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Sharp Curves Ahead: Analyzing Dedications to Public Use in Louisiana after Webb v. Franks Investment Co.

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INTRODUCTION

One hundred years ago, your ancestor-in-title granted to the parish government a narrow strip of land that bisected his property so that a public highway could be constructed. To this end, he executed a simple yet ambiguous document, which stated: "I hereby dedicate this land to the public use for a public road. This property is to be used for public road purposes only." Years later, after acquiring the property from your ancestor-in-title, you decide to sell the land but retain the mineral rights. Mineral production has been continuous on the land since you retained the mineral rights but only on one side of the highway. After ten years, the surface owner of the land challenges your rights to the minerals on the dormant side of the highway, claiming that part of your mineral servitude has prescribed through non-use. He argues that your ancestor-in-title's century-old document transferred ownership of the narrow strip of land to the government, creating two separate estates and therefore two separate servitudes separated by the highway.[1] As such, the mineral operations on one side of the highway would not interrupt prescription on the other side.

These were the facts considered by the Louisiana Second Circuit Court of Appeal in *Webb v. Franks Investment Co*.[2] Unfortunately, the existing law is rather unclear with respect to these types of transfers of property, known as "formal" dedications to public use, and the Second Circuit did little to clarify the law. The court ultimately decided that the dedication conveyed a servitude, but the three conflicting opinions from the panel reveal the state of confusion that plagues the law of dedication.[3]

Dedication to public use has been defined as "the act of appropriating private land to the public for any general or public use."[4] After land has been dedicated, the "dedicator" cannot

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1. *See* LA. REV. STAT. ANN. § 31:73 (2000) ("A single mineral servitude may not be created on two or more noncontiguous tracts of land.").
2. *See* Webb v. Franks Inv. Co., 105 So. 3d 764 (La. Ct. App. 2012).
3. *Id.* at 771.
4. William G. Bredthauer & Shawna Snellgrove Rinehart, *Ownership and Leasing of Minerals Under Highways and Right-of-Ways*, 16 TEX. WESLEYAN L. REV. 3, 6 (2009) (quoting Scott v. Cannon, 959 S.W.2d 712, 718 (Tex. Ct. App. 1998)).

interfere with the public's right to full enjoyment of the land.[5] Because dedications are typically gratuitous transactions, they are often analogized to gifts or donations.[6]

In Louisiana, dedication to public use is not identified by the Civil Code as a method by which landowners may transfer an interest in their properties.[7] In fact, there is relatively little legislative guidance on dedications to public use.[8] Nevertheless, over the course of almost two centuries, Louisiana courts have developed a substantial body of jurisprudence on the subject.[9] In this jurisprudence, the courts have identified different methods or "modes" by which a dedication may be executed, with each mode having unique requirements and effects.[10] Currently, Louisiana recognizes four distinct modes of dedication: statutory, tacit, implied, and formal.[11]

Formal dedication is the most unsettled of the four modes of dedication. Recognized by Louisiana courts only 30 years ago, formal dedication is defined as a dedication executed by a written act.[12] In particular, one critical question regarding the law on formal dedications remains unanswered: What type of property right is transferred to the public?[13] Whereas some courts have strongly adhered to the principle that formal dedications vest ownership in the public absent express intent to the contrary,[14] other courts have expressly stated and implied the opposite principle—that a statement of dedication must specifically contain an intent to convey ownership in order to actually convey ownership to the public.[15] Because dedication disputes affect the ownership of valuable real estate, Louisiana courts need to agree

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5. *Id.*

6. *See* Note, *Public Ownership of Land Through Dedication*, 75 HARV. L. REV. 1406, 1406 (1962).

7. *See* A.N. YIANNOPOULOS, PROPERTY § 95, *in* 2 LOUISIANA CIVIL LAW TREATISE 208 (4th ed. 2001).

8. *See* St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218, 221 (La. 1996) (citing Garrett v. Pioneer Prod. Corp., 390 So. 2d 851, 854 (La. 1980)).

9. *See infra* Part I.

10. *St. Charles*, 674 So. 2d at 221.

11. *Id.*

12. The first case to explicitly recognize formal dedication was *Anderson v. Police Jury of E. Feliciana Parish*, 452 So. 2d 730 (La. Ct. App. 1984).

13. *See infra* Part I.

14. *See, e.g.*, *Anderson*, 452 So. 2d at 730; Schmit v. St. Bernard Parish Police Jury, 504 So. 2d 619, 622 (La. Ct. App. 1987) (citing *Anderson*, 452 So. 2d 730).

15. *See, e.g.*, S. Amusement Co., Inc. v. Pat's of Henderson Seafood & Steak, Inc., 871 So. 2d 630 (La. App. Ct. 2004); Webb v. Franks Inv. Co., 105 So. 3d 764, 769–70 (La. Ct. App. 2012).

on a framework that will produce a consistent and predictable body of law.

