

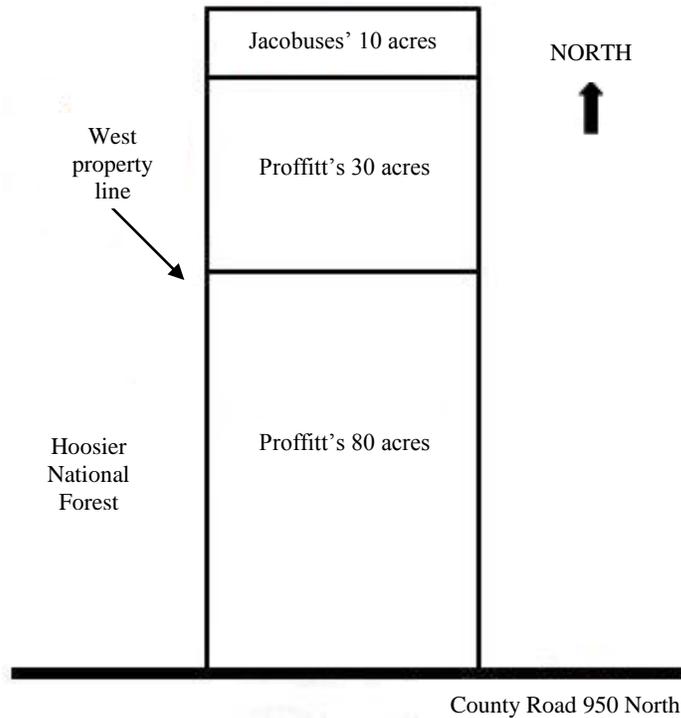


## **Case Summary**

Max and Penelope Jacobus appeal the trial court's order granting them an easement of necessity to their landlocked property across Peggy Proffitt's property. They argue that the easement is not reasonable because it is: (1) partially over the Hoosier National Forest owned by the federal government, a stranger to this dispute; (2) too narrow; and (3) on treacherous terrain. Finding that the easement is too narrow, we reverse and remand this case.

## **Facts and Procedural History**

Proffitt owns two tracts of land in Jackson County, Indiana, specifically, an eighty-acre tract due north of County Road 950 North ("C.R. 950 N.") and a thirty-acre tract just north of the eighty-acre tract. Tr. p. 6. The Jacobuses own a ten-acre tract due north of Proffitt's thirty-acre tract. *Id.* The Jacobuses' ten-acre tract is landlocked, in that it is not contiguous or adjacent to C.R. 950 N. or to any other public road. *Id.* at 13, 14. The two Proffitt tracts and the Jacobuses' tract are bounded by the Hoosier National Forest on their west property line.



The two Proffitt tracts and the Jacobuses' tract were once commonly owned by Elias and Mary Lou Rutan. Appellants' App. p. 12, 14. The Rutans first deeded off the ten-acre tract in 1899. *Id.* at 241. Several other conveyances of the three tracts were made in the following years, but they are not relevant to our discussion. In any event, all of the deeds of conveyance fail to reference or designate an easement or right-of-way in favor of the Jacobuses' ten acres and Proffitt's thirty acres through Proffitt's eighty acres for access to C.R. 950 N. or any other public road. *See id.* at 241, 254, 262, 284.

In May 2008 the Jacobuses filed a Complaint for Declaration of Easement of Necessity. *Id.* at 11. They alleged that since their ten acres is landlocked, it cannot be reasonably used without access to C.R. 950 N. and that an easement in favor of the Jacobuses exists over Proffitt's thirty and eighty acres for access to C.R. 950 N. *Id.* at 13.

