



IN THE CIRCUIT COURT IN AND FOR THE EIGHTH JUDICIAL CIRCUIT  
ALACHUA COUNTY, FLORIDA

HOWARD E. GREENO, JR. and VERDIE  
GREENO, husband and wife, and JEFFREY  
SCOTT GLASS and TRACY LYNN GLASS,  
husband and wife,

Plaintiffs,

vs.

MARY G. MCGINLEY, as Trustee and  
surviving Trustee UTD July 11, 1990,

Defendant.

CASE NO. 01 2008 CA 001033  
Division J

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Persons with a disability who need any accommodation in order to participate should call Jan Phillips, ADA Coordinator, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601 at (352) 337-6237 within two (2) working days of your receipt of this notice; if you are hearing impaired call (800) 955-8771; if you are voice impaired, call (800) 955-8770.

SUMMONS

THE STATE OF FLORIDA  
TO ALL AND SINGULAR THE SHERIFFS OF SAID STATE:  
GREETINGS:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint or Petition in the above-styled cause upon the Defendant:

GAINESVILLE REGIONAL UTILITIES, INC.  
c/o Robert E. Hunzinger, General Manager  
301 SE 4<sup>th</sup> Avenue  
Gainesville, FL 32601

*2nd Amended*  
*2-20-10*  
*10 AM*

Each Defendant is hereby required to serve written defenses to said Complaint or Petition on Plaintiff's attorney, whose name and address is:

STEPHEN H. KURVIN, ESQ.  
7 South Lime Avenue  
Sarasota, Florida 34237

**COPY**

within 20 days after service of this Summons upon that Defendant, exclusive of the day of service, and to file the original of said written defenses with the clerk of this court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against the Defendant for the relief demanded in the Complaint or Petition.

WITNESS my hand and the seal of said Court on this 19<sup>th</sup> day of January 2010.



CLERK OF CIRCUIT COURT

By: Mary Kay Casado  
Deputy Clerk

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CASE NO. 01 2008 CA 001033  
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**SECOND AMENDED COMPLAINT**

This action is filed by HOWARD E. GREENO, JR. and VERDIE GREENO, husband and wife, and JEFFREY SCOTT GLASS and TRACY LYNN GLASS, husband and wife, all of whom are tenants in common to real property in Alachua County, Florida, and said Plaintiffs sue the Defendant, MARY G. McGINLEY, as Trustee and surviving Trustee UTD July 11, 1990; CSX TRANSPORTATION, INC. (hereinafter "RAILROAD"); and GAINESVILLE REGIONAL UTILITIES, INC. (hereinafter "GRU") and state:

1. This is an action within the jurisdiction of the Circuit Court of Alachua County, Florida.
2. Plaintiffs are residents of Alachua County, Florida, and the real property which is the subject of this Complaint is located in Alachua County, Florida, and more accurately described below.

3. Defendant, MARY G. McGINLEY, as Trustee and surviving Trustee UTD July 11, 1990, is the owner of certain real property adjacent to the Plaintiffs' property and which is also the subject of this Complaint. MARY G. McGINLEY, as Trustee, resides in Marion County, Florida.

4. RAILROAD owns certain real property which is adjacent to Plaintiff's property and immediately abuts it to the south.

5. GRU owns real property which abuts Plaintiff's property and is immediately to the east.

**FACTS COMMON TO ALL COUNTS**

6. Plaintiffs are the owners of real property commonly known as Parcel Number 05897-000-000 which is landlocked.

7. The Plaintiffs' property is more accurately described on a Warranty Deed dated February 26, 2004, attached hereto as Exhibit "A". Said Warranty Deed was recorded in the Public Records of Alachua County on February 27, 2004 as Instrument # 2016997.

8. The legal description of the McGINLEY Trust property is more accurately described as: See Exhibit "B" attached hereto.

