

FILED

FEB 15 2019

Angela B. Van Meter
Clerk of Circuit Court

IN THE CIRCUIT COURT OF GRANT COUNTY, WEST VIRGINIA

**LEONARD D. CARR and
GLORIA CARR,
Plaintiffs,**

v.

**Case No. 16-C-1
Judge Lynn A. Nelson**

**LYSLE T. VEACH, JR., et als.,
Defendants.**

**ORDER DENYING MOTION FOR NEW TRIAL AND
RENEWED MOTION FOR NEW TRIAL**

On this 18th day of December 2017, this matter came on before the Court for argument on the Motion for New Trial and Renewed Motion for New Trial filed by the Plaintiffs, Leonard and Gloria Carr. The Plaintiffs were present in person and by their counsel, Nathan Walters. Defendant Lysle Veach was present in person and by his counsel, Jason Sites.

In related argument this date, the Court did alter the trial court order to correct certain aspects of the ruling that were raised both in a Motion to Alter or Amend and a Motion for New Trial. Those corrections will be reflected by separate order.

The remaining issues go to the substance of the Court's ruling regarding the right of way. With regard to those issues, the Court FINDS and CONCLUDES as follows:

1. The Motion for New Trial was timely filed by the Plaintiffs on September 28, 2017. Plaintiffs filed a Renewed Motion for New Trial on December 8, 2017. In these Motions, Plaintiffs contend that the Court committed legal error with regard to its interpretation of the law of easements. Specifically, the Plaintiffs' contend, through their affidavit that the Court based its decision on factual misunderstanding relating to the "pigpath" or back road that accesses the rear of the Carr property. It was represented by Defendant throughout the trial that the "pigpath" was a right of way over which the Carrs had access by virtue of the WV Department of Highways

constructing a roadway during Corridor H construction over this roadway. The affidavit provided by the WV Department of Highways engineer indicates that the roadway is state owned only for 500 feet of the access and not the full length of the roadway that the Defendant asserts serves the property. Plaintiffs' also contest the Court's finding that the Plaintiffs did not establish a prescriptive easement through their witnesses which would predate the Plaintiffs ownership of the property and the impact of the DOH deed on the right of way.

2. After review, the Court does not find good cause to grant Plaintiffs' Motions for New Trial and does deny same. Plaintiff's post-trial supplements/affidavits are to be placed into the record of this matter. Plaintiffs' assignment of error and objections are hereby SAVED.

3. The Circuit Clerk shall provide a copy of this Order to all counsel of record.

ENTERED this 15 day of February 2019.



JUDGE

STATE OF WEST VIRGINIA

GRANT COUNTY, TO-WIT:

I, Angela B. Van Meter, Clerk of the Circuit Court of Grant County, West Virginia do hereby certify that the foregoing is a true and correct copy from the record in my office.

Given under my hand and seal of the Circuit Court of Grant County, West Virginia this the 27th day of February, 2019.


Clerk of the Circuit Court KB