

IN THE CIRCUIT COURT, IN AND
FOR SUMTER COUNTY, FLORIDA.

CIVIL DIVISION

CASE NO. 81-260-CA-01

THOMAS F. FIELDS, et al.,

Plaintiffs,

vs.

HURLEY NICHOLS, et al.,

Defendants.

FINAL JUDGMENT

THIS CAUSE having come on to be heard upon the trial of the matter before the Court, and the Court having heard the testimony of the witnesses and having considered the evidence adduced in the trial, and the Court having made various rulings during the trial, and the Court having heard the objections and arguments of counsel for all parties, and the Court having considered the requested proffers of the Plaintiffs, and the Court being otherwise duly advised in the premises, the Court makes the following findings of fact and conclusions of law:

1. On December 7, 1960, a 30-ft. strip of land beginning on the section line of the northeast corner of Section 17, Township 18 South, Range 22 East, between Sections 8 and 17; run west along section line 1,650 feet, thence bearing in a southwesterly direction along the then present road to the $\frac{1}{2}$ mile post on the west side of Section 17, Township 18 South, Range 22 East, for right-of-way purposes only, all in the County of Sumter, State of Florida, was deeded to Sumter County, Florida, by Quit-Claim Deed executed by R. H. Nichols and wife, Lula Mae Nichols, and J. H. Nichols and wife, Estelle Nichols.

2. The aforesaid Quit-Claim Deed was recorded on the 11th day of January, 1961, at 2:00 P.M. in O.R. Book 26, page 455, of the Public Records of Sumter County, Florida.

3. The Plaintiffs are the owners of certain lands located in Sumter County, Florida, and more particularly described

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in the Plaintiffs' Amended Complaint.

4. The Defendants, HURLEY NICHOLS, NICHOLS CEMETERY ASSOCIATION, INC. and RAFTER J. RANCH, INC., are the owners of those lands as alleged in the Plaintiffs' Amended Complaint.

5. The Defendant, BOARD OF COUNTY COMMISSIONERS OF SUMTER COUNTY, FLORIDA, holds for the beneficial use of the people of this county in this state a certain public road located within Sumter County, Florida, as described in the aforesaid Quit-Claim Deed.

6. The right-of-way described in the aforesaid Quit-Claim Deed has been in existence since before December 7, 1960, and has been a public right-of-way since before December 7, 1960, and has at various times been known as "Nichols Cemetery Road," and since 1978, as Sumter County Road 246.

7. The Court further finds that the aforesaid county road did in fact extend all the way down to the $\frac{1}{2}$ mile post as it existed on December 7, 1960, and did not end and terminate more than 800 feet from Plaintiffs' lands as contended by Defendant.

8. The Court further finds that the original $\frac{1}{2}$ mile post was within the property presently owned by the Plaintiffs, LARRY J. ANDERSON and MARION A. ANDERSON, his wife, approximately 15-20 feet as described by a survey in the spring of 1977.

9. The Court further finds that said county right-of-way did intersect and go through the northwesternmost section of the ANDERSON parcel of property, which property is as described in paragraph 3 of the Amended Complaint and which property was previously owned by Olin J. Spivey and his wife, Shirley J. Spivey.

10. The Court further finds that the correct $\frac{1}{2}$ mile post was redefined as claimed by the Plaintiffs in April of 1977.

11. The Court further finds that the Defendant, HURLEY NICHOLS, did change the location and terminating point of County Road 246, also known as "Nichols Cemetery Road," but further finds that the original intent of the original grantor

of the deeded right-of-way was to terminate the deeded right-of-way north of the $\frac{1}{2}$ mile post.

12. The Court further finds that there are various cattle gaps across the public right-of-way known as County Road 246 which were placed there by the Defendant, HURLEY NICHOLS, with the consent of the BOARD OF COUNTY COMMISSIONERS OF SUMTER COUNTY, FLORIDA.

13. The Court further finds that the free ranging of the Defendants', HURLEY NICHOLS', or RAFTER J. RANCH, INC.'s, livestock across the right-of-way endangers and continues to endanger the safe movement of vehicles and pedestrians along the right-of-way, and that such free ranging of Defendants' livestock is in contravention of §588.14 of the Florida Statutes and in violation of ~~§ 588.14(2) Florida Statutes~~ LAW. *X*

14. The Court further finds that the construction or placement or continued location of the aforesaid cattle gaps are in violation of ~~§ 588.14(2) Florida Statutes~~ LAW. *H*

15. The Court further finds that the Plaintiffs have standing to bring this action and are entitled to the relief granted herein.