A trial was held in September 2009. Max Jacobus testified at trial that the ten-acre tract is currently wooded. Tr. p. 29. He said there is no evidence of any homes or buildings ever being located on the ten acres. *Id.* at 30. There is also no evidence of any prior use of the land other than for timber. *Id.* at 42. The Jacobuses, however, want to use the ten acres for timber production, construction and enjoyment of a recreational cabin, hunting, and “plants and flowers and animals.” *Id.* at 39-40. Max Jacobus testified that he wanted the easement, which he thought had to be fifty feet because of the applicable ordinance, to be through the middle of the pasture and hay fields and across several east-west fences. *Id.* at 59; Appellants’ App. p. 7-8. He said that there are at least five creeks near the west property line, one of which is about ten feet deep and thirty feet wide. Tr. p. 43, 49.

Michael Weir, a Jackson County building commissioner, testified on behalf of the Jacobuses regarding the width requirement for an easement to their ten-acre tract:

**Q [Appellants’ Counsel]:** Okay. Hypothetically speaking, if someone was going to have an easement over approximately a hundred and ten acres of property back to, uh, a tract of ten acres and they wanted to put like a recreational cabin there, would there be a certain width of easement that would be required by your department?

**A [Michael Weir]:** Yes.

**Q:** What would that be?

**A:** *As of January 1, 2009, the requirement would be a fifty foot strip. If the property was deeded off before then, uh, it would be a sixteen foot strip.*

**Q:** Okay. And a person would have to seek a variance, as I understand it, to, uh, permit that. Is that correct?

**A:** Yes. If they don’t actually own that strip back to their property, uh, the only way they could build back there would go through the board and get a variance.

\* \* \* \* \*

**[Appellee’s Counsel]:** . . . Um, the fifty foot width that you’re talking about, that’s a piece of property that you own or a piece of property that you have an easement across.

**Michael R. Weir:** Uh, you have to own that fifty foot strip.

**Q:** Okay. So having a fifty foot easement wouldn't, uh, get you out of having a variance any way. Correct?

**A:** Correct.

**Q:** You'd still have to go in for a variance even if you had a fifty foot strip.

**A:** Yes. If it was an easement.

*Id.* at 65-67 (emphasis added).

Proffitt testified that she and her late husband built a house and a barn in the southeast corner of the eighty acres, which was a Christmas tree farm before they purchased the acreage in 1970. *Id.* at 113-14. The Proffitts then cleared all the trees from the land to create pasture and hay ground and built fences for cattle and other livestock. *Id.* at 114-15. Proffitt testified that when they purchased the eighty acres, there were no roads or improvements visible on the tract except for a right-of-way along the west side of the tract. *Id.* at 115. Additionally, Proffitt testified that she and her husband built a fence along the west property line which was set off to the east of the boundary in order to leave a right-of-way for the previous owners of the thirty acres. *Id.* at 117-18.

Daniel Blann, licensed land surveyor and president of Foresight Land Surveying, testified on behalf of Proffitt regarding an old roadbed which runs north and south and the fence which is offset to the east of the west property line on the southern third of the eighty-acre tract. *Id.* at 90-91. The fence is along the east edge of the roadbed and is, at one specific point, eight feet east of the west property line, but then narrows going north. *Id.* at 90; Defendant's Ex. Q. According to Blann's survey report and his testimony, the roadbed varies from 13.1 feet to 15.3 feet in width, of which approximately 7 feet or more is on Hoosier National Forest property. Tr. p. 97, 101-02; Defendant's Ex. Q. Blann did not survey any farther than the southern third of the eighty-acre tract, but he

did walk to the northwest corner of the eighty acres and testified that the roadbed fades away until south of the northwest corner, where it intersects with an east-west roadbed. Tr. p. 91-92, 100.

The trial court entered the following order:

IT IS ORDERED, ADJUDGED AND DECRE[E]D AS FOLLOWS:

- a. That Judgment is entered in favor of the Plaintiffs on their Complaint for Declaration of Easement of Necessity.
- b. The access route across Tract 1. [(the eighty acres)] and a part of Tract 2. [(Proffitt's thirty acres and Jacobuses' ten acres)] is established for access to the Jacobus property as follows: The *old roadbed* described by Proffitt which runs east of Proffitt's west line of Tract 1., west of her fence and northerly to the northwest corner of her fence as presently found on Tract 1. Then the access route runs easterly and northerly over a path or old road described by Jacobus as beginning north of the east hayfield of Proffitt, north of the fence on Tract 2. Then the path or old road runs northerly to the south line of Jacobus. The easement shall be twenty (20) feet in width.
- c. Title to this easement shall be quieted in Jacobus.
- d. Proffitt's Counterclaim and Affirmative Defenses are denied.