Part of this problem is rooted in Louisiana's history. Prior to the development of the oil and gas industry in Louisiana, the question of public ownership of dedicated lands received far less jurisprudential treatment since courts were only concerned with whether the surface of the property was subject to public use.[16] Another source of this problem is the failure of Louisiana courts to follow a uniform framework for interpreting the language of dedication documents. Although the Louisiana Supreme Court suggested that formal dedications presumptively transfer ownership to the public in the 1996 case of *St. Charles Parish School Board v. P & L Investment Corp.*,[17] some of the lower courts have since ignored the Supreme Court's guidance, resulting in a confusing legal landscape.[18]

This Note argues that the majority in *Webb v. Franks Investment Co.* applied an incorrect standard for determining when formal dedications transfer ownership.[19] Part I traces the history of dedication law in Louisiana, highlighting the varying, inconsistent approaches taken by Louisiana courts. Part II discusses the *Webb* decision and sets forth the arguments in *Webb*'s majority, concurring, and dissenting opinions. Part III critiques the *Webb* majority's departure from the view of most Louisiana courts that formal dedications, unless stated otherwise, transfer ownership and explores the opinion's troubling effects on dedication law in Louisiana. Finally, Part IV suggests that courts should stop deviating from the rule laid down by the Louisiana Supreme Court in *St. Charles Parish School Board v. P & L Investment Corp.* and apply a presumption that formal dedications transfer ownership. By doing so, this approach would be consistent with the principles and rules governing dedication in Louisiana and would reflect the original purpose behind the jurisprudential creation of formal dedication—the recognition of a mode of dedication that transfers ownership.

16. *See* Garrett v. Pioneer Prod. Corp., 390 So. 2d 851, 855 (La. 1980).
17. St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218, 221 (La. 1996).
18. *See infra* Part I.
19. *See infra* Part III.

I. A WINDING ROAD: THE DEVELOPMENT OF DEDICATION LAW IN LOUISIANA

Louisiana's jurisprudence on dedication to public use dates back 200 years, a period throughout which the courts have approached dedications in a myriad of ways.[20] Although Louisiana courts first applied civil law principles to dedication issues, the courts have taken a decidedly common law approach to dedication over the last century and a half, crafting an intricate body of case law on the subject. The most notable aspect of this progression is how the courts have carved out four distinct methods by which a dedication can operate. This Part examines the development of this area of the law, emphasizing the courts' erratic treatment of formal dedications over the last 30 years.

A. Civil Law Origins

The earliest cases concerning dedication in Louisiana consistently held that the public owned the roadbeds and other public property, regardless of how the land was acquired.[21] These decisions were heavily influenced by civilian principles, with cases citing to Roman, French, and Spanish laws as conclusive authority.[22] For instance, the Louisiana Supreme Court's 1816 decision in *Renthorp v. Bourg* held that a Roman law providing that the soil of a highway was public property applied in Louisiana.[23] As one scholar noted, two concepts were predominant in the early cases: "(1) public things [were] owned by the public; and (2) one who designate[d] [lands] as 'public' [did] by *that act of dedication alone create public ownership of the dedicated lands*."[24]

This civilian notion of public ownership of public things did not last long in Louisiana, however. In 1848, the Louisiana Supreme Court limited *Renthorp*'s application of the ancient Roman law doctrine in *Hatch v. Arnault*, finding that the roads in the "infant colony" of Louisiana were simply not comparable to the ancient Roman highways that were "as permanent as the labor

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20. *See* Renthorp v. Bourg, 4 Mart. (o.s.) 97 (La. 1816).

21. *Garrett*, 390 So. 2d at 855. For an extensive history of the development of dedication in Louisiana, see Michael G. Page, Comment, *The Third Dimension of Dedication in Louisiana*, 30 LA. L. REV. 583 (1970).

22. *See Renthorp*, 4 Mart. (o.s.) at 97; Mayor of New Orleans v. Gravier, 11 Mart. (o.s.) 620 (La. 1822); Morgan v. Livingston, 6 Mart. (o.s.) 19 (La. 1819); City of New Orleans v. Metzinger, 3 Mart. (o.s.) 296 (La. 1814).

23. *Renthorp*, 4 Mart. (o.s.) at 138.

24. Page, *supra* note 21, at 600 (emphasis added).

of man could make them."[25] Relying on article 654 of the Louisiana Civil Code of 1825 and borrowing from French doctrine, the court ruled that Louisiana roads were generally classified as "chemins publics," or public roads that were privately owned subject to a servitude of use in favor of the public.[26] Nevertheless, the court did acknowledge that a few Louisiana highways were classified as "grand chemins," or roads wholly owned by the public.[27] But, in the years that followed, these early civil law influences were eventually completely displaced by common law principles.[28]

B. Common Law Influences

In 1832, the United States Supreme Court set forth the common law requirements of dedication in *City of Cincinnati v. White's Lessee*.[29] The *White's Lessee* Court held that there is no particular form or ceremony necessary to effect a dedication and that "all that is required is the assent of the owner of the land, and the fact of its being used for the public purposes intended by the appropriation."[30] In 1841, the Louisiana Supreme Court adopted the common law principles of dedication found in the *White's Lessee* case.[31] This decision, whether intentionally or inadvertently,[32] effectively displaced civilian principles with common law rules; for the next century, Louisiana courts often relied on the principles espoused by the United States Supreme Court in *White's Lessee* and endorsed by the Louisiana Supreme Court.[33] Today, the description

25. Hatch v. Arnault, 3 La. Ann. 482, 485 (1848). *See also* Harry McCall, Jr., Comment, *The Effect of Dedication to Public Use in Louisiana*, 13 TUL. L. REV. 606, 611–12 (1939).