Based upon the Court's foregoing findings of fact and conclusions of law, it is thereupon,

ORDERED AND ADJUDGED as follows:

1. There is hereby declared to exist a county road known as County Road 246 and also known as "Nichols Cemetery Road," consisting of:

A 30-foot strip of land beginning on the section line of the northeast corner of Section 17, Township 18 South, Range 22 East, between Sections 8 and 17; run west along section line 1,650 feet, thence bearing in a southwesterly direction along the present road to $\frac{1}{2}$ mile post on the west side of said Section 17, Township 18 South, Range 22 East, *X*

which county road terminates at the reestablished $\frac{1}{2}$ mile post on the west side of Section 17, Township 18 South, Range 22 East, Sumter County, Florida, and for the immediate 30-foot width thereof.

2. The Defendants, HURLEY NICHOLS, NICHOLS CEMETERY ASSOCIATION, INC. and RAFTER J. RANCH, INC., are hereby permanently enjoined from closing, obstructing, stopping up or injuring the aforesaid right-of-way or the use of the aforesaid right-of-way by all of the Plaintiffs, their families, agents, servants, invitees, licensees or other successors-in-interest from passing over or using said right-of-way for all lawful purposes, *UNLESS OFFICIALLY CLOSED OR ABANDONED BY THE COUNTY PURSUANT TO LAW IN WHOLE OR PART.* H

3. The Defendants, HURLEY NICHOLS, NICHOLS CEMETERY ASSOCIATION, INC. and RAFTER J. RANCH, INC., individually or through their servants, agents, employees or other persons acting on their behalf are enjoined from allowing any livestock to run freely across the aforesaid county road.

4. The Defendant, BOARD OF COUNTY COMMISSIONERS OF SUMTER COUNTY, FLORIDA, and each of said Commissioners named in this action, are hereby restrained and enjoined from closing, obstructing, stopping up or injuring the aforesaid right-of-way and are hereby further mandatorily enjoined to maintain said right-of-way to its terminating point as required under the laws of Florida and are further enjoined from in any manner interfering with or preventing or attempting to prevent the Plaintiffs, their families, agents, servants, invitees, licensees or other successors-in-interest from passing over or using said public right-of-way, *UNLESS OFFICIALLY CLOSED OR ABANDONED PURSUANT TO LAW IN PART OR WHOLE.* H

5. The Defendant, BOARD OF COUNTY COMMISSIONERS OF SUMTER COUNTY, FLORIDA, and each of said Commissioners named in this action, are hereby mandatorily required to perform their duty to remove any cattle gaps from within said County Road 246 at its expense.

6. It is further ORDERED AND ADJUDGED that this Court makes no rulings on either a statutory way of necessity, a common law way of necessity or any other way of necessity over any of the Defendants' lands, but does hereby enjoin the Defendants in this action from interfering, closing,

stopping, obstructing or in any other way interfering with any of the Plaintiffs', their guests, agents, employees, invitees, licensees or successors-in-interest's use of the license way provided by the Defendants, HURLEY NICHOLS, PAFTER J. RANCH, INC. or NICHOLS CEMETERY ASSOCIATION, INC., to County Road 475, unless otherwise ordered by a court of competent jurisdiction.

7. Upon stipulation in open court, the Defendants, STAN CUSHMAN, TRUSTEE, and HOWARD and NANCY DRIGGERS, are hereby dismissed from this action.

8. It is further ORDERED AND ADJUDGED that this Court reserves jurisdiction to enter such appropriate orders on costs and attorneys' fees as requested by the Plaintiffs.

DONE AND ORDERED in Chambers at Brooksville.

Hernando County, Florida, this 1ST day of December 1982.


Circuit Judge

Copies furnished to:

James R. Lavigne, Esq.
C. John Coniglio, Esq.
Stan Cushman, Esq.
Randall N. Thornton, Esq.

By: Maryline D. Dawson
Court Secretary

Date: 12-1-82