

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 23, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP972

Cir. Ct. No. 2004SC1392

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

LINDA HANSON,

PLAINTIFF-RESPONDENT,

V.

JERRY CHRISTENSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Barron County:
EDWARD R. BRUNNER, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Jerry Christensen appeals a small claims judgment of \$250. The judgment represents Christensen's share of maintenance costs for an easement that traverses his property. While the deed to his property states that

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

maintenance costs for the easement will be shared equally by those served by the easement, Christensen contends that this obligation terminated when the maintenance language was later excluded from a deed of his neighbor's property. That neighbor, Linda Hanson, brought the small claims action against Christensen. Since the circuit court properly concluded that Christensen was responsible for a portion of the maintenance costs, this court affirms.

Background

¶2 The easement is essentially a gravel roadway that runs from a town road across a neighboring property and across Christensen's property until it ends at Hanson's property.² At trial, Hanson testified that the roadway is approximately eight-tenths of a mile long.

¶3 The easement and maintenance language in question were included in the deeds to Christensen and to Duane Moe, who was Hanson's predecessor in title. However, Moe did not include the maintenance language in his deed to Hanson. While there are some minor stylistic differences between the deeds to Christensen and Moe, the language is substantially the same. The relevant language in Christensen's deed is as follows:

Together with a perpetual easement for ingress and egress to the above described property, which easement shall be 33 feet wide, the center line of which is the center of the existing roadway upon the north one-half of Section 14; running from the existing town roadway easterly to the above described property. This easement shall be appurtenant to and shall run with the above described property.

² Apparently, the maintenance language was also included in the deed to owners of another property, Scott and Mary Bellefeuille. Hanson successfully brought a separate action against these owners for their share of the maintenance.

Maintenance of the existing roadway shall be shared equally by all owners of property served by said private roadway, provided that each owner shall be responsible for damage which is clearly attributable to that owner or his guests and invitees.

¶4 When Moe conveyed his property to Hanson, he included in her deed language regarding the easement, but left out the language about maintenance. At trial, Moe testified that when he owned the property, he personally bore the costs of maintaining the easement. He did not seek reimbursement from the other owners. He testified that he excluded the maintenance language from Hanson’s deed because he and the other owners “hadn’t been doing it that way.”

¶5 The circuit court found that the easement runs with the land and that the maintenance language was inseparable from the easement. Therefore, Hanson was entitled to seek contribution for maintenance from Christensen.

Discussion

¶6 On appeal, Christensen relies upon the fact that the maintenance language was not included in Hanson’s deed. Christensen argues that there was no contractual agreement between Hanson and the other owners regarding maintenance. Without such an agreement, he argues that he cannot be forced to contribute towards maintenance of the easement.

¶7 Christensen’s reliance upon the fact that no maintenance language was included in Hanson’s deed ignores the meaning of the phrase “runs with the land.” According to the Restatement, “[r]unning with land means that the right or obligation passes automatically to successive owners or occupiers of the land or

the interest in land with which the right or obligation runs.” RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 1.1(1)(a) (2000).

¶8 Thus, if the maintenance language runs with the land, it need not be mentioned in Hanson’s deed because it passed automatically with title to Hanson’s property. Aside from repeatedly stressing that the maintenance language is not in Hanson’s deed, Christensen offers no substantive arguments as to why this language should not run with the land. Further, Christensen points to nothing in his deed that suggests that his maintenance obligation terminates when another property served by the easement is sold.

¶9 Instead, Christensen argues that Hanson cannot force him to contribute to maintenance where there is no contractual agreement between them. For this argument, Christensen relies primarily on *Koch v. Hustis*, 113 Wis. 599, 604, 87 N.W. 834 (1901), which he cites for the proposition that the owner of a servient estate is not bound to make repairs in the absence of an agreement to do so.

¶10 In *Koch*, the seller of property granted the buyer a right to take water from a dam, but required as a condition that the buyer make one-third of all repairs on the dam. *Id.* at 600. The buyer’s right to take water was also subject to the rights of three other previous grantees. *Id.* When the buyer later made repairs, he sought contribution from the seller. *Id.* at 601. The seller refused. *Id.* The buyer argued that when the seller granted the water rights subject to paying one-third of the repair costs, the seller impliedly covenanted to pay the other two-thirds. *Id.* at 602-03.

¶11 The Wisconsin Supreme Court noted that there was no express language in the deeds whereby the seller covenanted to pay two-thirds of the

repair costs. *Id.* at 602. Based upon a statute prohibiting implied covenants, the court refused to construe the deeds as requiring the seller to pay repair costs. *Id.* at 603-04.

¶12 In contrast to the facts in *Koch*, Christensen's deed clearly states that he is responsible for his share of the maintenance costs. By accepting his deed with the easement and maintenance language, Christensen expressly agreed to share responsibility for the costs of maintaining the easement.

¶13 Christensen urges the court to disregard the deed to Moe, along with the deed to himself. Christensen asserts that these deeds are not part of the record. However, these deeds are part of the record, since they were attached as exhibits to Christensen's trial brief that was filed on March 17, 2005.

¶14 Finally, Christensen quotes *Hunter v. McDonald*, 78 Wis. 2d 338, 342, 254 N.W.2d 282 (1977), which states, "[b]ecause the easement in question is created by deed, the court must look to that instrument in construing the relative rights of the landowners." Of course, Christensen seeks to have the court look only at Hanson's deed. Yet, *Hunter* instructs to look at the deed by which the easement is created. *Id.* Here, it appears that the easement was created, within Hanson's chain of title, by the deed to Moe. As stated above, Moe's deed includes the maintenance language.

¶15 Christensen gives this court no reason to disturb the circuit court's judgment. Christensen and Hanson both own property served by the easement. Christensen's deed expressly states that he must contribute equally to maintaining the easement. Hanson's predecessor in title's deed states the same obligation. Since the easement and maintenance language run with the land, Hanson was

entitled to seek contribution from Christensen for his share of the maintenance costs.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