26. *Hatch*, 3 La. Ann. at 487.

27. *Id.* at 488–89.

28. A.N. Yiannopoulos, *Common, Public, and Private Things in Louisiana: Civilian Tradition and Modern Practice*, 21 LA. L. REV. 697, 733–34 (1961).

29. *See* 31 U.S. 431 (1832).

30. *Id.* at 440.

31. Municipality No. 2 v. Orleans Cotton Press, 18 La. 122 (La. 1841). *See* Yiannopoulos, *supra* note 28, at 733–34.

32. Just eight years earlier, the Louisiana Supreme Court in *De Armas v. City of New Orleans*, 5 La. 132 (La. 1833), specifically rejected the common law principles of dedication as being inconsistent with the controlling French and Spanish jurisprudence in Louisiana. Nevertheless, the *Orleans Cotton Press* court, seemingly by mistake, cited the dissenting opinion in *De Armas* (the dissenting opinion happened to be delivered first) for the proposition that the law of dedication was governed by *White's Lesee*. *See* Yiannopoulos, *supra* note 28, at 733 n.174.

33. *See, e.g.*, Pickett v. Brown, 18 La. Ann. 560 (1866); Saulet v. City of New Orleans, 10 La. Ann. 81 (1855); s*ee also* Page, *supra* note 21, at 591–92.

of dedication in *White's Lessee* closely resembles the mode of "implied dedication" that is recognized by Louisiana courts.[34]

The Louisiana Legislature's earliest use of the term "dedication" is found in Act 134 of 1896.[35] The legislation required a subdivider to file a detailed plat of the land to be subdivided, clearly demarcating the individual lots, streets, and alleys.[36] The subdivider was also required to include a formal statement dedicating to public use all of the streets, alleys, and public squares depicted within the plat.[37] The 1896 Act did not, however, address the nature of the interest acquired by the public, leaving the question for the courts to decide.[38] Today, Act 134 is now substantially embodied in the section of the Louisiana Revised Statutes that provides for statutory dedication.[39] Moreover, it is now well settled that a statutory dedication transfers ownership of the property to the public unless the landowner clearly reserves ownership of the underlying land in the formal statement of dedication.[40]

The most significant development in Louisiana's dedication law was the Louisiana Supreme Court's decision in *Arkansas-Louisiana Gas Co. v. Parker Oil Co*.[41] The *Parker* court took the opportunity to clearly outline the law concerning dedication in Louisiana, and it did so by largely adopting the common law rules of dedication.[42] Relying heavily on the language of the *Corpus Juris Secundum*, the *Parker* court held that there were two forms of dedication in Louisiana: statutory dedication and common law dedication.[43] The

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34. The Louisiana Supreme Court described implied dedication as:
> Implied dedication is a common law doctrine recognized by the courts of this state. A dedication by implication consists of the assent of the owner, use by the public, and maintenance by the municipality. Because implied dedication lacks the formalities and safeguards of formal or statutory dedication, courts have required "a plain and positive intention to give and one equally plain to accept." Courts have also found an implied dedication when the owner of a tract of land subdivides it into lots, designates streets or roads on a map, and then sells the property or any portion of it with reference to the map. An implied dedication establishes a servitude of public use.

St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218, 222 (La. 1996) (citations omitted).

35. Webb v. Franks Inv. Co., 105 So. 3d 764, 774 (La. Ct. App. 2012) (Caraway, J., concurring).

36. Garrett v. Pioneer Prod. Corp., 390 So. 2d 851, 853 (La. 1980).

37. *Id.*

38. *Id.* at 854.

39. Page, *supra* note 21, at 601.

40. YIANNOPOULOS, *supra* note 7, § 99, at 219.

41. *See* Ark.-La. Gas Co. v. Parker Oil Co., 183 So. 229 (La. 1938).

42. Page, *supra* note 21, at 585.

43. *See Parker*, 183 So. at 240.

court described statutory dedication—dedications made pursuant to Act 134—as conveying ownership of the property in the public and not requiring an acceptance by the public to complete the dedication.[44] On the other hand, the court described common law dedication as operating under an estoppel theory and only transferring an easement, not an ownership right, in favor of the public.[45] Moreover, the court stated that the public must accept a common law dedication in order for the dedication to become effective.[46]

C. Development of Modern Formal Dedication Law

In the following decades, courts and legal scholars regarded *Parker* as the leading authority on dedication in Louisiana.[47] Courts often cited *Parker* for the principle that two exclusive methods of dedication were recognized in Louisiana.[48] These courts consistently reiterated the rules of dedication recounted in *Parker*—statutory dedication transfers ownership while common law dedication transfers a servitude.[49] Despite the widespread reliance on *Parker*, Louisiana courts eventually began to discover that some dedications could be executed in ways other than those described in *Parker*.[50] For example, *Banta v. Federal Land Bank of New Orleans* contains a good example of a dedication that did not squarely fall within the *Parker* framework.[51] In *Banta*, a landowner divided his land into large tracts of 40 to 100 acres and subsequently filed a plat of the area, describing the roads depicted within the plat as "public roads."[52] However, the *Banta* court determined that Act 134 of 1896 was not intended to apply to the subdivision of large lots, ruling out the possibility of statutory dedication.[53] Nevertheless, the court concluded that the inapplicability of statutory dedication did not preclude the possibility of another form of dedication transferring ownership to