9. A map depicting both the Plaintiffs' property and the McGINLEY Trust property is attached hereto as Exhibit "C". The RAILROAD property lies to the south of Plaintiff's property and the legal description is not necessary to this Complaint as the RAILROAD property forms the entire southern boundary of Plaintiffs' "landlocked triangle".

GRU's property is approximately 1,200 acres and the legal description is not necessary to this Complaint as the GRU property forms the entire eastern boundary of Plaintiffs' "landlocked triangle".

10. There are three possibilities to provide access to the Plaintiffs' property for the use and benefit of GREENO and GLASS. The first possibility lies to the south of the property and is access to Northwest 120<sup>th</sup> Lane (Old State Road 25). However, the access would by necessity cross the ACL Railroad and the cost of erecting a railroad crossing would be prohibitive. The Plaintiffs mention the possibility as it is a requirement of Plaintiff's claim that the Court determine a practical way of necessity.

11. The second possibility for access is across the property of McGINLEY Trust and to the north of the GREENO property. The access would be to Northwest 128<sup>th</sup> Lane (County Road Northwest 26). Plaintiffs feel it is the most practical but may involve "use" of GRU's property to avoid wetlands on the Defendant's property.

12. The third possibility lies across GRU's property to the east. The possibility for access to the GRU property would involve moving the fence which is on the far western boundary of GRU's property as that border runs from the highway described in paragraph 10 on the south of Plaintiffs' property to the road described in paragraph 11 to the north to the public access road which is immediately north and forms the northern boundary of the Plaintiffs' property.

13. The Exhibits to the Complaint depict the Plaintiffs' and all three Defendants' property pictorially and are an accurate showing of Plaintiffs' "landlocked" condition.

**COUNT I - COMMON LAW WAY OF NECESSITY - ALL DEFENDANTS**

14. The allegations of the preliminary paragraphs are incorporated herein by reference. The allegations of the Facts Common to All Counts are incorporated herein by reference.

15. Plaintiffs claim a Common Law way of passage under Florida Statute § 704.01(1). Plaintiffs, and their predecessors in title, have used neighboring property through the years prior to the establishment of the fence by GRU and the railroad tracks by RAILROAD. To the extent that the historical use of the property establishes a Common Law Way of Necessity, Plaintiffs will request the court grant them a remedy under Florida Statute § 704.01(1) across one or more of the Defendants' properties as justified by the historical use of the property. In the alternative, if Plaintiffs are not granted a Common Law Way of Necessity under Florida Statute § 704.01(1), then they are entitled to a Statutory Way of Necessity under Florida Statute § 704.01(2).

16. If Plaintiff's claim to a Common Law Way of Necessity is denied, Plaintiffs claim a Statutory Way of Necessity under Florida Statute § 704.01 (2). All prerequisites for establishing the way of necessity exists in the Plaintiffs' case. There is no other practical egress or ingress from their property and the most reasonable and practical way is across the McGINLEY Trust property and a short stretch of GRU's property to avoid the wetlands.

17. GRU and the RAILROAD provide practical alternatives to the Plaintiffs for gaining access to its otherwise landlocked parcel of property. In the event the court denies Plaintiffs a Common Law way of access to their property, then Plaintiffs, in the alternative,

seek the establishment by the Court of the most practical means of access across one or all of the Defendants' properties.

18. Plaintiffs claim attorney's fees pursuant to Florida Statute § 704.04. Plaintiffs have requested permission and demanded the Defendant provide the easement and the Defendant has failed and refused to provide Plaintiffs with access.

**COUNT II - STATUTORY WAY OF NECESSITY - McGINLEY**

19. The allegations of the preliminary paragraphs are incorporated herein by reference. The allegations of the Facts Common to All Counts are incorporated herein by reference.

20. If Plaintiffs are denied a Common Law Way of Necessity, they are entitled to access across the McGINLEY Trust property.

