IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-1685

HENRY H. BLANTON, as Trustee for
CAROLINE INVESTMENTS, INC.,
PROFIT SHARING PLAN,
Appellant,

vs.

CITY OF PINELLAS PARK, FLORIDA,
YALE MOSK & CO., and YALE MOSK,
an individual,
Appellees.

ON REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL

CASE NO. 2D02-1307

APPELLANT'S INITIAL BRIEF ON THE MERITS

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FEDERAL CASES

STATE CASES

STATUTES

OTHER AUTHORITY

INTRODUCTION

Appellant, Henry Blanton, owns a landlocked ten acre parcel of land in Pinellas County that sits unused and unproductive. He seeks access to his property by means of the statutory way of necessity provided by Section 704.01(2), Florida Statutes. This statute allows landlocked property owners to gain access to their property through neighboring lands by paying a reasonable fee for the right of access. Blanton is willing to pay a reasonable fee, but his neighbors, the Mosks, have refused to grant access.

This appeal stems from the trial court's ruling that Blanton's right to a statutory way of necessity is extinguished by Florida's Marketable Record Title Act ("MRTA"). The court based its reasoning on this Court's opinion in *H&F Land, Inc. v. Panama City-Bay County Airport and Indus. Dist.*, 736 So. 2d 1167 (Fla. 1999). The *H&F* opinion addresses MRTA's application to a common law way of necessity – a right of access based on an interest in the chain of title to a particular piece of property. On appeal, the Second District Court of Appeal recognized that *H&F* involved a common law way of necessity, not a statutory way of necessity, but affirmed based on *dicta* in *H&F* that suggests that MRTA applies to both common law and statutory ways of necessity. It therefore certified the following question of great public importance to this Court:

> Does the Marketable Record Title to Real Property Act, Chapter 712, Florida Statutes, operate to extinguish an otherwise valid claim of a statutory way of necessity when such claim was not timely asserted under the provisions of that Act?

See Order at 4.

In this brief, we show that MRTA has no application to statutory ways of necessity. First, a statutory way of necessity is not based on the chain of title. Because MRTA's purpose is to eliminate stale title claims, MRTA is inapplicable to a statutory way of necessity. Second, a statutory way of necessity is a legislative remedy created to benefit the public by avoiding the proliferation of landlocked pieces of land. A statutory way exists only when there is no right of access based on title and is not created until ordered by a court. Because the owner of a statutory way of necessity must pay a reasonable fee for its use, there is no prejudice to the original owner. Therefore, this Court should hold that MRTA does not apply to extinguish a statutory way of necessity.

STATEMENT OF THE CASE AND FACTS

On December 28, 1910, Pinellas Groves, Inc. conveyed the ten acre parcel now belonging to Henry Blanton to Blanton's predecessor in title, D.P. Baughman (R. 3 at ¶6).[1] The sale landlocked the property.[2] After the conveyance, the only reasonable and practical access to the property was through Pinellas Grove's land (R. 3 at ¶7).

Appellant Blanton purchased the landlocked ten acres from the estate of D.P._Baughman in 1975 (R. 683 at

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1 All facts come from the complaints filed in this case and must be accepted as true.

2 The fact that Blanton's land is landlocked is also verified in the 1984 Annexation Agreement in which appellee Pinellas Park annexed Mosk's property into the City (R._684 at ¶¶8-9). The Annexation Agreement entered into between Mosk and the City recognized that Blanton's property next door was landlocked and that access to Blanton's property was through Mosk's land (R. 685 at ¶13-14).

¶2; R. 5 at ¶15).[3] Appellees, Yale Mosk & Co. and Yale Mosk (collectively "Mosk") now own the Pinellas Groves property to the South and West of Blanton's property (R. 684 at ¶9; R. 687 at ¶22). Mosk's property has been platted as the Knollwood Industrial Park (R. 684 at ¶4; R. 686 at ¶16). A map of the property is attached as an Appendix to this brief.

Blanton has since attempted to negotiate a reasonable fee for use of the right of access contemplated by the annexation agreement. Mosk's response was to ask $1.15 million from Blanton for his right to utilize a small, 60-foot strip of land (R._690 at ¶34). The property appraiser has assessed this strip of land at $18,100. If fact, in 1990 Mosk successfully convinced the property appraiser to reduce the assessed value of the 60-foot strip from $45,700 to $18,100 based on the fact that the only permitted use was an access easement to Blanton's property (R. 690 at ¶36).

