

WHEREFORE, the Appeal is **GRANTED**. The Resolution dated 18 April 2018 of the Regional Trial Court, Branch 8, Dipolog City, is hereby **REVERSED and SET ASIDE**.

Accordingly, judgment is rendered as follows:

- 1) Appellees Spouses Jesus and Aida Castro are **DIRECTED** to remove the concrete fence and other structures they built on Lot No. 2759-C-2-B-12, Psd-09-013524, commonly known as "Foot Path";
- 2) Appellees Spouses Jesus and Aida Castro are permanently **enjoined or restrained** from obstructing appellants and the other neighboring lot owners from having access to and using the Foot Path, as their outlet to the national highway; and
- 3) Appellees Spouses Jesus and Aida Castro are **ORDERED** to pay appellants Spouses Felimon and Lorna Esperanza the amount of Fifty-Thousand Pesos (P50,000.00) as attorney's fees.

SO ORDERED.²

Proceedings before the Trial Court

Respondents Spouses Felimon and Lorna Esperanza filed their Petition³ dated January 20, 1997 for mandatory injunction with damages against petitioners Spouses Jesus and Aida Castro. Respondents essentially alleged:

They are absolute owners of Lot No. 2759-C-2-A, a residential lot covered by TCT No. T-7060 and Tax Declaration No. 002-1051 located in Minaog, Dipolog City. The lot is particularly described as follows:

"Bounded on the North by Dry Creek; NW., by Lot 2759-C-1; SE., by Lot 2759-C-2-B; SW., by Lot 2759-C-2-B. Area: 300 sq. meters more or less. Assessed at P1,260.00"⁴

On the other hand, petitioners are the owners of Lot Nos. 2759-C-2-B-7, 2759-C-2-B-5 and 2759-C-2-B-6, all situated in the same area.⁵

On the southwest part of their lot lies Lot 2759-C-2-B-12, covered by TCT No. T-7735 and measuring 262 square meters, and is known as the "Foot Path." The foot path lies between their lot and the three (3) lots owned by petitioners. They and the owners of the neighboring lots use the foot path as an ingress to and egress from the national highway.⁶

² *Id.* at 43-44.

³ *Id.* at 56-59.

⁴ *Id.* at 56.

⁵ *Id.* at 56-57.

⁶ *Id.*

Sometime in May 1996, petitioners constructed an interlinked wire fence and closed off the foot path, thereby preventing them and their neighbors from using the same. The closure of the foot path meant they could no longer access the national highway and even their own property.⁷

They demanded that petitioners desist from closing off the road but were ignored. They filed a complaint with the barangay captain, who, in turn, made verbal and written demands on petitioners to reopen the foot path. But petitioners ignored the barangay captain's demands.⁸

The closure of the foot path caused them irreparable injury, if not great inconvenience because they had to wade through a creek to access the outside world. They prayed for actual damages, moral damages, exemplary damages, attorney's fees and cost of suit.⁹

On the other hand, petitioners countered that respondents' property was bounded on the east by a dry creek. Respondents had been using this dry creek as a way in and out of their property for a long time now. The western part of respondents' lot was bounded by Lot Nos. 2759-C-2-B-5, 2759-C-2-B-4, and 2759-C-2-B-12, all of which are part of the foot path. Further, the foot path lies among the five (5) lots that they also own: Lot Nos. 2759-C-2-B-5, 2759-C-2-B-6, 2759-C-2-B-7, 2759-C-2-B-2 and 2759-C-2-B-1.¹⁰

The foot path did not exist when respondents acquired Lot No. 2759-C-2-A. They had to enclose their properties with a fence to protect their interests. They also spent ₱200,000.00 to convert Lot No. 2759-C-2-B-12 from a deep swamp to a dry foot path by filling it with soil. Respondents never contributed a cent for the construction of the foot path. Besides, respondents used the dry creek to gain access to the national highway.¹¹

Respondents acquired their property from a certain Nestor Reluya through a deed of absolute sale. In that document, it was emphasized that the dry creek was the means to access the national highway. Even respondent's very own TCT No. T-7060 bears an entry to the effect that ingress and egress was through a dry creek. Respondents never demanded from Nestor Reluya for a right of way to the national highway.¹²

Ruling of the Trial Court

After due proceedings, the trial court, by Resolution¹³ dated April 18, 2018, dismissed the petition. It held that respondents failed to establish the requisites of a right of way on petitioners' properties. Specifically,

⁷ *Id.* at 57.

