



AlaFile E-Notice

03-CV-2007-000211.00

Judge: HON. JOHNNY HARDWICK

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CITIZENS FOR PRESERVATION OF SHELL TOOMER PARKWAY VS M BARNETT LAWLEY
03-CV-2007-000211.00

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MONTGOMERY, AL 36102

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**IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA**

**CITIZENS FOR THE
PRESERVATION OF SHELL
TOOMER PARKWAY,**

PLAINTIFF,

vs.

**M. BARNETT LAWLEY,
COMMISSIONER, ALABAMA
DEPARTMENT OF
CONSERVATION AND
NATURAL RESOURCES,**

DEFENDANT.

CIVIL ACTION No. CV-07-211

FINAL JUDGMENT AND ORDER

This cause is before the court on cross-motions for summary judgment filed by the Plaintiff, the Defendants and the Intervenor after each side agreed that this cause could be decided as a matter of law based upon stipulated facts. Pursuant to that agreement, the parties have submitted stipulations of fact along with their motions, briefs, affidavits and supporting documentation. Oral argument on the cross-motions was conducted in open court January 31, 2008. Upon consideration of the pleadings, motions, stipulations of fact, affidavits and documents, as well as the arguments of counsel, this court is of the opinion that there are no material disputed issues of fact and that Defendant and Intervenor are entitled to summary judgment in their favor as a matter of law for the following reasons:

This action was filed by Plaintiff on February 2, 2007, seeking declaratory judgment and injunctive relief against the Commissioner of the Alabama Department of Conservation and Natural Resources (“DCNR”) regarding the granting of a driveway easement across state property referred to as Shell Toomer Parkway. Said easement was granted by DCNR in favor of Cleveland Real Estate Investments Partnership and Cleveland Brothers, Inc., (“Intervenor”) who intervened in this action in order to protect their rights.

In its Complaint, Plaintiff requests that this Court declare that the actions of DCNR in granting the easement are illegal and invalid and that this Court enter an injunction prohibiting DCNR from allowing any private access or easements to Shell Toomer Parkway. During oral argument counsel for Plaintiff conceded that it is Plaintiff’s position that the DCNR has never had any legal authority to grant any easements to any parkways in the State of Alabama—including the parkway in question. However, it has been stipulated that the president of the Plaintiff was granted just such an easement by DCNR as recently as 1993 and it is further stipulated that 37 members of the Plaintiff access their property through Shell-Toomer parkway easements granted by DCNR in the past. Plaintiff further alleges that DCNR’s granting of the easement to Intervenor did not comply with the Alabama Administrative Procedures Act (“AAPA”) and that all easements granted after the effective date of the AAPA—including some of those obtained by the

members of Plaintiff and used for access to their property—were, therefore, additionally illegal and invalid for that reason.

This Court is of the opinion that the Plaintiff lacks standing to challenge the issuance of an easement to the parkway because it is not an abutting landowner to the park or parkway and it is not the grantor or a representative of the grantor of the parkway. In other words, Plaintiff corporation has no legal or economic interest in the property at issue greater than any member of the general public might have in the operation of parkways in general. The Plaintiff's claims are also barred by the doctrine of laches in that similar easements have in prior years been granted without objection by Plaintiff or its members (who have been the beneficiaries of such easements themselves), and by the doctrine of unclean hands because officers and members thereof currently benefit from the very same type of easement that Plaintiff now contends to be illegal and invalid. "One of the time honored maxims of equity is that 'He who comes into equity must come with clean hands.'" *See Helms v. Tullis*, 398 So. 2d 253, 254 (Ala. 1981).

Furthermore, the Court is of the opinion that the legislature has granted DCNR the broad discretionary authority to "sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the state to do so." Ala. Code §§ 9-2-3 and 9-14-2. It would be illogical to interpret this power NOT to also include the granting of lesser interests in state parkways such as licenses or

non-exclusive easements. When this broad power granted by statute is read *in pari materia* with Ala. Code § 9-14-1(3) (which Plaintiff contends forbids DCNR from ever granting access to parkways to abutting landowners), the Court is of the opinion that the correct statutory construction would require interpreting them to mean that abutting landowners have no absolute right to access (as they would to other public highways or roads) but that abutting landowners can obtain such access by obtaining some property right (through deed, lease, exchange or some lesser included right of access such as an easement) from the DCNR when “in its judgment it is advantageous to the state to do so.” *See also*, Op. Att’y Gen. No. 04-101, 2004 Ala. AG LEXIS 30 (March 23, 2004).

The Court is also of the opinion that the Plaintiff has failed to provide any evidence that the DCNR acted arbitrarily in granting the easement to Intervenor. The Court notes that the easement granted to Intervenor over the parkway would not block access to the park to anyone but could increase the ease of access to the park by adding a turn lane into the subject development which would allow other users of the road to more easily pass those turning into the property of the Intervenor. As far as aesthetics are concerned, the record shows that the easement in question would not even be visible from the park entrance which is approximately a mile from the easement site. Accordingly, the granting of the easement to Intervenor here appears to have been within the broad statutory

authority granted to DCNR by the legislature and does not clearly appear to have been granted arbitrarily or capriciously by the DCNR.

It is therefore, ORDERED, ADJUDGED AND DECREED, that the motion for summary judgment filed by Plaintiff be and the same is hereby DENIED. It is further ORDERED, ADJUDGED AND DECREED that the motions for summary judgment filed by the DCNR and Intervenor be and the same are hereby GRANTED, costs to be taxed against Plaintiff.

Done this 24th day of March, 2008



CIRCUIT JUDGE