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44. *Id.*
45. *Id.*
46. *Id.*
47. *See* Thomas D. Hardeman, Comment, *Dedication of Land to Public Use*, 16 LA. L. REV. 789, 791 (1956).
48. *See, e.g.*, Life v. Griffith, 197 So. 646, 647 (La. Ct. App. 1940); Village of Folsom v. Alford, 204 So. 2d 100, 103–04 (La. Ct. App. 1967).
49. *See Griffith*, 197 So. at 646; *Alford*, 204 So. 2d at 100.
50. *See* Banta v. Fed. Land Bank of New Orleans, 200 So. 2d 107 (La. Ct. App.), *cert. denied*, 202 So. 2d 657 (La. 1967); *see also* Chevron Oil Co. v. Wilson, 226 So. 2d 774 (La. Ct. App. 1969).
51. *Banta*, 200 So. 2d at 111–12.
52. *Id.* at 108.
53. *Id.* at 112.

the public.[54] Thus, the court decided that title to the dedicated land had vested in the public, despite the fact that the dedication was not made pursuant to Act 134—a holding that clearly contradicted the concrete framework of *Parker*, which provided that only statutory dedication could transfer ownership.[55]

After *Banta*, scholar Michael Page noted that courts were implicitly recognizing a third form of dedication outside of the *Parker* framework—a "formal non-statutory dedication"—and called for its explicit recognition in the jurisprudence.[56] Basing his thesis largely on the civil law origins of dedication favoring public ownership, Page suggested that this third form of dedication should vest ownership of dedicated lands in the public.[57] One year later, Professor Yiannopoulos approvingly cited Page's article and reiterated the notion that formal, non-statutory dedications should be recognized so as to vest ownership of the land in the public.[58]

The assertion that *Parker* failed to recognize this third form of dedication was largely ignored until 1980 when the Third Circuit, and subsequently the Louisiana Supreme Court, addressed the issue in *Garrett v. Pioneer Production Corp*.[59] In a footnote, the Supreme Court impliedly recognized that a formal, non-statutory dedication could exist,[60] but it declined to rule on the issue because the case could be resolved under statutory dedication.[61]

In 1984, the First Circuit in *Anderson v. Police Jury of East Feliciana Parish* became the first court to explicitly recognize formal dedication as a distinct mode of dedication.[62] Relying on the decisions in both *Banta* and *Garrett* as well as Michael Page's article, the court found that there were three distinct forms of dedication: statutory, formal, and informal.[63] The court described formal dedication as "some formal, express act by the owner which clearly shows an intent to dedicate. . . . [A]bsent a clear expression to the contrary, this dedication also conveys ownership and applies

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54. *Id.* at 112–13.

55. *Id.* For an in-depth discussion of the importance of *Banta* in the jurisprudence on dedication, see Page, *supra* note 21.

56. Page, *supra* note 21, at 587.

57. *Id.* at 602–03.

58. A.N. Yiannopoulos, *Private Law: Property*, 31 LA. L. REV. 196, 201 n.24 (1971).

59. *See* Garrett v. Pioneer Prod. Corp., 390 So. 2d 851 (La. 1980).

60. *See id.* at 857 n.6.

61. *Id.* at 857–58.

62. *See* Anderson v. Police Jury of E. Feliciana Parish, 452 So. 2d 730, 734 (La. Ct. App. 1984).

63. *See id.* In a footnote, the court noted that Professor Yiannopoulos had divided "informal" dedication into two distinct modes—"implied" and "tacit"—resulting in a total of four modes of dedication. *Id.* at 734 n.2.

to the situation in which [the statutory dedication requirements are] not substantially complied with."[64] Three years later, the Fourth Circuit in *Schmit v. St. Bernard Parish Police Jury* significantly strengthened the doctrine of formal dedication as a distinct mode of dedication.[65] Importantly, the *Schmit* court relied heavily on the language in *Anderson* concerning formal dedications, stating that "[a]ny formal express act by the owner which shows an intent to dedicate will suffice and ownership is conveyed."[66]

D. The Current State of Formal Dedications

Despite the rulings in *Anderson* and *Schmit*, some courts continued to cite *Parker* for its proposition that Louisiana jurisprudence recognized only two forms of dedication.[67] This inconsistency ended when the Louisiana Supreme Court decided *St. Charles Parish School Board v. P & L Investment Corp*.[68] The court declared that Louisiana recognizes four modes of dedication: statutory, formal, implied, and tacit.[69] With respect to formal dedication, the court laid out the requirements as follows, heavily relying on Professor Yiannopoulos's description of formal dedication in his treatise on property:

> A landowner may make a formal dedication of a road by virtue of a written act, such as a deed of conveyance to the police jury of the parish. The written act may be in notarial form or under private signature. A formal dedication transfers ownership of the property to the public unless it is expressly or impliedly retained. If the landowner retains ownership of the property, the public acquires a servitude of public use.[70]

The *St. Charles* decision effectively superseded *Parker* as the fountainhead authority on dedication in Louisiana and remains good law today regarding its holding on dedications to public