Appellants' App. p. 9-10 (emphasis added). Although the judgment favors the Jacobuses, they now appeal the reasonableness of their easement of necessity.

### **Discussion and Decision**

The Jacobuses contend that their easement is unreasonable because it is: (1) partially over the Hoosier National Forest, which is owned by the federal government, a stranger to this dispute; (2) too narrow; and (3) on treacherous terrain. The trial court entered findings of facts and conclusions of law pursuant to Indiana Trial Rule 52(A). The standard of review is thus two-tiered. *Rennaker v. Gleason*, 913 N.E.2d 723, 728 (Ind. Ct. App. 2009). We must first determine whether the evidence supports the trial court's findings, and second, whether the findings support the judgment. *Id.* We will

only disturb the trial court's judgment where there is no evidence supporting the findings or the findings fail to support the judgment. *Goodwine v. Goodwine*, 819 N.E.2d 824, 828 (Ind. Ct. App. 2004). Challengers have the burden to prove the trial court's findings are clearly erroneous. *Id.* Findings are clearly erroneous when a "review of the record leaves [us] firmly convinced that a mistake has been made." *Id.*

The Jacobuses first argue that the easement is on federal property. Although the trial court ordered the easement of necessity to be "the old roadbed" – which according to land surveyor Blann is partially over the Hoosier National Forest, a stranger to this dispute – the trial court identified only a portion of the old roadbed as the easement. Specifically, the trial court ordered the part of the old roadbed between Proffitt's west property line and her fence, which was offset to the east of the property line, to be the easement. This portion does not include federal property.

The Jacobuses next argue that the easement is too narrow. The easement as defined by the trial court in its order and applied to Blann's survey report (Defendant's Exhibit Q) results in an easement that is approximately eight feet wide at its widest point. We find that this width of access is not sufficient, especially when the trial court ordered the easement to be twenty feet wide. Moreover, building commissioner Weir testified that if the "property" was deeded off January 1, 2009, or later, then the easement had to be fifty feet wide. But if the property was deeded off before then, the easement could be sixteen feet wide. However, Weir's testimony is unclear as to what "property" means. The Jacobuses argue that the "property" Weir referred to was the easement itself, but Proffitt argues that the "property" referred to was the ten acres owned by the Jacobuses,

which was deeded off in 1899. The trial court's findings do not explicitly resolve this dispute, but they implicitly do so by ordering a twenty-foot easement. We conclude that the trial court's findings fail to support its judgment since the explicitly ordered twenty-foot-wide easement cannot be reconciled with the described easement, which at its widest point is only eight feet.

As a final matter, the Jacobuses argue that the topography of the western boundary of the Proffitt properties is unsuited for an easement of necessity. Notably, neither the trial court's findings nor Proffitt's brief address this issue. Max Jacobus's trial testimony, however, referenced at least five creeks, one of which was thirty-feet wide. Tr. p. 43, 49. We also note that Proffitt's daughter, Pamela Hill, testified that when a wild fire occurred on the eighty acres, fire trucks drove on the roadbed, but people had to cross the creek by foot. *Id.* at 147. Because we are reversing the trial court on the issue of the width of the easement and we do not know where the trial court will place the easement upon remand, this is a non-issue. We therefore reverse the trial court's judgment and remand with instructions to establish an easement entirely on Proffitt's property which complies with the applicable ordinance regarding the proper width of easements. The easement must be located so as to accommodate a traversable road and utilities to reach the Jacobuses' ten-acre tract.

Reversed and remanded with instructions.

NAJAM, J., and BROWN, J., concur.