Along with demanding an exorbitant fee for access over its property, Mosk has taken additional steps to restrict Blanton's property from access to public roads. For example, Mosk built a retention pond along the entire western boundary of Blanton's property which has eliminated Blanton's ability to access any road through the western boundary of his property (R. 686 at ¶18.) Moreover, after purchasing the land surrounding Blanton's property, Mosk drafted a "Declaration of Restrictions" that restricts those lots to the exclusive use of the owners of the lots and grants Mosk the right to control the manner in which any of

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3 The property was actually purchased by Blawar Investments, Inc. of which Blanton was President (R. 5 at ¶15). Blawar subsequently sold the property to appellant Henry Blanton as trustee for Caroline Investments Inc. Profit Sharing Plan (R. 689 at ¶30). For ease of reference the appellant owner of the landlocked property will be referred to as "Blanton."

these lots are used. (R. 687 at ¶¶23-24) This control would include the right to prevent the lot owners from granting access over their lot to Blanton.

Mosk has exercised this control. On February 15, 1988, Mosk conveyed one of the lots' abutting Blanton's property to a third party. The deed contains a restriction that prevents the purchaser from allowing the property to be used for ingress or egress to Blanton's property (R. 688 at ¶26). Mosk has conveyed other lots abutting Blanton's property and has imposed similar restrictions preventing access (R. 689 at ¶28). As a result of these restrictions, Mosk's property remains the only viable reasonable and practical means of access to Blanton's property (R._689 at ¶29).

Blanton filed suit in the Pinellas County Circuit Court against Mosk and the City of Pinellas Park to force Defendants to allow him to access his land (R. 1). Blanton based his right to access his property on two theories. First, Blanton argued that he was entitled to a statutory way of necessity under Section 704.01(2), Florida Statutes so long as he paid a reasonable fee for his use of Mosk's property (R. 691-94). Section 704.01(2) recognizes a "statutory way of necessity" that guarantees any owner of a landlocked piece of land the right to access the nearest practicable public or private road through neighboring lands.[4] The

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4 The Complaint alleges that Blanton must cross Defendants' property to access the nearest practicable road (R. 689 at ¶29; R. 691 at ¶42).

statute limits this unconditional right of access with the restriction that the landlocked property owner pay reasonable compensation to the owner of the neighboring property to recompense for any burden imposed by the right of access. Blanton also argued that he was entitled to access his property through Mosk's property because he qualified as a third party beneficiary to an easement pursuant an Annexation Agreement entered into between Mosk and the City of Pinellas (R. 694-703).

The trial court dismissed Blanton's complaint, holding that Blanton's right to a statutory way of necessity was extinguished by Florida's Marketable Record Title Act based on this Court's decision in *H&F Land, Inc. v. Panama City-Bay County Airport & Indus. Dist.*, 736 So. 2d 1167 (Fla. 1999) (R. 719-22). The Court also ruled that Blanton was not a third party beneficiary under the Annexation Agreement. *Id.* On appeal, the Second District Court of Appeal affirmed the trial court's decision based on the *H&F* case, but certified the following question to this Court:

> Does the Marketable Record Title to Real Property Act, Chapter 712, Florida Statutes, operate to extinguish an otherwise valid claim of a statutory way of necessity when such claim was not timely asserted under the provisions of that Act?

See Order at 4. The Court reasoned that this Court had not yet fully considered MRTA's effect on statutory ways of necessity because "*H&F* arose in the context of a common law way of necessity and the supreme court's reference to statutory ways of necessity appears only in the stated holding." *Id.* Blanton's petition for discretionary review followed.

SUMMARY OF THE ARGUMENT

Blanton is entitled to the statutory way of necessity across Mosk's land provided by Section

704.01(2). Statutory ways of necessity exist as a legislation safety valve to prevent valuable land from remaining landlocked and useless. They are inherently different from common law ways of necessity. A common law way of necessity is a title interest created when a common grantor creates landlocked property by selling property without granting access to the property. In such circumstances, the common law implies an easement over the grantor's property as part of the grant.