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64. *Id.* at 734.
65. *See* Schmit v. St. Bernard Parish Police Jury, 504 So. 2d 619 (La. Ct. App. 4th 1987).
66. *Id.* at 622.
67. *See, e.g.*, Hailey v. Panno, 472 So. 2d 97,100 (La. Ct. App. 1985).
68. *See* St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218 (La. 1996).
69. *Id.* at 221. The court adopted Professor Yiannopoulos's approach to the doctrine, dividing "informal dedication" described in *Anderson* into two separate modes of dedication: "implied" and "tacit." *Id.*
70. *Id.* (citations omitted).

use.[71] Although the court did not address formal dedication at length, the language of the opinion reflected the court's desire to follow the legal scholars and lower courts by holding that an instrument of formal dedication should transfer ownership to the public as a default rule unless the dedicatory language displays an intent to retain ownership.[72]

The pro-ownership approach taken by the Louisiana Supreme Court in *St. Charles* received its strongest endorsement in the Third Circuit's 2000 decision of *Vernon Parish Police Jury v. Buckley*.[73] The *Buckley* court was charged with interpreting an instrument that was executed in 1983 and purported to convey a 50-foot "right-of-way" in favor of the public.[74] The court briefly cited the language regarding formal dedication found in *St. Charles* and concluded that the dedication transferred ownership of the road, finding no reservation of ownership in the instrument.[75] Although *Buckley* followed the Louisiana Supreme Court's clear language favoring transfers of ownership, the *St. Charles* rule has become the subject of mixed observance by the lower courts.

Eight years after the Louisiana Supreme Court clarified the modern rule on formal dedication in *St. Charles*, the Third Circuit distinguished the rule in the 2004 decision of *Southern Amusement Co. v. Pat's of Henderson Seafood & Steak, Inc*.[76] In *Southern Amusement*, the court was asked to interpret the following dedicatory language: "As a part of the consideration for this sale, Vendor and Vendee hereby dedicate to the City . . . all road rights-of-way shown in the attached plat of survey dated June 7, 1977 . . . ."[77] A notation on the attached survey reiterated the dedication as follows: "Vendor and Vendee hereby dedicates [sic] for public use all Right of Ways for roads and streets as shown above."[78]

Reasoning that the use of the term "right-of-way" in the dedicatory language sufficiently demonstrated the dedicator's intent to retain ownership, the court determined that this language

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71. *St. Charles* has since been abrogated on other grounds by *Cenac v. Public Access Water Rights Ass'n.*, 851 So. 2d. 1006 (La. 2003).

72. *See St. Charles*, 674 So. 2d at 221.

73. *See* Vernon Parish Police Jury v. Buckley, 776 So. 2d 17 (La. Ct. App. 2000).

74. *Id.* at 18. The exact dedicatory language of the act did not appear in the court's opinion, but the court described the document as transferring a "right of way." *Id.*

75. *Id.* at 20–21.

76. *See* S. Amusement Co., Inc. v. Pat's of Henderson Seafood & Steak, Inc., 871 So. 2d 630 (La. Ct. App. 2004).

77. *Id.* at 631.

78. *Id.*

dedicated only a servitude in favor of the public.[79] This argument was derived from the *Black's Law Dictionary* definition of "right-of-way," which says that the term connotes the transfer of only an "easement," the common law equivalent of servitude.[80] The court went on to suggest that had the words "right-of-way" not been used in the dedicatory language, the outcome might have been different.[81]

Although the above reasoning is consistent with the *St. Charles* framework to the extent that the phrase "right-of-way" can be considered an implied retention of ownership, the *Southern Amusement* court eventually deviated from the *St. Charles* rule. In the course of its reasoning, the court stated that, "[a]s noted by Professor Yiannopoulos, there must be a clear intent to dedicate and, to that end, *there must be a clear dedication of title to the dedicated property in order to transfer ownership*."[82] The second half of this sentence represents a sharp departure both from the previous jurisprudence regarding the transfer of ownership in formal dedications and from the very authority to which the first half of the sentence refers.[83] Prior to this case, modern Louisiana courts consistently held that formal dedications transfer ownership as a matter of law unless the dedicatory language evinces an intent to retain ownership.[84] The statement by the Third Circuit turns this principle on its head, implying that only a servitude is presumed to be conveyed. Thus, according to the Third Circuit in *Southern Amusement*, a formal dedication transfers only a servitude unless the declaration clearly expresses a conveyance of ownership as well.

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79. *Id.* at 637.

80. Interestingly, the court chose to refer to *Black's Law Dictionary* instead of the Louisiana jurisprudence, which has discussed this issue many times. *See* A.N. YIANNOPOULOS, PERSONAL SERVITUDES § 8:8, *in* 3 LOUISIANA CIVIL LAW TREATISE 537–38 (5th ed. 2011). Louisiana courts have held that, while "right of way" generally implies a servitude, either ownership or a servitude can be intended by the term. *Id.*

81. *Southern Amusement*, 871 So. 2d at 637.

82. *Id.* (emphasis added).

83. The court is referring to Professor Yiannopoulos's work on formal dedication, which states that "[i]n a formal dedication, the ownership of the property is transferred to the public, unless it is expressly or impliedly retained." YIANNOPOULOS, *supra* note 7, § 97, at 213.

