*Okefenoke Rural Electric Membership Corportation v. Dayspring Health, LLC*, No. 1D18-4059, 2020 WL 3988490 (Fla. 1st DCA July 15, 2020)

**First DCA Grants Electric Company Prescriptive Easement Over Private Property From Mistaken Placement of Utility Poles Fifty Years Prior**

Okefenoke Rural Electric Membership Corporation ("OREMC") erected power poles and transmission lines on a right-of-way belonging to the Florida Department of Transportation along U.S. Route 301 in the 1950's. OREMC inadvertently placed several poles outside of the right-of-way on private property. Dayspring Health, LLC ("Dayspring") was deeded the property about fifty years after the utility lines were placed on it. Dayspring's owner, upon noticing that the utility lines were on his property, filed suit against OREMC, claiming that he did not consent to the use of the lines on his property.

At trial, the main issue was whether a prescriptive easement existed for OREMC, which would grant OREMC the property without providing just compensation to Dayspring. The evidence presented at trial supported the conclusion that neither OREMC, nor the prior property owners, believed that the utility lines were on private property until fifty years later when the property was deeded to Dayspring. The lower court ruled in favor of Dayspring, stating that no prescriptive easement existed. It reasoned that the "presence of the power poles was never adverse because they were in place only with the consent of the property owners and that the electricity they supplied benefited the owners."

The First DCA reversed, holding that OREMC has a prescriptive easement because the prior property owners did not grant OREMC permission to place the utility poles on their property. In order to acquire a prescriptive easement, the use must be adverse or without permission from the owner. Dayspring argued that there was no adverse use of the property because all of the prior owners consented to the presence of the utility poles. The Court rejected this argument, reasoning that the evidence in this case demonstrates that no prior owner of the property (or OREMC) previously knew that the power poles were on private property, and thus no consent or permission was granted. Additionally, the Court noted that Dayspring's own complaint alleged that no one knew the utility poles were on private property until about fifty years after they were put there, supporting the notion that landowners cannot be unaware that their property is being used and simultaneously consent to its use to avoid a prescriptive easement.

Lastly, the Court quickly rejected the trial court's reasoning that there was no adverse use of the property because the utility poles benefited all the prior property owners with electricity. It stated there was no precedent to support this theory and that if it were the case, no public utility would be entitled to a prescriptive easement, which is in clear contrast with the law.