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Clerk, Supreme Court of Appeals
Richmond, Va.

202 VA 572

Record No. 5191

In the Supreme Court of Appeals of Virginia at Richmond

LILLY B. RICE

v.

WOODROW L. COBB

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5191

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 26th day of April, 1960.

LILLY B. RICE, Appellant,

against

WOODROW L. COBB, Appellee.

From the Circuit Court of Fairfax County

Upon the petition of Lilly B. Rice an appeal and *supersedeas* is awarded her from a decree entered by the Circuit Court of Fairfax County on the 21st day of January, 1960, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Woodrow L. Cobb was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed in Circuit Court Clerk's Office Nov. 20, 1959.

THOMAS P. CHAPMAN, JR.
Clerk Fairfax-County, Va.

BILL FOR INJUNCTION AGAINST CLOSING OF EASEMENT.

To the Honorable the Judges of the Above Styled Court:

Your Plaintiff, LILLY B. RICE respectfully represents:

That Plaintiff, Lilly B. Rice is the widow of Nelson H. Rice who died several years ago; that your Plaintiff is seized, possessed of a parcel of land situated near Graham Road in Fairfax County, Virginia and that Woodrow L. Cobb, the defendant, is seized and possessed of Lot #1, HYLTON'S ADDITION TO TYLER PARK, and that under date of February 12, 1953 your Plaintiff, Lilly B. Rice and Nelson H. Rice by deed duly recorded among the land records of Fairfax County in Deed Book 1048 at page 540 did bargain, sell and convey unto Cecil D. Hylton a portion of their real estate, said portion containing 6,4840 acres, more or less, in which said deed your Plaintiff and her husband reserved unto themselves the use of an outlet road on the aforesaid property from Graham Road to the remaining Rice property together with the right to use and maintain the fences existing on both sides of and immediately adjacent to said outlet road and reserving unto themselves during the lifetime of either or until such time as they or either of them should sell or subdivide the remaining Rice property as owned and possessed by your Plaintiff by deed recorded among the land records of Fairfax County in Liber Z-9 at page 432½; that your Plaintiff under date of August 3, 1959 did bargain, sell and convey unto C. Fred Wilson, Frank Fox
page 2 } and John L. Wann, Jr. the westerly portion of the aforementioned Rice property and described in the aforementioned deed as Lots 1-4, Inclusive, Section Two (2), HYLTON'S ADDITION TO TYLER PARK, as shown upon a plat attached to said deed, which said plat also shows Parcel "A" containing 44,897 square feet together with the mansion house and garage of your Plaintiff as well as a reservation

to a 20 foot outlet easement over the property heretofore deeded to Cecil D. Hylton referred to above.

That on or about November 10, 1959, the defendant, Woodrow L. Cobb, did erect barriers over the said outlet road for the purpose of preventing your Plaintiff from the use and enjoyment thereof.

Your Plaintiff further alleges that the closing of the road has caused and will cause your plaintiff great and irreparable injury, from the nature and character of which said injury redress at law would be uncertain and inadequate, and that damages resulting therefrom would be impossible of ascertainment.

That your Plaintiff has no adequate remedy at law.

Your Plaintiff therefore prays that Woodrow L. Cobb may be required to remove the obstructions on the said outlet road and may be enjoined temporarily and permanently from erecting barriers or in any other manner interfering with the use and enjoyment of said outlet road by the Plaintiff and that he may be likewise enjoined from any wise interfering with the use of the said outlet road by your Plaintiff or from doing any act which may interfere with the free enjoyment and use of said outlet road by your Plaintiff; and that the said Woodrow L. Cobb may be made a party defendant to this bill and required to answer the allegations thereof, but not under oath, answer under oath being hereby expressly waived, and that your Plaintiff may be granted such other further and general relief as the nature of her case may require or to equity shall seem meet and just.

As in duty bound your Plaintiff will ever pray.

LILLY B. RICE
Plaintiff.

EDWARD C. HALL
Counsel.

Subscribed and sworn to before me this 13th day of November, 1959.