84. *See, e.g.*, St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218, 221 (La. 1996); Vernon Parish Police Jury v. Buckley, 776 So. 2d 17, 20–21 (La. Ct. App. 2000); Schmit v. St. Bernard Parish Police Jury, 504 So. 2d 619, 623 (La. Ct. App. 1987); Anderson v. Police Jury of E. Feliciana Parish, 452 So. 2d 730, 734 (La. Ct. App. 1984).

Notably, the *Southern Amusement* decision came with a strong dissent arguing that the formal dedication transferred ownership to the public.[85] Relying heavily on Professor Yiannopoulos's statements regarding formal dedication, as well as the First Circuit's decision in *Anderson*, the dissent concluded that "[t]he use of the word 'dedicate' is all that is required . . . to find a formal dedication occurred and for ownership to transfer to the public."[86] The dissent predicted that "[t]he majority opinion [would] create havoc with long established principles of property law."[87]

Again, in 2010, the Third Circuit in *Clement v. City of Lake Charles* tinkered with the *St. Charles* rule governing the property interest transferred by formal dedications.[88] *Clement* involved a statutory dedication, the dedicatory language of which granted the "right-of-way of streets" to the public.[89] The trial court, relying on *Southern Amusement*, found that the use of the term "right-of-way" in the dedicatory language was sufficient to retain ownership of the roads, thus granting only a servitude in favor of the public.[90] The Third Circuit reversed, however, holding that the mere use of the term "right-of-way" in a statutory dedication, unlike a formal dedication, does not suffice to retain ownership.[91] In other words, the court held that formal dedications require a lower standard for proving intent to retain ownership than do statutory dedications.

This holding from the Third Circuit effectively distinguished *St. Charles*. First, the *Clement* court declared that a statutory dedication must "expressly" reserve ownership.[92] However, the modifier "expressly" was not included in the *St. Charles* opinion. Rather, the *Clement* court borrowed this term from a First Circuit opinion.[93] The court then contrasted this "expressly" standard with the language of *St. Charles*, which provided that formal dedications can reserve ownership "expressly *or impliedly*."[94] The court posited that this

85. *Southern Amusement*, 871 So. 2d at 640–41 (Cooks, J., dissenting).
86. *Id.* at 641.
87. *Id.*
88. *See* Clement v. City of Lake Charles, 52 So. 3d 1054 (La. Ct. App. 2010).
89. *Id.* at 1056.
90. *Id.*
91. *Id.* at 1059.
92. *Id.* at 1058.
93. *Id.* The First Circuit opinion cited is *Stonegate Homeowners Civic Ass'n v. City of Baton Rouge*, 836 So. 2d 440 (La. Ct. App. 2002).
94. *Clement*, 52 So. 3d at 1058–59 (alteration in original) (quoting S. Amusement Co., Inc. v. Pat's of Henderson Seafood & Steak, Inc., 871 So. 2d 630, 635 (La. App. Ct. 2004)). Interestingly enough, the *Stonegate* court found that the use of the term "right of way" was an express reservation of ownership. *See* 836 So. 2d. at 444 n.4.

distinction is warranted because formal dedications are voluntary but statutory dedications are compelled by legislation.[95] Because formal dedications are not compelled by a statute, the court reasoned that there is a greater need to protect a dedicator from "inadvertent mistakes."[96] Thus, under *Clement*, a formal dedication reserves ownership "without any specific reservation," but a statutory dedication must "expressly" reserve ownership.[97] Accordingly, despite interpreting almost identical dedicatory language, the Third Circuit preserved the ruling in *Southern Amusement* while reaching a different outcome in *Clement*. Such results are indicative of a jumbled doctrine in need of clarification.

II. VEERING OFF TRACK: THE DECISION OF *WEBB V. FRANKS INVESTMENT CO.*

Given the fledgling nature of formal dedication's existence as a distinct and identifiable doctrine in Louisiana, every decision that closely deals with a formal dedication has a formative impact. A 2012 Second Circuit decision, *Webb v. Franks Investment Co.*, involved two consolidated cases arising out of disputes over mineral rights on two separate tracts of land in Caddo Parish.[98] In both cases, a strip of land on each tract was dedicated to the public in the early 1900s for use as a public road.[99] Both cases involved a dedication using a standard form with the pre-printed language, "I . . . do hereby dedicate to the public use for a public road," followed by either a handwritten or typewritten description of the land.[100] The form then provided, "The said property to be used for public road purposes only."[101]

Subsequent to the dedications, both tracts became burdened with mineral servitudes.[102] Following the development of the Haynesville Shale and subsequent drilling operations on the properties, large royalty bonuses were at stake.[103] The rights to these lucrative royalties ultimately boiled down to whether the dedications to the public transferred ownership or merely a servitude.[104] If the public owned the dedicated roadways, then the

95. *Clement*, 52 So. 3d at 1058.
96. *Id.*
97. *Id.* at 1058–59.
98. Webb v. Franks Inv. Co., 105 So. 3d 764, 765–66 (La. Ct. App. 2012).
99. *Id.* at 766.
100. *Id.* at 766–67 (alteration in original).
101. *Id.* at 767.
102. *Id.* at 766.
103. *Id.*
104. *Id.* at 767.

