

LAW360

Conn. Homeowners Get New Trial In Waterfront Access Row

By Brian Steele

Law360 (September 26, 2023, 3:42 PM EDT) -- Connecticut's intermediate state appellate court on Tuesday ordered a new trial for a Bridgeport couple who sued over residential construction activity that blocked their access to waterfront amenities, finding that the trial court's ruling in favor of the defendants improperly limited the easement at issue to foot passage.

The Connecticut Appellate Court panel's opinion, authored by Chief Judge William H. Bright Jr., held that the lower court "failed to give effect to the plain and unambiguous language" of the property deed that establishes an easement on property near the shoreline on Anchorage Drive. The relevant deed "expressly grants an open right-of-way in general terms without restrictions on its use," the opinion said, and the trial court's construction of the deed was wrong as a matter of law.

"In other words, because nothing in the language granting the express easement or the objective circumstances surrounding the grant indicates an intent to impose any limitation on the use of the right-of-way, the scope of the easement is such that it may be used for those purposes reasonably necessary to the full enjoyment of the premises to which the right-of-way is appurtenant," the opinion held. "Whether a particular use is reasonable is a question of fact" that must be determined on a case-by-case basis, but the trial judge "failed to consider whether the plaintiffs' uses of the easement were reasonable."

Davidson and Barbara Williams bought a home on Grovers Avenue in the Black Rock section of Bridgeport in 1987, which they allege came with an easement granting access to the waterfront. The couple sued five individual and corporate defendants in state court in August 2021, claiming that they had caused a chain link fence with a locked gate to be installed amid construction of a house on an abutting parcel, and that the easement rights were "likely" to be destroyed.

The plaintiffs sought a declaratory judgment defining the permissible uses of the easement and an injunction prohibiting the defendants from interfering with their use of the right-of-way, according to the appellate panel's opinion. The complaint asserted claims for nuisance and trespassing, seeking more than \$15,000 in damages from Green Power Ventures LLC, 141 Anchorage LLC, the companies' owners Edward and Amy Stern, and Keith J. Manca Building Company LLC.

In 2017, Green Power bought the property at 145 Anchorage Drive, also known as Lot 13, and 141 Anchorage LLC bought 141 Anchorage Drive. The Sterns plan to live in the house once it's complete, the opinion said.

The parties' properties were originally part of a single parcel, but in the 1920s, the owner subdivided it into 13 lots, leaving number 145 as a strip of land running from the end of Anchorage Drive to the waterfront, according to the appellate panel.

"The intention of Green Power and 141 Anchorage, LLC, is to allow the Sterns to drive through the motor vehicle gate while restricting access for those who have a deeded easement over 145 Anchorage Drive to the pedestrian gate only," the opinion said. "Prior to the defendants' construction of the gate and fence, the plaintiffs and other easement holders traversed the length of 145 Anchorage Drive in

motor vehicles, parked vehicles on the way, and used the right-of-way to store and launch boats, paddleboards, and kayaks, and to watch Fourth of July fireworks."

Green Power and 141 Anchorage LLC filed a counterclaim seeking a declaration that they could continue the construction and bar vehicles from entering, and that fencing with gates does not impermissibly interfere with any easement holders' rights. They said that the temporary gate is open during most daylight hours and when a permanent fence goes up, one gate would be locked and each easement holder would receive the combination.

The defendants argued "that the easement is solely for the right to pass and repass over 145 Anchorage Drive" and that the language does not allow for launching boats or other recreational activities, the panel said.

Superior Court Judge Trial Referee George N. Thim wrote in his decision in May 2022, following a bench trial, that the easement "is limited to passage by foot from Anchorage Drive to and from the shore of Black Rock Harbor." He found that the plaintiffs were not entitled to an injunction or attorney fees, but awarded \$500 in "token" damages on the nuisance claim, ruling that the construction project "temporarily harmed" the Williamses' use and enjoyment of the right-of-way.

The appellate court reversed the ruling on the counterclaim and each of the plaintiffs' claims except for their allegation of trespass, which the lower court found was "not proven" since the Williamses are not in exclusive possession of 145 Anchorage Drive. The plaintiffs did not challenge the trespass ruling.

"Although the plaintiffs invite this court to conclude, as a matter of law, 'that the defendants' gates and fences across the right-of-way interfere with the plaintiffs' use and enjoyment of their easement,' we decline to do so," the opinion said in a footnote, leaving the question to the trial court to decide.

According to the plaintiffs' motion for review, Judge Thim retired effective June 30, 2022, the same day they filed their appeal.

In their brief to the appellate court, the defendants said "it is patently clear that the appellants' claims at trial and arguments on appeal are based entirely on their personal, subjective opinions and interpretations of their rights under the right-of-way – opinions and interpretations which, at the risk of making an understatement, are objectively unreasonable and without support in law or fact."

The defendants argued that the lower court's ruling should be affirmed after review under a clear error standard, rejecting the plaintiffs' assertion that plenary review is appropriate because the case involves the interpretation of the deed's language. The panel agreed with the Williamses.

An attorney for the plaintiffs, Eric Grayson, told Law360 that the dozen other easement holders are likely to watch the outcome of the case, and he believes that they "more or less" have the same rights. He said that his clients would pursue "their actual damages" after the reversal of the nuisance count, which he said would be substantial.

"My clients feel relieved and vindicated by the Appellate Court's decision," Grayson said in a statement. "My clients felt it was just plain wrong for the defendants to fence off the right of way and put up signs," including "Private Property" and "Keep Out."

Counsel for the defendants did not immediately respond to requests for comment.

Chief Judge William H. Bright Jr., Judge Nina F. Elgo and Judge Melanie L. Cradle sat on the panel for the Connecticut Appellate Court.

The plaintiff-appellants are represented by Eric D. Grayson of Grayson & Associates PC.

The defendant-appellees are represented by Colin B. Connor of Russo & Rizio LLC.

The case is Davidson D. Williams et al. v. Green Power Ventures LLC et al., case number AC 45623, in the Connecticut Appellate Court. The underlying case is Williams, Davidson et al. v. Green Power Ventures LLC et al., case number FBT-CV21-6109667-S, in the Fairfield Judicial District of the Connecticut Superior Court at Bridgeport.

--Editing by Patrick Reagan.