By contrast, a statutory way of necessity has nothing to do with title – the statutory access granted by Section 704.01(2) is based on a legislative determination that landlocked property owners should have a right of access even though they have no interest in the title to the property. A statutory way of necessity is a newly created right, independent of any title interest, that is created by a court upon the payment of the reasonable costs for the access right.

MRTA operates to extinguish stale interests in title and therefore applies to common law ways of necessity. But statutory ways of necessity have nothing to do with the chain of title, and therefore, there is no justification for applying MRTA to statutory ways of necessity.

Applying MRTA to extinguish statutory ways of necessity is incompatible with the Legislature's determination that all property should be accessible to a public road and would create landlocked parcels of useless land all over Florida. Indeed, no Court in Florida has ever applied MRTA to extinguish a

statutory way of necessity, and counsel for Blanton cannot find *any* case in *any* jurisdiction where MRTA or its equivalent has extinguished a statutory way of necessity. Therefore, this Court should hold that MRTA cannot extinguish a statutory way of necessity, and remand this case to the trial court so that it can determine a reasonable fee for access to Blanton's property.

ARGUMENT

This case concerns the applicability of MRTA to statutory ways of necessity. Because this case concerns a pure issue of law, it should be reviewed *de novo*. *See Parker v. State*, 843 So. 2d 871, 874 (Fla. 2003). Section 704.01(2) grants a landlocked property owner a statutory way of necessity to access his or her land through neighboring property for purposes of "public policy, convenience and necessity." *Id.* A person is entitled to a statutory way of necessity at any time property becomes landlocked. The right can be enforced by filing an action in circuit court. If the parties cannot agree on the conditions of access, the court determines the nearest practicable route and the reasonable price that the landlocked landowner must pay for the right of access.

Statutory ways of necessity avoid the unnecessary creation of landlocked parcels of property. The statute is predominantly intended to benefit the public and only incidentally to benefit the private owner.

See *Deseret Ranches of Florida, Inc. v. Bowman*, 349 So. 2d 155, 156 (Fla. 1977). As the Court in *Deseret* explains:

> Useful land becomes more scarce in proportion to population increase, and the problem in this state becomes greater as tourism, commerce and the need for housing and agricultural goods grow. By its application to shut-off lands to be used for housing, agriculture, timber production and stock raising, the statute is designed to fill these needs. There is a clear public purpose in providing means of access to such lands so that they might be utilized in the enumerated ways....

Id. at 156-57.

Florida Courts have systematically recognized the right of landlocked property owners to access their property. When Florida property owners prove that the only practical way they can access their land is through neighboring property, they are entitled to a statutory way of necessity. *See Perkins v. Smith*, 794 So. 2d 647 (Fla. 2d DCA 2001); *Bell v. Cox*, 642 So. 2d 1381 (Fla. 5th DCA 1994); *Faison v. Smith*, 510 So. 2d 928 (Fla. 5th DCA 1987); *Sapp v. Gen. Develop. Corp.*, 472 So. 2d 544 (Fla. 2d DCA 1985); *Franklin v. Boatright*, 399 Sp. 2d 1132 (Fla. 1st DCA 1981). The Court is *Deseret* summarizes the need for statutory ways of necessity, commenting that "sensible utilization of land continues to be on of our most important goals." *Deseret*, 349 So. 2d at 156.

COMMON LAW VERSUS STATUTORY WAYS OF NECESSITY

A statutory way of necessity under Section 704.01(2) should not be confused with the common law

way of necessity recognized by Section 704.01(1). A common law way of necessity is created "(1) when a grantor conveys land to another to which the only access is over the grantor's land, or (2) when the grantor retains land that is inaccessible except over the land he conveys." *See* THE FLORIDA BAR CONTINUING LEGAL EDUCATION, FLORIDA REAL PROPERTY PRACTICE I §12.8 (2nd ed. 1971). Put simply, when a grantor conveys land and the only way of access to that land is across the grantor's land, the law implies that the grantor also conveys a right of access as part of the original grant. Thus, the grantee has an implied interest in title (for which the grantee need pay no additional compensation). *See H&F Land, Inc. v. Panama City-Bay County Airport and Indus. Dist.*, 736 So. 2d 1167, 1173 (Fla. 1999) (common law way of necessity "constitutes a recognized legal interest in land."). In other words, a common law way of necessity is a right that is based in the chain of title.