roadways dissecting the tracts would serve to divide the tract, thus creating separate mineral servitudes on each side of the highway.[105] As such, the drilling operations on one side of the highway would not serve to interrupt prescription on the opposite side.[106] On the other hand, if the public merely enjoyed a servitude over the roads, then the drilling operations on one side of the highway would interrupt prescription over the entire tract. No portions of the properties would be subject to prescription of non-use, and the mineral servitudes would remain intact.[107]

After consolidating the two cases, the trial court found that Caddo Parish owned both roads as a matter of law.[108] Applying the *St. Charles* rule, the trial court held that ownership transferred to the public when the dedications were executed because neither dedication contained language indicating an intent to retain ownership.[109] Ultimately producing three opinions from the panel, the Second Circuit reversed and remanded on appeal, finding that the dedications had only transferred a servitude to the public.[110]

A. Majority Opinion by Judge Brown

The majority began its analysis by citing to a 1939 Louisiana Supreme Court case, which found that an act of dedication for a roadway conveyed only a servitude.[111] Notably, the language in that act of dedication used the term "right-of-way" to describe the right transferred therein—a term that was absent in both acts of dedication in *Webb* and which has since been construed by at least one Louisiana court as an express reservation of ownership.[112] Next, the court relied on a 1942 Louisiana Supreme Court case for the principle that a right of way may transfer either ownership or a servitude, but, as a general rule, only a servitude is intended to be transferred.[113] Finally, the court cited to a Second Circuit decision from 1950 for the proposition that, in determining whether title or a servitude has been conveyed by a written instrument, the intention of the parties must be determined from the stipulations in the entire

105. *Id.* at 766–67.
106. *Id.*
107. *Id.*
108. *Id.* at 766.
109. *Id.*
110. *Id.* at 771–72.
111. *Id.* at 768 (citing Jones Island Realty Co. v. Middendorf, 185 So. 881, 882 (La. 1939)).
112. *See Jones Island*, 185 So. at 882; *see supra* note 93.
113. *See Webb*, 105 So. 3d at 768 (citing Texas & Pac. Ry. Co. v. Ellerbe, 6 So. 2d 556, 557 (La. 1942)).

instrument.[114] From these cases and "other cases involving the point at issue," the majority concluded that Louisiana courts have generally construed the intent of the parties in right-of-way cases to be to grant a servitude, not ownership.[115]

The majority opinion then addressed the Louisiana Supreme Court's treatment of formal dedication in *St. Charles*.[116] In particular, the *Webb* court focused on the following portion of the *St. Charles* opinion, which cited Professor Yiannopoulos's treatise on property: "*A formal dedication transfers ownership of the property to the public unless it is expressly or impliedly retained*."[117] Interpreting this language, the proponents of public ownership argued that "all formal dedications are, as a matter of law, conveyances of full ownership unless some contrary expression of [the] grantor's intent is provided."[118] The court, however, expressly disagreed with this interpretation of *St. Charles*.[119] Rather, the court suggested that this statement concerning formal dedications must be read together with Professor Yiannopoulos's scholarship on rights of way in his treatise's section on servitudes.[120] There, he stated that "[t]he general rule is that the *conveyance of a right of way is generally meant to be merely a servitude, unless the deed itself evidences that the parties intended otherwise*."[121] This rule, however, is a complete reversal of the *St. Charles* rule.[122] Unfortunately, the court offered no advice on how to reconcile these conflicting rules other than that they should be "read together."[123]

Curiously, despite hinting that *St. Charles* does not actually presume that a formal dedication transfers ownership, the court then approvingly quoted at length from the Third Circuit's opinion in *Clement*.[124] Although *Clement* held that reservations of ownership in formal dedications need not be as explicit as those in statutory

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114. *Id.* (quoting Sun Oil Co. v. Stout, 46 So. 2d 151, 153 (La. Ct. App. 1950)).
115. *Id.*
116. *Id.* at 769.
117. *Id.* (alteration in original) (quoting YIANNOPOULOS, *supra* note 7, § 95, at 204–05).
118. *Id.* (quoting St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218, 221 (La. 1996)).
119. *Id.*
120. *Id.*
121. A.N. YIANNOPOULOS, PREDIAL SERVITUDES § 130, *in* 4 LOUISIANA CIVIL LAW TREATISE 378 (3d ed. 2004) [hereinafter YIANNOPOULOS, PREDIAL SERVITUDES] (emphasis added).
122. *St. Charles*, 674 So. 2d at 221 (holding that a formal dedication transfers ownership unless there is an intent to retain ownership).
123. *Webb*, 105 So. 3d at 769.
124. *Id.* at 770–71.

dedications, the *Clement* decision undoubtedly interpreted *St. Charles* as presuming that formal dedications transfer ownership.[125]

Finally, the court supported its central argument by relying on several factors that purportedly demonstrated the parties' intent to only grant the public a servitude over the roads.[126] These factors can be summarized as follows: (1) no compensation was given to the dedicators, (2) specific limitations were placed on the use of the property, (3) there was an absence of language conveying title to the properties, (4) the standard form dedications of this type were historically treated as servitudes by the Parish, and (5) there is generally no need for the public ownership of roadbeds because the public interest is in the use of the roads.[127] According to the court, the intent of the dedications to transfer ownership could be "comfortably known" from these factors.[128]