EDWARD C. HALL
Notary Public.

My Commission expires: 3/2/62.

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* * * * *

NOTICE.

To: Woodrow L. Cobb
1501 Rice Street
Falls Church, Virginia

Take notice that on Friday, November 20, 1959, at 10:00 o'clock A. M. or as soon thereafter as it can be heard, the undersigned will move the Judge of the above styled court for entry of an order directing you to remove the barricades you have erected across the 20 foot outlet road running from Graham Road to the Rice property as described in the deed from Lilly B. Rice, *et vir* to Cecil D. Hylton duly recorded among the land records of Fairfax County in Deed Book 1048 at page 540; and for the issuance of a permanent injunction prohibiting the interference by you of the continued use and enjoyment of said road by Mrs. Rice and her family and invitees.

Witness my hand this 13th day of November, 1959.

LILLY B. RICE
By Counsel.

EDWARD C. HALL
Attorney for Plaintiff.

Executed in Fairfax County, Virginia, this 17 day of Nov. 1959, by going to the usual place of abode of Woodrow L. Cobb and not finding him there, I delivered a true copy of the within Notice to Mrs. Woodrow L. Cobb, a member of his family over sixteen years of age and explained its purport thereof to her.

JOHN E. TAYLOR, Sheriff
By M. TWOMBLY, Deputy.

Filed in Circuit Court Clerk's Office Nov. 20, 1959.

THOMAS P. CHAPMAN, JR.
Clerk Fairfax County, Va.

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Filed in Circuit Court Clerk's Office Nov. 20, 1959.

THOMAS P. CHAPMAN, JR.
Clerk Fairfax County, Va.

ANSWER.

Comes now the defendant, Woodrow L. Cobb, by Counsel, and alleges the following:

1. Denies that the plaintiff Lilly B. Rice is entitled to any easement or any outlet road.
2. States that this was a personal easement that was reserved to her subject to the condition that if she sold or subdivided the remainder of her property, this outlet road easement would be extinguished.
3. That the plaintiff has subdivided the remainder of her property and/or sold it; that the easement has been eliminated by operation of law; that the *the* reservation for said outlet road as recorded in Deed Book 1048 at page 540 has been released as recorded in the Record Books of Fairfax County in Deed Book 1798 at page 38, and re-recorded in Deed Book 1813 at page 163.
4. That Mrs. Rice, the plaintiff, admitted to the defendant that she had no legal easement existing, but stated to him that she was going to harass him to continue to use his property; that she now has a good road to her house and that the defendant further alleges that she has been trespassing on his property although she has been told not to do so.

WHEREFORE, the defendant requests that the plaintiff's injunction be dismissed with costs to the defendant, and that she be enjoined from using any part of the premises
page 6 } of the defendant as an easement.

WOODROW L. COBB, Defendant
By Counsel.

VAROUTSOS AND KOUTOULAKOS
By LOUIS KOUTOULAKOS
Counsel for Defendant
200 Southern Building
Arlington 1, Virginia.

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DECREE FOR TEMPORARY INJUNCTION.

To: Woodrow L. Cobb
1501 Rice Street
Falls Church, Virginia

Upon the prayer of the within bill, an injunction is granted the Plaintiff, LILLY B. RICE, enjoining and restraining the defendant, Woodrow L. Cobb, from obstructing or in any wise interfering with the free use and enjoyment by the Plaintiff, members of her family and invitees of the 20 foot outlet road across the land of the defendant which outlet road leads from the lands of the Plaintiff through the lands of the defendant to Graham Road.

And it is further ordered that the defendant forthwith remove the barricades erected by him on the said outlet road.

This injunction shall be effective from November 20, 1959 to January 18th, 1960, at which time it shall stand dissolved unless prior thereto it be enlarged or further injunction granted; but this injunction shall not take effect until the said Plaintiff or someone for her shall enter into bond before the Clerk of the Court in the sum of $200.00 without surety, conditioned to *paymall* such costs as may be awarded against the said Plaintiff and also such damages as shall be incurred by the said defendant in case the said injunction be
page 8 } dissolved.

