



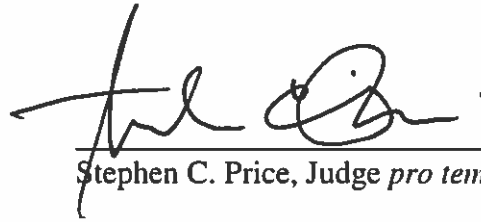
A necessary element for the establishment of an easement by necessity is that such easement must be “reasonably necessary to the enjoyment of the dominant estate...” *Palmer*, note 11. The court went on to say that in “making the reasonable necessity determination...” a court must consider “the reasonable needs, present and future, of the dominant estate...” (Citations omitted.) *Palmer* p. 17.

In the instant case, the Eatons propose residential use of their three lots. Residential use requires that a roadway be constructed—a mere hiking path would be insufficient. The proposed easement is in very steep terrain and is subject to the stringent development regulations of Loudoun County’s Mountainside Overlay District and Facility Standards Manual. Because the plaintiffs failed to establish that they could either comply with such regulations or obtain appropriate waivers, they did not establish that the county was likely to approve construction of a roadway to serve their three residential lots. Absent the likelihood of such approval, there is no “reasonable necessity” to imply a mere paper easement to encumber the Baer property. And without “reasonable necessity” a needed element to establish an easement by necessity is lacking. Moreover, the implication of a paper easement that encumbers the Baer property will not render the Eatons’ lots fit for occupancy or successful cultivation.

The judicial establishment of an easement by necessity is an equitable remedy. “In the administration of remedies, an equity court is not bound by the strict rules of the common law, but adapts its relief and molds its decrees to satisfy the requirements of the case. Its purpose is the accomplishment of justice, and it will administer such relief as the exigencies of the case demand.” *First Nat’l Exchange Bank v. Hughson*, 194 Va. 736, 753-754 (1953) (Buchanan, J. concurring.) (Citations omitted.) Under the facts of this case an easement by necessity should not be established.

Wherefore it is ORDERED that the Motion to Reconsider be, and hereby is, denied.

ENTERED this 27<sup>th</sup> day of September 2017



Stephen C. Price, Judge *pro tempore*