

**VIRGINIA  
REPORTS**

**JAN., FEB.,  
APRIL, 2009**

ATTACHMENT C - HARD BOUND VOLUME

SPINLE (aa.)

**CASES DECIDED**

IN THE

**SUPREME COURT  
OF VIRGINIA**

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Volume 277

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**January, February and April  
Sessions 2009**

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Supreme Court of Virginia  
Richmond  
2009

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**JUSTICES**  
OF THE  
**SUPREME COURT OF VIRGINIA**

DURING THE TIME OF THESE REPORTS

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LEROY ROUNTREE HASSELL, SR., *Chief Justice*  
BARBARA MILANO KEENAN  
LAWRENCE LARKINS KOONTZ, JR.  
CYNTHIA DINAH FANNON KINSER  
DONALD WAYNE LEMONS  
SAMUEL BERNARD GOODWYN  
LEROY FRANCIS MILLETTE, JR.

---

SENIOR JUSTICES  
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ROSCOE BOLAR STEPHENSON, JR.  
CHARLES STEVENS RUSSELL  
ELIZABETH BIRMINGHAM LACY

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EXECUTIVE SECRETARY  
KARL ROBERT HADE

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INFORMATION (cc.)  
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Sworn in as Attorney General February 27, 2009

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CITATION OF VIRGINIA  
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THOMAS M. HELMS, ET AL.

V.

JAMES L. MANSPILE, ET AL.

Record No. 072306

January 16, 2009

Present: All the Justices

*In a real property action, the trial court did not err in ruling that any easement the plaintiffs may have had over land owned by the defendants was abandoned, but erred in finding that the defendants had not established a claim to ownership of a disputed strip of land by adverse possession. The defendants' possession of the disputed parcel was actual, adverse to the plaintiffs, and exclusive, and such use was open and notorious. The use was continuous in excess of the statutory period of 15 years, and was asserted as a claim of right to the property. The judgment is affirmed in part, reversed in part, and the case is remanded.*

**Real Property – Easements – Wagon Roads – Abandonment – Proof by Clear and Convincing Evidence – Mere Nonuse of Easement – Intent to Abandon Easements – Acquiescence in Adverse Use for Period of Prescription – Adverse Possession – Exclusive, Open and Notorious Use – Continuous Use for 15 Years – Assertion of Claim of Right – Appellate Practice – Preservation of Objections to Rulings – Requirement of Affirmative Waiver or Abandonment After Objection is Made – Code § 8.01-384(A) – Rule 5:25**

In 1972 defendants bought land adjoining that of plaintiffs. The actual boundary line could not be determined because the descriptions in the deeds in both chains of title are inadequate to permit a surveyor to ascertain the property line. Defendants' property was enclosed within a fence when they acquired it in 1972. Defendants' predecessors in title grazed livestock on the enclosed parcel and had erected buildings on it, including a "smokehouse" that had been built over 65 years ago. Recently plaintiffs brought suit, seeking a declaration that they benefit from an easement crossing defendants' land. Defendants counterclaimed for an adjudication that they own a disputed rectangular strip of land 102 feet long by adverse possession. At the conclusion of a bench trial, the circuit court held that the plaintiffs did not have an easement over the defendants' property and – had an easement existed – it had been abandoned. The circuit court also ruled that the defendants had failed to establish their claim of ownership of the disputed land by adverse possession. This appeal followed.

1. Defendants preserved their right to challenge on appeal the circuit court's ruling on adverse possession. Code § 8.01-384(A) provides that no party, after having made an objection or motion known to the court, shall be required to make such

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