

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 1342

ORGERON INVESTMENTS, L.L.C.

VERSUS

DONALD MELANCON AND EMILY MELANCON

CONSOLIDATED WITH

NO. 2007 CA 1343

DONALD MELANCON AND EMILY MELANCON

VERSUS

ORGERON INVESTMENTS, L.L.C. AND LEE ORGERON

**Judgment rendered February 8, 2008.**

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Appealed from the  
17<sup>th</sup> Judicial District Court  
in and for the Parish of Lafourche, Louisiana  
Trial Court No. 101753 c/w 102348  
Honorable Jerome J. Barbera, III, Judge

\* \* \* \* \*

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\* \* \* \* \*

**BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.**

*Welch Jr. Consents without reasons.*

**PETTIGREW, J.**

This appeal by Donald and Emily Melancon (Melancon) challenges two judgments in this consolidated matter, rendered by the trial court on January 30, 2007 and February 7, 2007. The judgment of January 30, 2007, involved a dispute between Melancon and Orgeron Investments, L.L.C. (Orgeron).<sup>1</sup> The judgment of February 7, 2007, involved a dispute between Melancon and, intervenor, The Louisiana Land and Exploration Company (LL&E).<sup>2</sup>

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<sup>1</sup> The judgment of the trial court dated January 30, 2007, read, in part, as follows.

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff's, ORGERON INVESTMENTS, L.L.C., request for cable services is not relevant to the servitude issues contained herein and therefore is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants', DONALD AND EMILY MELANCON, exception of *Res Judicata* as to the speed bump issues contained herein is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, ORGERON INVESTMENTS, L.L.C., be allowed to replace the existing first gate with an electronic gate which shall be activated by a vehicle. The payment of said gate shall be at the expense of the plaintiff, ORGERON INVESTMENTS, L.L.C.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants', DONALD AND EMILY MELANCON, request for a third gate located at the rear of the Gateway Trace Road is granted. Said gate shall be an electronic gate which shall be activated by a vehicle. The payment of said gate shall be at the expense of the defendants, DONALD AND EMILY MELANCON. The defendants, DONALD AND EMILY MELANCON, must declare in writing to the plaintiff, ORGERON INVESTMENTS, L.L.C., whether they intend to construct the said third gate by April 8, 2007. At such time, the plaintiff, ORGERON INVESTMENTS, L.L.C., shall have the option to replace the second, or middle gate, with an electronic gate which shall be activated by a vehicle. In the event the second gate is replaced, it shall be at the expense of the plaintiff, ORGERON INVESTMENTS, L.L.C.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the injunctive relief sought by the defendants, DONALD AND EMILY MELANCON, to restrict the use of the road against the plaintiff, ORGERON INVESTMENTS, L.L.C., is hereby moot given the fact that Louisiana Land and Exploration Company is granted a servitude of passage over the Gateway Trace Road and ORGERON INVESTMENTS, L.L.C., as Lessee, is afforded the same rights and privileges as Louisiana Land and Exploration Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for injunctive relief sought by the defendants, DONALD AND EMILY MELANCON, regarding the plaintiff, ORGERON INVESTMENTS, L.L.C., traveling outside the boundaries of the servitude is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the petitioner, ORGERON INVESTMENTS, L.L.C., is hereby given a servitude of drainage by acquisitive prescription for the pumping station, bulk head, intake canal, and levee located on the Eastern side of the intake canal and identified by the plat identified as Exhibit "Orgeron #3".

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, DONALD AND EMILY MELANCON, request for injunctive relief to have the plaintiff, ORGERON INVESTMENTS, L.L.C., remove the pumping station, bulk head, intake canal, and levee is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall bear their own costs.

<sup>2</sup> The judgment of the trial court dated February 7, 2007, read, in part, as follows.

IT IS ORDERED, ADJUDGED AND DECREED that the following described property owned by The Louisiana Land and Exploration Company situated in Lafourche Parish, Louisiana, is an enclosed estate within the meaning and intent of Louisiana Civil Code Article 689 ... and, in conformity with Louisiana Civil Code Article 689, judgment is accordingly rendered herein recognizing and establishing a legal servitude and right of passage to and from Louisiana Highway 1 for the benefit of the above-described property of The Louisiana Land and Exploration Company (herein, the "dominant estate") on, over and across certain

For the reasons that follow, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