This common law *implied* right of access is precisely the opposite of the statutory way of necessity which, as discussed above, is legislatively created as a last resort only when a party has no actual or implied title interest giving rise to a right of access. In fact, any person claiming a statutory way of necessity *cannot* have any title-based claim to the right of access. *See Hancock v. Tipton*, 732 So. 2d 369 (Fla. 2d DCA 1999) (court can grant statutory way of necessity only if the landlocked owner has no common law right of access); *Ganey v. Byrd*, 383 So. 2d 652 (Fla. 1st DCA 1980) (statutory way of necessity can be granted

only is the plaintiff has no other right of access by express or implied grant). A statutory way of necessity arises when property becomes landlocked, regardless of a common grantor, and is based on "public policy, convenience, and necessity." Section 704.01(2). Unlike a common law way of necessity, a statutory way of necessity can be enforced *at any time the property becomes landlocked* by filing an action in circuit court. If the parties cannot agree on the conditions of access, the court then determines the nearest practicable route and the reasonable price that the landlocked landowner must pay for the right of access. Unlike with a common law way of necessity, an owner of a statutory way of necessity is required to pay a reasonable price for the right of use. Thus, a statutory way of necessity is not based in the chain of title and is a legal remedy created to prevent the creation of landlocked pieces of land.

THE MARKETABLE RECORD TITLE ACT

MRTA vests marketable record title to property owners who have held record ownership in property for 30 years or more. Its purpose is to extinguish outdated *claims against the title* to a particular property, and to limit the extent of the title search. *See* Section 712.10 (MRTA's purpose is to simplify and facilitate land title transactions); THE FLORIDA BAR CONTINUING LEGAL EDUCATION, FLORIDA

REAL PROPERTY PRACTICE I §6.1 (2nd ed. 1971).[5] Any person who has any claim to the title of a particular piece of property needs to assert that claim within 30 years of its existence or it will be extinguished.

MRTA SHOULD NOT APPLY TO STATUTORY WAYS OF NECESSITY BECAUSE STATUTORY WAYS OF NECESSITY ARE NOT BASED IN THE CHAIN OF TITLE.

MRTA applies to common law ways of necessity. MRTA was created to resolve conflicts in title. A common law way of necessity is an example of an interest in title, arising from an implied grant of access to landlocked property. *See H&F Land, Inc. v. Panama City-Bay County Airport and Indus. Dist.*, 736 So. 2d 1167, 1171-72 (Fla. 1999). Thus, like any other claim based on the chain of title, if a common law way of necessity is not asserted within the 30 year limitation period of MRTA, the claim is extinguished. As this Court noted in *H&F*, a common law way of necessity is "more than a mere personal privilege; it is an interest in land," and that MRTA is designed to extinguish stale claims in the "record title to land" and to clear "old interest

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See also City of Miami v. St. Joe Paper Co., 364 So. 2d 439, 442 (Fla. 1978) (holding that MRTA is a "curative act in that it may operate to correct certain defects which have arisen in the execution of instruments in the chain of title); *Wilson v. Kelley*, 226 So. 2d 123, 126 (Fla. 2d DCA 1969) (holding that MRTA's purpose is to simplify the land title examination); *Whaley v. Wotring*, 225 So. 2d 177, 181 (Fla. 1st DCA 1969) (holding that the purpose of MRTA is to simplify title searches); *Holland v. Haffanay*, 438 So. 2d 456, 461 (Fla. 5th DCA 1983) (bolding that the purpose of MRTA is to clearn an existing title of formal irregularities in title).

of record." *H&F*, 736 So. 2d at 1171, 1172

Statutory ways of necessity are different, because they exist any time property becomes landlocked, and are not rooted in a chain of title. *See* Section 704.01(2) (statutory way of necessity is "exclusive" of any common law right of access). A statutory way of necessity is not an "implied grant of a way of necessity" as a common law way of necessity is; instead, it is simply an ongoing legislatively created right to enter land so long as the party entitled to the statutory way of necessity pays a reasonable price for the access, subject to the court's determination of the nearest practicable route. Statutory ways of necessity have nothing to do with the "title" to property; instead they serve as a remedy created by the legislature to benefit the public as a whole by ensuring that Florida land does not lie inaccessible and fallow.