The service of a certiled copy of this order upon the said defendant shall have the same force and effect as the issuance and service of a formal writ of injunction.

Entered this 20th day of November, 1959.

PAUL E. BROWN, Judge.

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DECREE FOR TEMPORARY INJUNCTION.

To: Woodrow L. Cobb
1501 Rice Street
Falls Church, Virginia

Upon the prayer of the within bill, an injunction is granted the Plaintiff, Lilly B. Rice, enjoining and restraining the defendant, Woodrow L. Cobb, from obstruction or in any wise interfering with the free use and enjoyment by the Plaintiff, members of her family and invitees of the 20 foot outlet road across the land of the defendant which outlet road leads from the lands of the Plaintiff through the lands of the defendant to Graham Road.

And it is further ordered that the defendant forthwith remove the barricades erected by him on the said outlet road.

This injunction shall be effective from November 20, 1959 to January 18th, 1960, at which time it shall stand dissolved unless prior thereto it be enlarged or further injunction granted; but this injunction shall not take effect until the said Plaintiff or someone for her shall enter into bond before the Clerk of the Court in the sum of $200.00 without surety, conditioned to pay all such costs as may be awarded against the said Plaintiff and also such damages as shall be incurred by the said defendant in case the said injunction be dissolved.

The service of a certified copy of this order upon the said defendant shall have the same force and effect as the issuance and service of a formal writ of injunction.

Entered this 20th day of November, 1959.

PAUL E. BROWN /s/
Judge.

I hereby certify that the bond required by this order has been given.

FRANCES D. MYERS, Deputy Clerk.

(on back)

Executed in Fairfax County, Virginia, this 21 day of November, 1959, by serving a true copy of the within decree on Woodrow L. Cobb in person.

JOHN E. TAYLOR, Sheriff
By ....., Deputy.

Returned by Sheriff Nov. 25, 1959.

THOMAS P. CHAPMAN, JR., Clerk.

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Filed Jan. 19, 1960.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

PETITION.

To the Honorable Harry C. Carrico, Judge of the Circuit Court of Fairfax County, Virginia:

LILLY B. RICE, complaining of Woodrow L. Cobb says that she is the Plaintiff in the aforesaid case and that on the 20th day of November, 1959, caused to be filed in the Clerk's office of the Circuit Court of Fairfax County, a bill praying for an injunction against the said Woodrow L. Cobb, restraining him from obstructing or in any wise interfering with the free use and enjoyment by the Plaintiff of the twenty (20) foot outlet road across the land of the Defendant upon which road the said Defendant, Woodrow L. Cobb, had erected barricades; and

That upon Plaintiff's motion for an injunction the court did on the date aforesaid issue a preliminary injunction; and

That although the court on December 22, 1959 was of the opinion the Plaintiff had by her acts released the reservation for said outlet road as recorded among the land records of Fairfax County, Virginia, in Deed Book 1048 at page 540, no order has been entered; and

That not withstanding the preliminary injunction issued in this case which has not been dissolved, the said Defendant, Woodrow L. Cobb, did on the 23rd day of December, 1959, erect barricades on said outlet road, which barricades are in violation of the preliminary injunction heretofore
page 11 } issued; which acts by the Defendant are in violation of said preliminary injunction and in contempt of this court and also against the peace and dignity of the Commonwealth of Virginia; therefore the Plaintiff, Lilly B. Rice, prays that the said Woodrow L. Cobb be held to answer the said contempt and that the Complainant prays the preliminary injunction heretofore issued by this court on the 20th day of November, 1959, be extended for a period of sixty (60) days from the date of an order to be entered in this case

pursuant to the finding of the court on the 22nd day of December, 1959, so that your Plaintiff may have an opportunity to apply to the Supreme Court of the State of Virginia for a writ of error which your Complainant believes will be issued.

WITNESS my hand and seal this 12th day of January, 1960.

LILLY B. RICE (Seal)

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FINAL DECREE.