Melancon's tract of land fronts along Louisiana Highway 1 and is bounded to the rear or on the south by Bayou L'Bleu. This tract was acquired by Melancon from the Barrios family. LL&E owns 3,734 acres of immovable property located in Lafourche Parish relevant to this proceeding. The LL&E property is divided north-south by the Intracoastal Waterway (the portion on the north side of the Intracoastal Waterway being relevant to this proceeding). The LL&E property is further divided east-west by Bayou L'Bleu, a natural navigable bayou with a depth of up to 10 feet. The LL&E property has no access to public roads and is an "enclosed estate." Orgeron owns a tract of land adjacent to and south of Bayou L'Bleu that it purchased from David Saucier. Orgeron's tract adjoins portions of the LL&E property. Melancon's tract adjoins the north side of Bayou L'Bleu, across from the Orgeron tract. The preexisting Gateway Trace Road, a private road or drive, extends from Louisiana Highway 1 across the Melancon tract to the north side of Bayou L'Bleu. The Orgeron tract and Melancon tract partitioned out of the common ancestors-in-title tract of land. By judgment of the 17<sup>th</sup> Judicial District Court, in prior

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(Continued)

property situated in Sections 21, 39 and 67, Township 17 South, Range 19 East and Sections 67 and 68, Township 17 South, Range 20 East, Lafourche Parish, Louisiana, owned by Donald Melancon and Emily Melancon (herein, the "servient estate").

....

The said legal servitude recognized and established by this judgment providing a right of passage for the benefit of the dominant estate over the servient estate to and from Louisiana Highway 1 as hereinabove described shall be exercised by use of the existing road (known as the "Gateway Trace Road") that is situated within the area of said servitude on the servient estate as shown by the aforesaid Orgeron Exhibits "1" and "2" attached hereto.

....

It is further Ordered, Adjudged and Decreed that the owner of the dominant estate may convert either or both of the existing front or first manual gate and the second manual gate on the existing road to unsecured electronic gates that are activated to open and close by the presence of vehicular traffic thereon; the cost of such conversion and maintenance of such electronic gates, if installed, will be shared by the owner of the dominant estate and Orgeron Investments, L.L.C.

It is further Ordered, Adjudged and Decreed that the owner(s) of the servient estate may use the said existing road in common with the right of passage over the same herein granted for the benefit of the dominant estate, provided neither user interferes unreasonably with the use by the other. Further, said owner(s) of the servient estate may, if they so desire, maintain in place the five existing rope "speed" bumps that are located on said existing road, and they may further install and maintain at the rear of the existing road, at their sole cost, an unsecured electronic gate activated to open and close by the presence of vehicular traffic, provided that the owner(s) of the servient estate must declare by April 8, 2007 in writing to Orgeron Investments L.L.C. whether they intend to install said gate.

litigation entitled "Orgeron Investments, Inc. v. Donald Melancon and Emily Melancon in Docket No. 96916 (which judgment is now final), pursuant to La. Civ. Code art. 692 et seq., the Orgeron tract was recognized to be an "enclosed estate," and a right of passage was granted in favor of the Orgeron tract through the Melancon tract over the preexisting Gateway Trace Road, for access to Louisiana Highway 1, a public road.

The LL&E tract is also bound on the north by other property owned by Melancon. LL&E has also leased part of its property to Orgeron, and LL&E holds a conventional servitude of passage from Orgeron over the Orgeron tract for access to the Gateway Trace Road for the benefit of the LL&E property.

On or about July 13, 2005, Orgeron filed a rule against Melancon in the matter entitled "Orgeron Investments, L.L.C. v. Donald Melancon and Emily Melancon, No. 101753, of the 17<sup>th</sup> Judicial District Court." The purpose of this rule was to allow Orgeron to replace a locked gate with an electronic gate on the right of passage in favor of Orgeron's dominant estate across Melancon's servient estate. An exception raising the objection of *res judicata* was filed by Melancon on October 11, 2005, contending the previous judgment rendered in Docket No. 96916 of the 17<sup>th</sup> Judicial District Court was determinative of the issue of locked electronic gates.

On October 11, 2005, Melancon also filed a petition for injunction and declaratory judgment against Orgeron in Docket No. 102348 of the 17<sup>th</sup> Judicial District Court. In this suit, Melancon attempted to place limitations on Orgeron's use of the servitude of passage, to prohibit Orgeron from trespassing on Melancon's property in his use of the servitude of passage, and to order Orgeron to close the gates when using the servitude of passage. Further Melancon requested the placing of a third gate at the rear of the servient estate across the servitude of passage previously granted to Orgeron's dominant estate and to stop the use and physical location of a pumping station on Orgeron's estate from encroaching upon Melancon's estate.