In other words, the beneficiary of a statutory way of necessity is entitled to access his landlocked property despite the fact that he or she has absolutely no title-based claim to such a right of access. Statutory ways of necessity are intended as a last resort when the landlocked owner has no other legal interest in the property that would entitle the owner to a right of access.[6]

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It is also settled that statutory ways of necessity apply to all landlocked parcels of property; its validity does not diminish even if an owner willfully purchases a landlocked parcel of land. This is because the statute is designed to benefit the public's interest in preventing landlocked property, not merely to benefit the private landowner. *See Deseret Ranches of Florida, Inc. v. Bowman*, 349 So. 2d 155, 156 (Fla. 1977).

MRTA's purpose to clear stale title claims has nothing to do with statutory ways of necessity that arise outside the chain of title. Applying MRTA to statutory ways of necessity is directly contrary to the intent and purpose of Section 704.01(2). Therefore, because a statutory way of necessity is founded on public policy concerns, and is not rooted in the chain of title; it is beyond the confines of MRTA.

THIS COURT HAS NOT HELD THAT MRTA CAN EXTINGUISH A STATUTORY WAY OF NECESSITY.

Defendants argued below that this Court has already held that MRTA extinguishes statutory ways of necessity in *H&F Land, Inc. v. Panama City-Bay County Airport & Indus. Dist.*, 736 So. 2d 1167 (Fla. 1999). Defendants' argument is misplaced because *H&F* deals with common law ways of necessity, not statutory ways of necessity. As shown below, the opinion's isolated reference to statutory ways of necessity is *dicta* and should not be relied on as precedent.

H&F involved the transfer of a piece of property in 1940 that created a common law way of necessity at the time of the transfer. Thus, as a result of this 1940 transfer, H&F had an implied easement over its neighbor's property. H&F and its predecessors in title let that implied title interest become stale and did not file any notice of its claim to a common law way of necessity in the public records. In 1996, some fifty-six years following the creation of the common law way of necessity, H&F filed a lawsuit to assert its

common law way of necessity based on the 1940 transfer of title. Significantly, H&F did not assert a statutory way of necessity in the case. The trial court held that H&F's 56-year old claim based on the 1940 implied grant was stale and therefore extinguished.

The First District affirmed, agreeing that H&F's stale claim was barred by MRTA. The court recognized, however, that the issue was of first impression and raised important policy issues worthy of this Court's attention. Accordingly, the First District Court of Appeal certified the following question to this Court:

> Does the Marketable Record Title Act, Chapter 712, Florida Statutes, operate to extinguish an otherwise valid claim of a *common law way of necessity* when such a claim was not asserted within thirty years?

See H&F Land, Inc. v. Panama City-Bay County Airport & Indus. Dist., 706 So. 2d. 327, (Fla. 1st DCA 1998) *(emphasis added).* The First District's decision and certified question contain no references to statutory ways of necessity.

This Court accepted jurisdiction and held that MRTA extinguished H&F's interest in the property. Because Panama City-Bay County Airport had been vested with the rights to the property for over 30 years, and H&F had not done anything to pursue its purported 1940 interest in title during that time, this Court reasoned that H&F could no longer assert its interest in the property arising out of the 1940 implied grant.

The facts of *H&F* are clearly limited to common law ways of necessity. The *H&F* opinion never

addresses statutory ways of necessity, and the analysis centers only around common law ways of necessity. For example, this Court states: "In fact, Florida appellate courts have consistently applied MRTA to easements and rights of way in situations similar to the one involved herein." *See id.* at 1172. The court cites *City of Jacksonville v. Horn,* 496 So. 2d 204 (Fla. 1st DCA 1986) and *Holland v. Hattaway*, 438 So. 2d 456 (Fla. 5th DCA 1983) to support this claim. Notably, neither *Horn* nor *Holland* involve statutory ways of necessity. In fact, *nowhere* did this Court analyze cases MRTA's application to statutory ways of necessity.

The trial court's reliance on *H&F* rests, not on the this Court's analysis (which applies only to common law ways of necessity) but rather on one line of *dicta* in the beginning of the *H&F* opinion. After reciting the certified question posed by the First District, the opinion states: "we answer the certified question in the affirmative and hold that statutory or common law ways of necessity are subject to the provisions of [MRTA]." *Id.* at 1170. The opinion contains no explanation for the inclusion of statutory ways of necessity in the answer to the question. Indeed, two paragraphs later this Court correctly restates the issue as the effect of MRTA on the way of necessity codified by Section 704.01(1) (which describes the common law, not statutory, way of necessity).