⁸ *Id.*

⁹ *Id.* at 58.

¹⁰ *Id.* at 67-68.

¹¹ *Id.* at 68-70.

¹² *Id.* at 71.

¹³ *Id.* at 49-55.

respondents failed to prove that there was no adequate outlet from their property to the national highway. Based on the trial court's ocular inspection, the dry creek had already been converted to a gravel road that was wider than the foot path. The neighbors also use the gravel road in going to the national highway. It would be prejudicial to petitioners, who had bought all the surrounding lots, if they would be compelled to provide a foot path on their properties just to connect respondents to their own lots. Besides, the foot path was a voluntary easement granted by Nestor Reluya to the owners of Lot Nos. 2759-C-2-B-1 to 12 and to respondents' lot as well. In the deed of absolute sale between Nestor Reluya and respondents, there was no mention of a right of way granted to the latter. TCT No. T-2575 issued to Nestor Reluya states that a right of way was granted only to a certain Agosto Nazareth for Lot 1759-C-4-A for a consideration of ₱390.00. The trial court further observed:

The Foot Path is not a compulsory legal easement which cannot be disturbed or recalled. Being a voluntary easement the control still belongs to the owner of the same, Nestor Reluya who had long died, and whose other properties, including those who bought from him, had also been sold to Respondents. Practically the said Foot Path is now under the control of the new owner, the Respondents having bought the surrounding lots. Said Foot Path serves no one anymore, since the whole lot area is now practically owned by Respondents. The purpose of its birth had become mooted by the disappearance of its other users. After all it came about only for the use of the Lot B owners (i.e. B-1 to B-11, with the further note that B-10 is a Road Lot which serves the purpose already of a compulsory servitude, while Lot B-12, the Foot Path itself, to the mind of the (sic) this court was intended only for the Lot B subdivision owners and not for the petitioners who have an adequate outlet via the dried creek).

Granting that said Foot Path is demandable as a compulsory or given and existing servitude, still Petitioners under the requisites of servitude cannot have it. It is too burdensome on the Respondents, and the rule is that convenience is not the gauge but adequacy and not artificial necessity. Besides, he never paid any indemnity for it.¹⁴

Consequently, the trial court decreed:

WHEREFORE, premises considered it not being clear by preponderance of evidence that a road right of way was given to Petitioners, or that the existing Foot Path was for their benefit, this petition is hereby **DISMISSED**.

Petitioner instead shall use the adequate outlet (the dried creek) towards the Road Lot, for his ingress and egress to the national highway.

SO ORDERED.¹⁵

Proceedings before the Court of Appeals

¹⁴ *Id.* at 55.

¹⁵ *Id.*



On respondents' appeal, they faulted the trial court for: a) failing to consider petitioners were not the owners of the foot path and therefore had no right to bar anyone from gaining access to it; b) holding that they had not proven the four (4) requisites to establish a right of way; and c) not awarding them damages.

By its assailed Decision dated July 12, 2019, the Court of Appeals reversed. It found that the foot path had its own separate title, specifically TCT No. T-7735, bearing the name of "Foot Path" and was not among the lots sold or transferred to third persons by Nestor Reluya who remained its owner. Even petitioner Jesus Castro testified that he was not the owner of the foot path. Neither Nestor Reluya nor his heirs had relinquished their right thereto or changed its purpose, thus, the foot path retained its nature as a passageway. Since petitioners only owned the adjoining lots and not the foot path itself, they had no exclusive, nay, absolute right to close it.

