

IN THE CIRCUIT COURT OF JOHNSON COUNTY, ARKANSAS  
CIVIL DIVISION

JUNE BRAATEN

PLAINTIFF

VS.

NO. 36CV-2021-197

RONALD A. WARREN

DEFENDANT

MOTION TO DISMISS AND AMENDED ALTERNATIVE ANSWER

Comes now the Defendant, Ronald A. Warren, by and through his undersigned counsel, and states for his Motion to Dismiss and Amended Alternative Answer as follows:

1. The Defendant is without sufficient information to admit or deny the allegations of paragraph one (1) of the Complaint, and therefore same are denied.
2. The Defendant is without sufficient information to admit or deny the allegations of paragraph two (2) of the Complaint, and therefore same are denied.
3. Defendant admits that this Court has jurisdiction of the parties and subject matter and that venue is proper.
4. There are no specific fact allegations contained in paragraph number four (4) of said Complaint, but to the extent there are, same are denied. The Defendant adopts and re-incorporates his answers in the preceding paragraphs of this alternative answer as if set forth fully herein word for word.
5. The Defendant admits the allegations contained in paragraph number five (5) of the Complaint.

6. The Defendant is without sufficient information to admit or deny the allegations of paragraph six (6) of the Complaint, and therefore same are denied.

7. The Defendant is without sufficient information to admit or deny the allegations of paragraph seven (7) of the Complaint, and therefore same are denied.

8. The Defendant is without sufficient information to admit or deny the allegations of paragraph eight (8) of the Complaint, and therefore same are denied.

9. The Defendant admits that Plaintiff brings this action, but denies the remaining allegations contained in paragraph number nine (9) of said Complaint, and further denies that she is entitled to any relief whatsoever.

10. There are no specific allegations contained in paragraph number ten (10) of said Complaint, but to the extent there are, same are denied. The Defendant adopts and re-incorporates his answers in the preceding paragraphs of this alternative answer as if set forth fully herein word for word.

11. The Defendant admits that the Plaintiff owns two tracts of land in Section 19, Township 10 North, Range 24 West and that the Defendant owns a tract of land in said section. Defendant denies the remaining allegation particularly as to the characterization of the lay of the lands by Defendant's Complaint all as contained in paragraph number eleven (11) of the Complaint.

12. The Defendant points out that Plaintiff does not incorporate any exhibit to her complaint in the substance thereof; the exhibit "A" attached is a copyrighted map. Defendant denies that his property is "under the name of Myrtle Reece" as alleged, and further denies any remaining allegations contained in paragraph number twelve (12) of the Complaint.

13. The Defendant admits that there is no legal easement in existence as to Plaintiff's "Tract 1" as described in the survey attached to the Complaint as exhibit "2".

14. The Defendant admits the allegations contained in paragraph number fourteen (14) of the Complaint.

15. The Defendant is without sufficient information to admit or deny the allegations of paragraph fifteen (15) of the Complaint, and therefore same are denied.

16. The Defendant is without sufficient information to admit or deny the allegations of paragraph sixteen (16) of the Complaint, and therefore same are denied.

17. The Defendant admits the allegations contained in paragraph number seventeen (17) of the Complaint.

18. The Defendant denies the allegations contained in paragraph number eighteen (18) of the Complaint.

19. The Defendant denies the allegations contained in paragraph number nineteen (19) of the Complaint.

20. The Defendant admits that Plaintiff's occasional use of Defendant's lands for ingress and egress to her "Tract 1" has been by permission granted by Defendant. Defendant is not willing to concede any such easement.

21. There are no specific fact allegations contained in paragraph number twenty-one (21) of said Complaint, but to the extent there are, same are denied. The Defendant adopts and re-incorporates his answers in the preceding paragraphs of this alternative answer as if set forth fully herein word for word.

22. There are no specific fact allegations contained in paragraph number twenty-two (22) of said Complaint, but to the extent there are, same are denied. The Defendant

adopts and re-incorporates his answers in the preceding paragraphs of this alternative answer as if set forth fully herein word for word.

23. There are no specific fact allegations contained in paragraph number twenty-three (23) of said Complaint, but to the extent there are, same are denied. The Defendant adopts and re-incorporates his answers in the preceding paragraphs of this alternative answer as if set forth fully herein word for word.

24. The Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph number twenty-four (24) of the Complaint, and there the same are denied.

25. The Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph number twenty-four (24) of the Complaint, and there the same are denied.

26. The Defendant denies the allegations contained in paragraph number twenty-six (26) of the Complaint.

27. The Defendant denies the allegations contained in paragraph number twenty-seven (27) of the Complaint.

28. The Defendant denies the allegations contained in paragraph number twenty-eight (28) of the Complaint.

29. Defendant pleads the following defenses: Laches and Statute of Limitations pursuant to A.R.C.P., Rule 8 (c).

30. Plaintiff has failed to join necessary parties to this cause of action, and has failed to state facts sufficient to show that she is entitled to any relief, therefore the

Complaint should be dismissed pursuant to A.R.C.P., Rule 12 (b) (6) and (7). Defendant incorporates by reference his Incorporated Brief in Support following hereinbelow.

WHEREFORE, having answered the Complaint of the Plaintiff, and moved for dismissal, the Defendant prays that the Court dismiss said claim and for his attorney fees expended, his costs and all other proper relief.

#### INCORPORATED BRIEF IN SUPPORT

Rule 8 of the Arkansas Rules of Civil Procedure requires a claimant to set forth a statement “in ordinary and concise language of facts showing . . . that the pleader is entitled to relief.” In the instant case, Plaintiff has pleaded that a tract of her land is “land-locked” and in conclusory language goes on to aver the “necessity” of an easement. But the Arkansas courts have long required more than simply being “land-locked” to show necessity. Young v. Robertson, 2015 Ark.App. \_\_\_\_, 476 S.W.3d 856 (Ark. App. 2015). The right of an easement by necessity requires the demonstration of the necessity of using such a route. Greasy Slough Outing Club v. Amick, 224 330, 274 S.W. 2d 63 (1954). The degree of necessity must be more than mere convenience. Horton v. Taylor, 2012 Ark.App. 469, 422 S.W.3d 202 (Ark. App. 2012), and Young v. Robertson, supra. The requirement of necessity means that there could be no other reasonable mode of enjoying the dominant tenement with the easement. Kennedy v. Papp, 294 Ark. 88, 742 S.W.2d 625 (1987). The possibility of any other route, although inconvenient or expensive, to Plaintiff’s land precludes a finding of necessity. Young v. Robertson, supra, in which the Court observed that the claimant’s lands adjoined a swamp through which the claimant could have built a road, though it would be costly. The possibility of another route which has not been fully investigated or attempted precludes the

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