Because *H&F* only involved facts relating to a common law way of necessity, and the determination of the action rested solely on the interpretation of MRTA as it effected common law ways of necessity, any

mention of statutory ways of necessity was unnecessary to the determination of the case and constitutes *dicta.*[7] *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67 (1996) (a court is only bound to the portions of an opinion necessary to the result of the case); *State ex rel. Biscayne Kennel Club v. Bd. Of Bus. Regulation*, 276 So. 2d 823 (Fla. 1973) (statements that are not essential to a decision are without force as precedent); *Dobson v. Crews*, 164 So. 2d 252 (Fla. 1st DCA 1964) (an expression beyond what is necessary to decide a narrow issue involved in an appeal is *obiter dictum*).

In fact, it does not even matter if *obiter dictum* is couched in what appears to be an overreaching holding. For example, in *Odom v. Deltona Corp.*, 341 So. 2d 977 (Fla. 1976), this Court held that "beds underlying navigable waters previously conveyed are extinguished by [MRTA]." This statement had nothing to do with the underlying case, and as a result, the Court later retracted this *"dicta"* in *Coastal Petroleum Co. v. American Cynamid Co.*, 492 So. 2d 339 (Fla. 1986). The Court stated in *Coastal Petroleum*, "we

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Dicta, often referred to as *obiter dicta*, is any judicial comment made during the course of delivering a judicial opinion "that is unnecessary to the decision in the case and therefore not precedential (though it may be considered persuasive)." BLACK'S LAW DICTIONARY (7th ed. 1999). William M. Lile, author of *Brief Making and the Use of Law Books*, explains *dicta*: "Strictly speaking, an 'obiter dictum' is a remark made or opinion expressed by a judge, in his decision upon a cause, 'by the way' - - that is, incidentally or collaterally and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion. . .In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as 'dicta' or 'obiter dicta,' these two terms being used interchangeably." William M. Lile, et al., BRIEF MAKING AND THE USE OF LAW BOOKS 304 (3d. ed. 1914).

went [beyond the factual situation presented in *Odom*] to answer irrelevant arguments put to us by the parties and in answering one such argument concluded that MRTA was applicable . . . "to beds underlying navigable waters . . . " The statements concerning the effect of MRTA on navigable water beds were *dicta* and are non-binding in the instant case inasmuch as there were no navigable waterbeds at issue in *Odom*."

Id. at 344.[8] Thus, this Court should withdraw from the *dicta* set forth in the *H&F* opinion, and should hold that MRTA cannot apply to extinguish a statutory way of necessity.

PUBLIC POLICY COMPELS THE CONCLUSION THAT MRTA SHOULD NOT APPLY TO STATUTORY WAYS OF NECESSITY.

It is important that the public policy behind statutory ways of necessity remains viable. The statutory way of necessity is essentially a legislative safety valve designed to prevent land from remaining landlocked.[9] For example, one important purpose of the statutory way of necessity is to prevent property from becoming landlocked when a common law way of necessity does not exist or is extinguished. This

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The dicta in *H&F* is arguably more egregious than the *dicta* in *Odom*. There is no indication in *H&F* that any party even briefed the issue of statutory ways of necessity. Thus, this Court in *H&F* not only answered a question unnecessary to the opinion, it answered a question that was never asked.

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If the Legislature had intended for MRTA to apply to a statutory way of necessity, it could have said so. For example, in Florida Statute Section 704.05, the Legislature specifically states that MRTA can apply to extinguish easements for mining purposes.

policy is predominantly intended to benefit the public and only incidentally to benefit the private landowner. *See Deseret Ranches of Florida, Inc. v. Bowman*, 349 So. 2d 155, 156 (Fla. 1977).

Applying MRTA to extinguish statutory ways of necessity would create harmful results. Theoretically, once MRTA applied to extinguish the right to the statutory way of necessity, the landlocked property would *always* be landlocked and could never become accessible. Thus, if defendants are correct, Blanton's property is landlocked for all time. MRTA would bar all future owners of the property from asserting further statutory ways of necessity, (as any potential statutory way of necessity would have been extinguished now by MRTA), and the property would remain permanently useless, wasted land. Eventually, this policy would create landlocked parcels of land all over Florida, the very problem Fla. Stat. 704.01(2) was designed to cure by creating statutory ways of necessity as a remedy of last resort.