21. Plaintiffs request that the Court establish a easement pursuant to the Statute cited twenty-two feet in width running from the Plaintiffs' property to County Road Northwest 26 over the east twenty-two feet of the McGINLEY Trust property. The easement would run approximately 1,252 feet from the Plaintiffs' property to the road and it would involve approximately .63 acres. If the court determines that access to Plaintiffs' property is most practical across GRU's property, then Plaintiffs request that the establishment of the easement be on GRU property to the north to the public road or to the south across GRU property and the RAILROAD property.

**COUNT III - STATUTORY WAY OF NECESSITY - GRU**

22. The allegations of the preliminary paragraphs are incorporated herein by reference. The allegations of the Facts Common to All Counts are incorporated herein by reference.

23. GRU lies immediately to the east of Plaintiff's landlocked triangle.

24. GRU maintains a fence around its property. It may be practical to remove the fence to allow Plaintiff access over the McGINLEY Trust property wetlands.

25. To the extent it is necessary and practical, Plaintiff requests that the Court grant it a Statutory Way of Necessity across GRU's property.

**COUNT IV - STATUTORY WAY OF NECESSITY - RAILROAD**

26. The allegations of the preliminary paragraphs are incorporated herein by reference. The allegations of the Facts Common to All Counts are incorporated herein by reference.

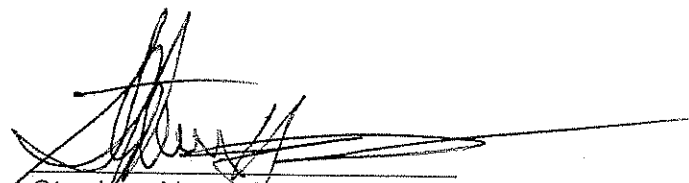
27. The railroad property constitutes the southern boundary of Plaintiff's property. If the court determines that it is impractical to grant a Statutory Way of Necessity across property of the McGINLEY Trust and the GRU property, the only other practical method of access to the property is across the RAILROAD right-of-way.

28. Plaintiff requests that the Court grant a Statutory Way of Necessity to the Plaintiffs and against the RAILROAD and require that the RAILROAD provide any and all railroad crossings, railroad crossing mechanisms, safety devices and warnings at the RAILROAD's expense.

WHEREFORE, Plaintiffs claim a Common Law way of access to their landlocked property. In the alternative, Plaintiffs are in need of access and egress from their property, their property is landlocked by the Defendants' property, they have demanded and been refused access by the Defendants and they are entitled to relief from the Court by the establishment of an easement and the cost of doing so because of the unreasonable refusal of the Defendants to comply with the law. The Plaintiffs demand the Court establish a Common Law Way of Necessity or in the alternative, a Statutory Way of Necessity to and from their property and award any and all other sums the Court deems equitable and proper including attorney's fees and costs.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail to JEFFREY R. DOLINGER, ESQ., 1 Southeast First Ave., P.O. Box 23109, Gainesville, FL 32602-3109, this 11<sup>th</sup> day of January 2010.



Stephen Henry Kurvin, Esq.  
Florida Bar No. 119458  
7 South Lime Avenue  
Sarasota, Florida 34237  
(941) 957-0222  
Attorney for Plaintiffs



WARRANTY DEED

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 2016997 1 PG  
2004 FEB 27 10:49 AM BK 2863 PG 10  
J. K. "BUDDY" IRBY  
CLERK OF CIRCUIT COURT  
ALACHUA COUNTY, FLORIDA  
CLERK10 Receipt#179043

This Warranty Deed made the 26 day of February, A.D. 2004

Jeffrey Scott Glass and his wife, Tracy Lynn Glass  
hereinafter called the grantor, to

Doc Stamp-Deed: 196.00

Howard E. Greeno, Jr., and his wife, Verdie Greeno  
Whose address is: 8620 NW 13<sup>th</sup> Street, Gainesville, FL 32653



104

#10

Witnesseth: That the grantor, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situated in Alachua County, Florida.

