Can You Kill an Easement in a Vegetative State?

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That was at least partially the question that a recent Lycoming County Court of Common Pleas decision answered in the matter of Swift v. Heltman, et al.

In that case, the Plaintiff attempted to claim by adverse possession, rights to an easement that had been expressly conveyed and referenced not only in the Plaintiff's deed , but in deeds to other as well. The Plaintiff contended that by allowing vegetative growth including grass, grapevine arbors, ornamental shrubs, trees, fruit trees and an ornamental pond, that these were sufficient to extinguish the easement that had previously been expressly conveyed. The Plaintiff claimed that this vegetative growth had been in existence for at least 34 years.

The Court reiterated a well established legal principle that an express grant of an easement does not obligate the grantee to make use of the easement. Mere non-use, including the allowance of vegetative growth, does not amount to abandonment. For one to successfully make out a claim for adverse possession of an easement, there must be a showing of abandonment along with one of three additional elements:

- Adverse possession by the owner of the servient tenement;
- Affirmative acts by the owner of the easement that renders the use of the easement impossible; or
- Obstruction of the easement by the owner of the easement in a manner that is inconsistent with its further enjoyment.

Since the Plaintiff could not prove the elements of abandonment, the Court determined, in not so many words, that she could not kill the easement although in a vegetative state.

For additional information contact Kevin Hall.