Moreover, such a ruling would be inconsistent with numerous Florida court opinions emphasizing the importance of utilizing all of Florida's natural resources. Florida Courts value the importance of the accessibility of land, and regularly recognize the right of landlocked property owners to access their property when they can prove that the only practical way they can access their land is through neighboring property. As the Second District Court of Appeal stated, "a landlocked owner *always* has either a common law way of necessity or a statutory way of necessity." *See Sapp v. General Dev. Corp.*, 472 So. 2d 544 (Fla. 2d

DCA 1985). *See also Deseret Ranches*, 349 So. 2d 156-57 (there is a clear public purpose in ensuring access to landlocked property); *Perkins v. Smith*, 794 So. 2d 647 (Fla. 2d DCA 2001); *Bell v. Cox*, 642 So. 2d 1381 (Fla. 5th DCA 1994); *Faison v. Smith*, 510 So. 2d 928 (Fla. 5th DCA 1987); *Sapp v. Gen. Develop. Corp.*, 472 So. 2d 544 (Fla. 2d DCA 1985); *Franklin v. Boatright*, 399 So. 2d 1132 (Fla. 1st DCA 1981).[10] This same public policy has been expressed by the courts of other states.

Additionally, attempting to apply MRTA to a statutory way of necessity is difficult, because there is no clear indication of when to "start the clock." With a common law way of necessity, MRTA's thirty-year timeclock clearly starts when the parcel of land is sold and the property becomes landlocked through the sale – at that point the common law way of necessity as an interest in title attaches and MRTA's timeclock begins to run. But a statutory way of necessity does not have such a clear beginning - a statutory way of necessity *always* exists. Unlike with a common law way of necessity, a statutory way of necessity is not "born" when the landlocked parcel is created, but continually "exists" so long as property is landlocked. *See*

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See Ferguson Ranch, Inc. v. Murray, 811 P.2d 287, 289 (Wyo. 1991) (the purpose of eliminating landlocked land is to make full utilization of land for productive purposes); *Sorenson v. Czinger*, 852 P.2d 1124, 1129 (Was. Ct. App. 1993) (there is a public policy to prevent landlocked land from being rendered useless); *Leaf River Forest Products, Inc. v. Rowell*, 819 So. 2d 1281, 1284 (Miss. Ct. App. 2002) ("public policy supports a buyer's right to use, occupy and enjoy his otherwise useless, landlocked property"); *Condry v. Laurie*, 41 A.2d 66, 68 (Md. Ct. App. 1945) (public policy favors full utilization of land).

Section 704.01(2) (describing a statutory way of necessity in the present tense and setting forth the circumstances under which a statutory way of necessity "exists.") If a statutory way of necessity is said to have a "beginning" date at all, it should begin after a court has determined that a statutory way of necessity exists, after the court has designated the appropriate route for the statutory way of necessity, after the court has assigned a reasonable compensation to be paid for the statutory way of necessity, and after this compensation has been paid. This is in accordance with Florida Statute Section 704.04, which states that "the [statutory way of necessity] *shall date from the time the award is paid.*" *See id.* Therefore, even if this Court were to find that MRTA applies to a statutory way of necessity, Blanton's thirty-year time clock has not yet been started.

Put simply, a statutory way of necessity is a legislatively granted interest that is not created until ordered by the court and until the plaintiff pays full value. MRTA, which is designed to eliminate stale claims, cannot extinguish an interest that has not yet even been created. Our research has uncovered no case in Florida or for that matter no case anywhere in the country where the statutory equivalent of MRTA was applied to extinguish a statutory way of necessity. Therefore, this Court should hold that MRTA does not apply to statutory ways of necessity and reverse the judgment below.

CONCLUSION

For all the foregoing reasons, this Court should hold that MRTA does not extinguish statutory ways of necessity, reverse the decision below, and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Attorney for Appellant

CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Appellant, Henry H. Blanton, certifies that this Initial Brief is typed in 14 point (proportionately spaced) Times New Roman, in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

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Attorney