Begin at the Northeast corner of the Southeast Quarter of the Northeast Quarter of Section 28, Township 8 South, Range 19 East, and run South 88 deg. 37' 23" West, along the North line of said Southeast Quarter of the Northeast Quarter, a distance of 324.73 feet, more or less, to the intersection of the North boundary line of the Seaboard Coast Line right of way; thence run South 59 deg. 24' East, along said North right of way line a distance of 381.86 feet, more or less, to the East line of the said Section; thence North 1 deg. 15' West along the East Section line, a distance of 202.45 feet, more or less, to the Point of Beginning. Lying and being in Alachua County, Florida.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anyway appertaining.

To Have and to Hold, the same in fee simple forever. And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2002.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

Richard A. Haddon  
Witness

Jeffrey Scott Glass  
Jeffrey Scott Glass

Kevin E. Haddon  
Witness

Tracy Lynn Glass  
Tracy Lynn Glass

State of Florida  
County of Alachua

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County last aforesaid to take acknowledgments personally appeared Jeffrey Scott Glass and his wife, Tracy Lynn Glass known to me personally and/or who produced a drivers license and who executed before me the foregoing deed and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 26 day of February A.D., 2004.

(seal)

Jennifer Snowden  
NOTARY PUBLIC



Jennifer Snowden  
MY COMMISSION # DB191542 EXPIRES  
March 9, 2007  
BONDED THRU TROY FARM INSURANCE, INC.

11 A 11

The NW 1/4 of the NE 1/4 lying North of the A.C. L. R. R/W and the NE 1/4 of the NE 1/4 lying North of the A.C. L. R. R. R/W less the North 55 feet for road R/W and less; Commence at the NE corner of Section 28 T8S - R19E, thence run S 1 degree 15 feet E 55 feet, thence run S 88 degrees 42 feet W 660.0 feet to the point of beginning, thence run S 1 degree 15 feet E 155 feet, thence run S 88 degrees 42 feet W 210 feet, thence run N 1 degree 15 feet W 155 feet, thence run N 88 degrees 42 feet E 210 feet to the point of beginning. All being and lying in the NE 1/4 of Sec. 28 - T8S - R19E Also described as that part of Gov't Lots 1 & 2 lying North of the A.C. L. R. R. R/W less the North 55 feet for Road R/W and less; Commence at the NE corner of Sec. 28 - T8S - R19E, thence run S 1 degree 15 feet E 55 feet, thence run S 88 degrees 42 feet W 660.0 feet, to the point of beginning, thence run S 1 degree 15 feet E 155 feet, thence run S 88 degrees 42 feet W 210 feet, thence run N 1 degree 15 feet W 155 feet; thence run N 88 degrees 42 feet E 210 feet to the point of beginning. All being and lying in the NE 1/4 of Sec. 28 - T8S - R19E. Alachua County, Florida.

Less and except McGinley Industrial Park, Units No. 1 and 2 as recorded in Plat Book K, Page 48 and Plat Book N, Page 8, Public Records of Alachua County, Florida.

" B "

Map Title

#5. NW 128 Ln.  
CR 26

#4. McGinley

#3. GRU

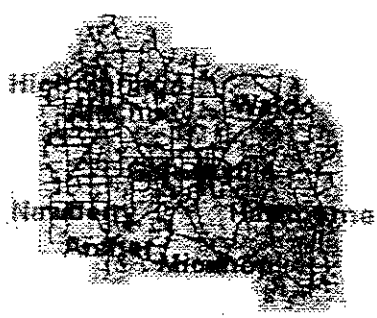
#1. Greeno

#6. NW 120 Ln.  
(old 25)

@2. Railroad

Alachua County Property Appraiser - Central Florida

ESRI



This map is prepared for the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The Alachua County Property Appraiser assumes no legal responsibility for the information contained on this map or in this website.



<http://WWW.ACPAFL.ORG>

“(C)”