

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 13, 2003**

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. 02-0958**

**Cir. Ct. No. 00-CV-106**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**EDWARD A. FAAS AND RUTH E. FAAS,**

**PLAINTIFFS-RESPONDENTS,**

**v.**

**ERVIN H. NUTTELMAN, JR. A/K/A ERVIN H.  
NUTTLEMAN, JR., BARBARA F. NUTTELMAN A/K/A  
BARBARA F. NUTTLEMAN, ROBERT S. NUTTELMAN A/K/A  
ROBERT S. NUTTLEMAN, AND GLORIA D. NUTTELMAN  
A/K/A GLORIA D. NUTTLEMAN,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for La Crosse County:  
MICHAEL J. MULROY, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 PER CURIAM. Ervin, Barbara, Robert and Gloria Nuttleman appeal from a judgment granting Edward and Ruth Faas an easement across the

Nuttlemans' property. The Nuttleman challenge the location, width, and scope of use of the easement. We conclude that the trial court's findings in each regard are not clearly erroneous, and therefore affirm. *See* WIS. STAT. § 805.17(2) (2001-02).<sup>1</sup>

¶2 This case arises from the Faases' desire to build a gravel road over the Nuttleman's cornfield and barnyard to gain access to a landlocked parcel of property on which they wish to build a home. It is undisputed that the Nuttleman's predecessors in title granted an easement to a prior owner of the Faas land in 1966, when the Faas land became landlocked due to the construction of an interstate highway. The easement was described by reference to "a red line constituting the centerline of an easement on Northern States Power Company access road drawing No. 100." The drawing, however, could not be located and an alternate route of access less disruptive to the Nuttleman's farming operation had been used seasonally since the mid-1980's, leaving a factual dispute as to the location, size and scope of the easement. The Faases initiated this action to establish their claim to the route over the cornfield and barnyard, and the trial court found in their favor.

¶3 The Nuttleman argue that the location, width and scope of the easement should be established based on the seasonal use of the original easement and the subsequent use of an alternate route of access. The easement at issue here was not created by prescription or adverse possession, however. Instead, this was a recorded transfer of property rights. Therefore, the intended location, width and

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

scope of the easement must be determined by interpretation of the written document rather than the customary use of the easement. See *Hunter v. McDonald*, 78 Wis. 2d 338, 342-43, 254 N.W.2d 282, 285 (1977).

¶4 The loss of the referenced easement drawing left ambiguity in the written description of the location and size of the easement. Therefore, the trial court properly looked to other extrinsic evidence to determine where and how large the parties intended the easement to be at the time they created it. The trial court's findings in regard to the size and placement of the easement were supported by references in other contemporary documents to the "animal barnyard," testimony as to where the easement had been, the creation of a thirty-foot wide culvert along the claimed easement path, and the Connell survey, restaked by Fechner. Because there was nothing in the written document in any way limiting the use of the easement to seasonal or agricultural use, the trial court reasonably found the scope of the easement to encompass year-round ingress and egress. In sum, we are satisfied that the trial court's findings were supported by the record and not clearly erroneous.

*By the Court.*—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

