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OLSS Obtained Exceptional Judgment in a Property Line Dispute

Orloff, Lowenbach, Stifelman & Siegel's litigation team obtained an unusual and exceptional result on behalf of its client in a lawsuit against an adjacent property owner, who claimed a permanent right-of-way across a portion of the client's property.

The opinion of the Hon. Patrick J. Bartels, of the Superior Court of New Jersey, Chancery Division, General Equity Part, Mercer County, dated July 11, 2023, can be found at 2023 WL-8869622, and a corrected Final Judgment at 2023 WL-8869628.

The focus of the dispute was a 10-foot wide gravel pathway that ran through the 125 acres owned by the Estate of Marilyn Rhyne Herr, deceased (the "Herr Property") in Clinton Township and Readington Township, Hunterdon County, New Jersey. The Pathway had been utilized for decades by the owners of the adjacent property, which had no public road frontage, as the sole means of access to and from the nearest public road.

Notwithstanding that the Pathway had been used for such access since at least 1930, for residential foot and vehicular ingress and egress, the Court determined, on the Herr summary judgment motion, that the defendant had no title, interest, easement, right-of-way, or any other rights to any portion of the Herr Property, including but not limited to the Pathway and no authority to continue to use the Pathway.

Judge Bartels determined, based on OLSS's submissions on behalf of its client, that the Herr Property and adjoining acreage were never in common ownership; that the Herr Property was never burdened with any easement or right-of-way in favor of the defendant's property; that the permissive use of the pathway for decades by successive owners of the adjoining property did not establish a claim of right by adverse possession, inasmuch as the prior use had been with the permission of the owner of the Herr Property and thus there was no hostile or adverse use; and that, in addition, the defendant had not met the statutory 30-year period required for adverse possession, inasmuch as he only had owned his property for 16 years. Finally, the Court denied the adjoining property owner relief based on claims of equitable estoppel or other equitable relief.

The judgment entered by the Court on July 11, 2023, with a technical correction on September 8, 2023, allowed the defendant to continue to use the pathway for ingress and egress only for a period of months. The defendant did not appeal the Court's judgment and, in accordance with the Court's ruling, was unable to use the pathway from and after January 4, 2024.

The case was handled on behalf of Orloff, Lowenbach, Stifelman & Siegel, P.A., by litigation attorneys Laurence B. Orloff and Alexander S. Firsichbaum.