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It is further ORDERED, ADJUDGED AND DECREED that each party shall pay its respective court costs.

By order of the 17<sup>th</sup> Judicial District Court, filed into the record on December 1, 2005, Docket Nos. 101753 and 102348 were consolidated for purposes of trial.

On February 23, 2006, LL&E intervened into the proceeding, making Melancon a defendant in reconvention, contending its estate was an "enclosed estate" and, pursuant to La. Civ. Code art. 689, was entitled to a right of passage to its enclosed estate over Melancon's estate through Gateway Trace Road, which is the road and right of passage created by judgment rendered in Docket No. 96916 in favor of the Orgeron dominant estate. LL&E, which had acquired a conventional servitude across Orgeron's estate to access Gateway Trace Road, alleged that the enclosed estate is to the rear of Melancon's estate and is adjacent to the rear of Orgeron's estate. It further alleged that the Gateway Trace Road is burdened by a legal servitude of passage in favor of Orgeron and the Lafourche Parish Drainage Board. Melancon alleged that LL&E should acquire a servitude over other property to access a public street known as Ledet Street.

The matter proceeded to trial on July 7, September 21, September 22, December 15, 2006, and January 8, 2007. Although this matter was consolidated for trial by the trial court, the trial court rendered two separate judgments. The first judgment, dated January 30, 2007, dealt with the facts and legal issues involving Melancon and Orgeron. The second judgment, rendered February 7, 2007, dealt with the legal servitude of passage in favor of LL&E's dominant estate over Melancon's servient estate.

Melancon suspensively appealed both of these judgments in this consolidated case on March 1, 2007.

### **ISSUES PRESENTED**

On appeal, Melancon assigned the following issues for review by this court, some of which apply to the judgment in favor of Orgeron, dated January 30, 2007, and some of which apply to the judgment in favor of LL&E, dated February 7, 2007:

1. Whether Louisiana Civil Code article 692 requires that the trial court choose the shortest route from the enclosed estate to the nearest public road, when both the shortest [route] and the route requested by petitioner are comparable in terms of quality, the only difference being that the longer route is where petitioner wishes to exercise the servitude of passage;

2. Whether the use of the term "generally" in Civil Code art. 692 requires the court to balance the features and suitability of competing routes over potential servient estates, or to ignore such considerations in favor of an analysis of the dominant estate only;

3. Whether the trial court's method of analyzing Civil Code art. 692 changes the legislative intent of said statute, in that the balancing of differing routes of possible servitudes is ignored in favor of an analysis of only the enclosed estate;

4. Whether La. R.S. 9:1254 provides appellee LL&E with a right of passage which supersedes the judicial right of passage sought by appellee.

### **DISCUSSION**

The Louisiana Constitution of 1974 provides that the appellate jurisdiction of the courts of appeal extends to both law and facts. La. Const., art. V. § 10(B). A court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. See **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882, n.2 (La. 1993). If the trial court or jury findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989).

This case involves modifications of a legal servitude previously granted to an enclosed dominant estate over the servient estate, pursuant to La. Civ. Code art. 692, and a grant of a servitude of passage to another enclosed dominant estate over the same servient estate. The trial court gave extensive oral reasons for its judgment. This case deals with established principals of law pursuant to La. Civ. Code art. 689 et seq., and La. R.S. 9:1254. It also deals with established policy by the courts of balancing the various needs of the estates involved, including consideration of the shortest route and the most economical route for the dominant and servient estates. See **Rockholt v. Keaty**, 256 La. 629, 237 So.2d 663 (La. 1970); **Tessier v. Medical Center of Baton Rouge Inc.**, 93-0075 (La. App. 1 Cir. 3/11/94), 636 So.2d 928, 929, writ denied, 94-1609 (La.

9/30/94), 642 So.2d 878; **Bouser v. Morgan**, 520 So.2d 937, 940 (La.App. 3 Cir. 1987); **Rieger v. Norwood**, 401 So.2d 1272, 1273-1274 (La.App. 1 Cir.), writ denied, 409 So.2d 618 (La. 1981); **Finn v. Eoff**, 368 So.2d 199, 201 (La. App. 1 Cir. 1979). After a thorough review of the record, we cannot say that the trial court was manifestly erroneous in its finding of facts, nor did it commit legal error. For these reasons, we affirm the trial court's judgments of January 30, 2007, and February 7, 2007. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B and assess all appeal costs against appellants, Donald and Emily Melancon.

**AFFIRMED.**