract. Although Pisarski contested this evidence, the trial court could have reasonably found that an easement of this size and location was a necessity, and not merely a matter of convenience. Therefore, we conclude the evidence is legally and factually sufficient to support the trial court's judgment granting the easement.

Conclusion

Having overruled Pisarski's sole issue on appeal, we affirm the judgment of the trial court.

Judy C. Parker
Justice