The Court of Appeals, thus, directed petitioners to remove the concrete fence and other structures they built on the foot path and permanently enjoined them from obstructing the ingress and egress of respondents and the other neighbors. Petitioners were also ordered to pay respondents P50,000.00 as attorney's fees.

The Present Petition

Petitioners now invoke this Court's discretionary appellate jurisdiction to reverse and set aside the Court of Appeals' decision. They essentially reiterate their argument that although the foot path has a separate title, it is intended for their benefit and not for the benefit of respondents who already had the dry creek as their means to access the national highway. Being a voluntary easement, control over the foot path remained with Nestor Reluya, and after his death, control over the foot path had been transferred to them as his successors-in-interest. Since the whole area practically belonged to them already, the foot path no longer has any use to third persons, including respondents. Besides, respondents failed to prove the four (4) requisites for the establishment of a compulsory easement.¹⁶

In their Comment¹⁷ dated December 16, 2019, respondents riposte that petitioners are not the owners of the foot path. Further, the foot path is the only legitimate ingress to and egress from their property. By Letter dated March 22, 2004, the City Building Officer of Dipolog informed petitioners that the construction of the fence was illegal for failing to secure the necessary permit. The foot path was already existing when petitioners bought their lots.

¹⁶ *Id.* at 13-32.

¹⁷ *Id.* at 80-90.

Issue

Do respondents have the right to use the foot path as ingress and egress and the requisite standing as well to pray that petitioners remove the fence they constructed to close off the foot path?

Ruling

We affirm.

An action for injunction is a recognized remedy in this country. It is a suit which has for its purpose the enjoinder of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or the defendant's compulsion to continue performance of a particular act. It has an independent existence. It is similar to the special civil action of prohibition under Rule 65, except that the latter, in common with other special civil actions, deals with special matters requiring a special procedure, *i.e.*, it is concerned with public officers or entities performing public duties: tribunals, corporations, boards, or persons exercising functions judicial or ministerial, whereas the former, an ordinary suit, generally involves acts and transactions of private individuals. The action for injunction is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. And, of course, in an action of injunction, the auxiliary remedy of a preliminary injunction, prohibitory or mandatory, may issue.¹⁸ An injunction may either be: (1) a prohibitory injunction, which commands a party to refrain from doing a particular act; or (2) a mandatory injunction, which commands the performance of some positive act to correct a wrong in the past.¹⁹

Here, respondents prayed for a writ of mandatory injunction and “*render its decision to perpetually restrain respondents closing the FOOT PATH, and mandatory injunction be made permanent.*”²⁰ A mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the status quo between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he or she does not have a clear legal right and, therefore, the issuance of a writ of mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.²¹

¹⁸ *Manila Banking Corporation v. Court of Appeals*, 265 Phil. 142, 150 (1990).

¹⁹ *Dela Rosa v. Heirs of Juan Valdez*, 670 Phil. 97, 109 (2011).

²⁰ *Rollo*, p. 59.

²¹ *Sps. Ngo, et al. v. Allied Banking Corp.*, 646 Phil. 681, 685 (2010).

Here, respondents hinge their claim to remove the fence enclosure of the foot path on the voluntary easement made by Nestor Reluya thereon and the fact that the same is covered by its own title, TCT No. T-7735. As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements.²²

Generally, the owner of an estate may claim a legal or compulsory right of way only after he or she has established the existence of these four (4) requisites: (a) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (b) after payment of the proper indemnity; (c) the isolation was not due to the proprietor's own acts; and (d) the right of way claimed is at a point least prejudicial to the servient estate.²³

Notably, the opening of an adequate outlet to a highway can extinguish only legal or compulsory easements, not voluntary easements. The fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity.²⁴

The foot path was a voluntary easement constituted by Nestor Reluya and this fact was confirmed by the trial court and the Court of Appeals. Further, the Court of Appeals noted that the separate title to the foot path was retained by Nestor Reluya and later on passed on to his heirs after his death. Also, there is no showing that the Heirs of Nestor Reluya had withdrawn the right-of-way. Hence, although the dry creek had been turned into a gravel road that gives access to the national highway, the foot path has not lost its nature as a voluntary easement which benefits respondents and third persons. Surely, petitioners cannot claim the foot path as their own and exclude third persons from using it.

