

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA

FILED  
RANDOLPH COUNTY  
2019 AUG 30 A 10:45  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

JOHN S. VEACH,  
Plaintiff,

v.

Civil Action No. 17-C-125

PHILIP D. TICE,  
Defendant.

**JUDGMENT ORDER**

On July 9, 2019, this action came on for jury selection pursuant to an earlier order of the Court. Plaintiff, John S. Veach, appeared in person and by counsel, Harry A. Smith, III; Defendant Philip D. Tice appeared in person and by counsel, Pat A. Nichols. A six-person jury was selected, along with one alternate juror. The Court then adjourned until July 10, 2019.

On July 10, 2019, the parties and counsel again appeared, prepared to begin trial. After opening statements by counsel, the Court conducted a jury view, attended by the parties, their counsel, and the jury. After the view, Plaintiff commenced to present his case through the testimony of several witnesses. After Plaintiff rested his case, Defendant moved, pursuant to Rule 50, *West Virginia Rules of Civil Procedure*, for judgment as a matter of law; the Court denied this motion. After the jury was discharged for the day, counsel for the parties conferred with the Court, *in camera*, to discuss jury instructions and form of verdict.

On July 11, 2019, the parties and counsel again appeared, in open court, prior to seating the jury; the Court advised the parties as to his intended jury instructions and verdict form and heard objections of counsel thereto. Then, with the jury seated, Defendant commenced to present his case

through the testimony of two witnesses. After Defendant rested his case, Plaintiff presented brief rebuttal testimony, followed by brief surrebuttal testimony. The Court then instructed the jury and advised the jury that it was to return two separate verdicts; counsel for the parties then made their closing arguments. The jury then returned to consider of its verdict, the alternate juror being then excused.

The jury, by its foreperson, presented several questions for the Court; in each case, the Court conferred with counsel and written responses to the questions were provided by the Court, without objection.

The jury then notified the Court that it had reached its verdicts, which were as follows:

**JURY VERDICT FORM A**

**(Express Deeded Right-of-Way)**

**I.**

**(CHOOSE ONE)**

  X   We, the jury, find by a preponderance of the evidence, that the location of the express, deeded, right-of-way is as claimed by Plaintiff John S. Veach.

OR

       We, the jury, find, by a preponderance of the evidence, that the location of the express, deeded, right-of-way is as claimed by Defendant Philip D. Tice.

**II.**

**(COMPLETE THE FOLLOWING)**

We the jury, find, by a preponderance of the evidence, the width of the express, deeded, right-of-way to be   14   feet.

Dated: July 11, 2019

/s/ Cindy Lynn Shaffer Chancellor  
FOREPERSON

**JURY VERDICT FORM B**

**(Prescriptive Easement)**

**(CHOOSE ONE)**

  X   We, the jury find, by clear and convincing evidence, that Plaintiff John S. Veach, has proven the elements of a prescriptive easement across the real estate of Defendant Philip D. Tice.

OR

           We, the jury, find, by clear and convincing evidence, that Plaintiff John S. Veach has not proven the elements of a prescriptive easement across the real estate of Defendant Philip D. Tice.

Dated: July 11, 2019

/s/ Cindy Lynn Shaffer Chancellor  
FOREPERSON

The Court read the verdicts and inquired of the jurors as to whether the verdicts were unanimous. At the request of Defendant, the jury was polled. The Court then thanked the jury and excused them from further duty in this action.

Based upon the verdicts of the jury, it is the judgment of the Court, and it is ORDERED:

1. That Plaintiff, John S. Veach, has an express, deeded, right-of-way across a tract of real estate owned by Defendant, Philip D. Tice, said real estate being a 17-acre tract situate in Beverly District, Randolph County, West Virginia, conveyed to Defendant by Denzil R. Rice and Margaret R. Tice, by deed dated February 7, 1994, of record in the Office of the Clerk of the County Commission of Randolph County, West Virginia, in Deed Book 431 at page 57.

2. That said express, deeded, right-of-way has a width of 14 feet, the centerline of which is as surveyed and platted by Donald L. Teter, licensed land surveyor, and as described as "R/W"

(being approximately 1,032.4 feet in length) on a plat of survey, entitled Plat of Survey for John S. Veach, admitted as evidence (Exhibit M) in the trial herein; a copy of said plat of survey, reduced in size, is attached hereto and incorporated herein as part of this Judgment Order.

3. That Plaintiff, John S. Veach, has a prescriptive easement across said 17-acre tract of real estate owned by Defendant, Philip D. Tice, the centerline of said prescriptive easement being as surveyed and platted by Donald L. Teter and as specifically described in the preceding paragraph of this Judgment Order.

4. That Plaintiff may record an attested copy of this Judgment Order with the miscellaneous records in the Office of the Clerk of the County Commission of Randolph County, West Virginia, to be indexed with Defendant, Philip D. Rice, as "grantor" and Plaintiff, John S. Veach, as "grantee."


5. That if this Judgment Order is not appealed, or if it is affirmed on appeal, the Court will conduct further proceedings, as initiated by either of the parties, as may be necessary, including: (1) designation of a permanent location of the right-of-way on the ground; and (2) such documentation as may be required to index the verdict herein in the land records of Randolph County, West Virginia, so as to provide proper and effective notice in the parties' chain of title.

6. That Plaintiff is awarded his costs.

It is further ORDERED that this matter is dismissed, being a final judgment, and retired from the active docket of the Court, subject, however, to further proceedings as may be necessitated, as set forth in Paragraph 5, above.

Defendant's objections and exceptions are noted and preserved.

ENTER: 29 Aug, 2019

  
DAVID H. WILMOTH  
Circuit Judge

Prepared by:



HARRY A. SMITH, III  
Counsel for Plaintiff John S. Veach  
WV State Bar No. 3466  
Jory & Smith, L.C.  
P.O. Box 1909  
Elkins, WV 26241

**ENTERED**

**AUG 30 2019**

PHILIP D. RIGGLEMAN, CLERK

Approved as to form:



PAT A. NICHOLS  
Counsel for Defendant Philip D. Tice  
WV State Bar No. 2734  
P.O. Box 201  
Parsons, WV 26287

A TRUE COPY  
ATTEST:  
PHILIP D. RIGGLEMAN  
CLERK OF THE CIRCUIT COURT  
BY C. Thomas DEPUTY

cc:  
HAS  
PAN