This cause came on to be heard on the 22nd day of December, 1959, upon the Bill of Complaint filed herein praying for an injunction to be awarded against the Defendant, upon the answer of the Defendant filed herein, upon the decree for a temporary injunction entered herein on November 20, 1959, upon the evidence taken *ore tenus,* together with the exhibits introduced on behalf of each party, and was argued by counsel, and it appearing to the Court that the easement reserved to the Complainant and her husband, now deceased, in their deed to Cecil D. Hylton, dated February 12, 1953, and recorded in Deed Book No. 1048, at page 540, of the land records of Fairfax County, Virginia, was extinguished by the action of the Complainant in subdividing her remaining property by plat attached to a deed from the Complainant to C. Fred Wilson, et als., dated August 3, 1959, and recorded in Deed Book No. 1798, at page 38, and re-recorded in Deed Book No. 1813, at page 163, of said land records, upon consideration whereof,

It is adjudged, ordered and decreed that the prayers of the Bill of Complaint be denied, that the said Bill of Complaint be dismissed, and that the temporary injunction heretofore awarded be dissolved as of December 22, 1959.

To which ruling of the Court the Complainant, by counsel, duly excepts.

HARRY C. CARRICO, Judge.

January 21st, 1960.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To: Thomas P. Chapman, Jr.
Clerk of the Circuit Court of Fairfax County
Courthouse
Fairfax, Virginia

In Re: Chancery Cause No. 14204

The Complainant, Lilly B. Rice, files this, her Notice of Appeal and Assignment of Error, and states that it is her intention to file a petition for a writ of error to the Final Decree entered in this court on the 21st day of January, 1960, and Complainant assigns the following errors:

1. The court erred in dismissing the complaint.
2. The court erred in ruling that the Complainant extinguished her easement by permitting to be attached to her deed a plat prepared by an independent contractor, to-wit: a surveyor, showing parcel purchased by grantee in said deed pursuant to sales contract.
3. The decree of the court was contrary to the law and the evidence.
4. The court erred in refusing to consider the circumstances surrounding the execution of the deed by the Complainant and her intention in so doing.

Respectfully submitted this 25th day of January, 1960.

LILLY B. RICE
Complainant
By EDWARD C. HALL
Counsel.

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PETITION.

* * * * *

To the Honorable, Harry C. Carrico, Judge of the Circuit Court of Fairfax County, Virginia:

Comes now Lilly B. Rice, by Counsel, and respectfully shows unto the court that she has filed her notice of appeal and assignment of error with the Clerk of this court, and respectfully moves the court to suspend execution of the decree of January 21, 1960, for a period of 60 days, and to restrain the defendant from preventing the use and enjoyment of said easement by the Complainant until such time as she can apply to the Supreme Court of Appeals for a writ of *supersedeas.*

Respectfully submitted this 25th day of January, 1960.

LILLY B. RICE
By Counsel.

EDWARD C. HALL OF
HARRIS & HALL
Arlington, Virginia.

Filed Jan. 26, 1960.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

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FINAL DECREE.

This cause came on this 5th day of February, 1960, upon the Petition of Plaintiff filed herein praying for suspension of decree of this Court entered on January 21, 1960, for a period of 60 days was argued by Counsel.

And it appearing to Court, the petition should be granted,

It is adjudged, ordered and decree that execution of said

decree, be and the same hereby, is suspended for a period of Sixty (60) days from the date hereof,

To which ruling of the Court the Defendant, by Counsel, duly excepts.

HARRY C. CARRICO, Judge.

Entered this 5th day of February, 1960.

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NARRATIVE STATEMENT OF THE EVIDENCE AND OTHER INCIDENTS OF TRIAL.

Counsel for Plaintiff and Defendant agree that the order entered by the Court on January 21, 1960, contains a brief resume of the incidents of trial with the further explanation that the Plaintiff and Defendant both took the stand and testified.

Submitted March 16, 1960.

EDWARD C. HALL
LOUIS KOUTOULAKOS

Filed in Circuit Court Clerk's Office .... 18, 1960.

THOMAS P. CHAPMAN, JR.
Clerk Fairfax County, Va.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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