Verily, the respondents had the right and legal standing to seek a writ of mandatory injunction against petitioners, who had no authority to close off the foot path from general use. Too, as early as 1914, *Resolme v. Lazo*²⁵ had already decreed that a complaint for injunction is the proper remedy to ensure that a right-of-way is respected thus:

We are of opinion that the trial judge correctly held that the record sustains the plaintiffs' claim of a right of way as indicated by the arrows marked number 1 on the plan of the land submitted by the commissioner and filed with the record. We think however that the form of the judgment entered by him must be modified. He directed merely that this road "be opened for the public use" and by inference imposed upon the defendant the duty of so doing. But there is nothing in the record which would justify a

²² *Unisource Commercial and Development Corp. v. Chung*, 610 Phil. 642, 649 (2009).

²³ *Sps. Mejorada v. Vertudazo*, 561 Phil. 682, 687 (2007).

²⁴ *La Vista Association, Inc. v. Court of Appeals*, 344 Phil. 30, 49 (1997).

²⁵ 27 Phil. 416, 418 (1914).

finding that the defendant is charged with a duty to maintain or construct a road across his land. So far as the record discloses his only obligation in regard to this right of way over his land is a negative one, that is to say, not to obstruct or hinder the free passage over it of any persons entitled to make use of it. **While the prayer of the complaint does not clearly indicate the relief sought by the plaintiffs, we think that it may fairly be construed as a prayer for a permanent injunction, and as that is the relief to which the plaintiffs are entitled upon the facts alleged and proven, the trial court should have granted a permanent injunction prohibiting the defendant from obstructing, by the maintenance of fences or otherwise, the plaintiffs' passage over the ancient right of way, which the trial court found to be in a direct line as indicated by the arrows marked No. 1 on the commissioner's plan.** (Emphasis supplied)

So must it be.

As for the award of ₱50,000.00 as attorney's fees, the Court of Appeals reasoned that “[t]his Court, however, finds the propriety of granting an award of attorney's fees in favor of appellants since they were apparently compelled to litigate their cause and incurred the necessary expenses to protect their rights.”²⁶ Yet, this justification is not enough. Even if a party is compelled to litigate with third persons or to incur expenses to protect his or her rights, attorney's fees will not be awarded if no bad faith could be reflected in a party's persistence in a case. To award attorney's fees, the court must have factual, legal, and equitable justification. The court must state the award's basis in its decision. These rules are based on the policy that no premium should be placed on the right to litigate.²⁷ Here, there is no clear showing that petitioners, in persistently asserting their exclusive right over the foot path, acted in bad faith, thus, they cannot be held liable for attorney's fees.

ACCORDINGLY, the petition is **DENIED**. The assailed Decision dated July 12, 2019 of the Court of Appeals in CA-G.R. CV No. 05047-MIN is **AFFIRMED with MODIFICATION** deleting the award of attorney's fees.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

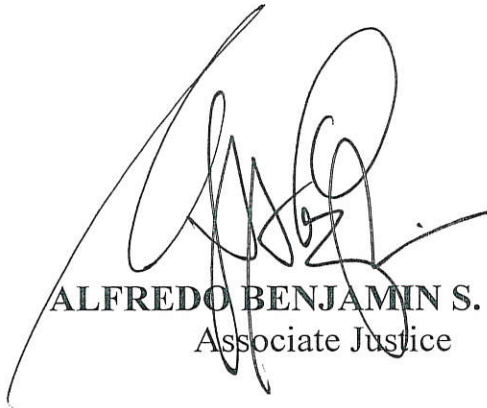
²⁶ *Rollo*, p. 43.

²⁷ *Lui Enterprises, Inc. v. Zuellig Pharma Corp.*, 729 Phil. 440, 483 (2014).

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice
Chairperson, First Division