B. Concurring Opinion by Judge Caraway

Although Judge Caraway agreed with the majority's ultimate outcome, he wrote a separate concurring opinion, which concluded that the acts of dedication indeed transferred ownership to the public.[129] The heart of the concurrence was its examination of Act 151 of 1910.[130] The Act empowered police juries to set aside the dedications of all roads previously dedicated to public use.[131] The Act contained a critical provision regarding the ownership of dedicated property after it is no longer in public use: "That upon such revocation, the ownership of the soil embraced in such roads, streets, and alley-ways up to the center line thereof shall *revert to the then present owners* of the land contiguous thereto."[132] In other words, following a period of public use, the Act did not return ownership of the dedicated property to the original landowner nor did it provide that such owner's servient interest was freed from a public servitude.[133] Instead, the Louisiana Legislature chose to place ownership of the dedicated property with the "then present owners"

125. *See supra* Part I.D.
126. *Webb*, 105 So. 3d at 771.
127. *Id.*
128. *Id.*
129. *Id.* at 774 (Caraway, J., concurring) (ultimately deciding that a 1983 Caddo Parish Police Jury resolution effectively restricted the Parish's interest in the roads to a servitude).
130. *Id.* at 774–75.
131. *Id.* at 774.
132. *Id.* (emphasis added).
133. *Id.*

of the adjacent land.[134] Judge Caraway concluded that this "legislative implication" should have given property owners who dedicated their property fair notice that they were surrendering title to their property by effecting a dedication.[135] In his own words, the "provision rests on the premise that if the owner uses as his expression for a land conveyance the specific verb 'dedicate,' as opposed to 'sell' or 'donate,' his ownership of the land may be completely conveyed to a public body."[136] In support of this conclusion, he cited at length from a 1925 Louisiana Supreme Court case, which also noted the legislative implication of the 1910 Act and accordingly found that the dedication at issue in the case transferred ownership.[137]

Judge Caraway also drew upon the similarity between the formal nature of the dedications in *Webb* and the formal statements of dedication required for statutory dedications.[138] He quoted from the Louisiana Supreme Court's decision in *Goree v. Midstates Oil Corp.*, where the court compared tacit dedications to statutory dedications.[139] A tacit dedication operates by application of Louisiana Revised Statutes section 48:491, which declares that roads or streets that have been "kept up, maintained, or worked" for three years by a parish or local government will become public roads.[140] In *Goree*, the court offered the following explanation as to why a tacit dedication transfers a servitude whereas a statutory dedication transfers ownership: "A tacit dedication is one which arises from silence, inactivity—one arising without express contract or agreement. A statutory dedication involves some deliberate, affirmative, active step . . . ."[141] Judge Caraway then pointed out that, similar to a statutory dedication, the dedication forms in *Webb* were also a "deliberate" and "active step" made under private signature, likening the metes-and-bounds description found in the standard dedication forms to the visual rendering of a subdivision plat.[142] Based on this analogy to statutory dedication and the import of the 1910 Act, Judge Caraway believed that the dedications in *Webb* transferred complete ownership to the public.

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134. *Id.* (internal quotations omitted).
135. *Id.* at 775.
136. *Id.*
137. *Id.* at 775 (citing Jaenke v. Taylor, 106 So. 711 (La. 1925)).
138. *Id.* at 775–76.
139. Goree v. Midstates Oil Corp., 18 So. 2d 591, 596 (La. 1944).
140. LA. REV. STAT. ANN. § 48:491 (2004).
141. *Webb*, 105 So. 3d at 776 (Caraway, J., concurring) (quoting *Goree*, 18 So. 2d at 596).
142. *Id.*

C. Dissenting Opinion by Judge Moore

Judge Moore also concluded that the dedications transferred ownership to the public. But, unlike the concurring opinion, the dissent insisted that Caddo Parish remained in full ownership of the dedicated land.[143] His argument primarily relied upon the principle stated by the Louisiana Supreme Court in *St. Charles*—that a formal dedication transfers ownership of the property to the public unless the dedicatory language expresses an intent to retain ownership.[144] He disagreed with the majority's assertion that the provisions of the dedication forms that restricted the land to be used for public road purposes were indicative of an intent to reserve ownership, stating that "[a] purpose is crucial to the cause of the dedication."[145] The dissent's approach ignored the Third Circuit's deviations in *Southern Amusement* and *Clement*, preferring instead to follow the Louisiana Supreme Court's rule in *St. Charles*.

III. A WRONG TURN: AN ANALYSIS OF THE FLAWED REASONING IN *WEBB*

The Second Circuit in *Webb* embraced the Third Circuit's holding that formal dedications require a lower standard for proving intent to retain ownership than do statutory dedications. Unfortunately, the Second Circuit's majority opinion in *Webb* has further jumbled dedication law in Louisiana by ignoring the Louisiana Supreme Court's treatment of formal dedications and by considering inappropriate factors for evaluating the intent behind dedications to public use. As the dissent in *Webb* put it, the court appears to have "skirted the law in its zeal to avoid an unpalatable result."[146]

A. Dedication Is a Unique Means of Conveying Property

Judge Caraway pointed out in his concurrence that dedications are a "special category of conveyance 'to public use.'"[147] Indeed, as far back as 1928, the Louisiana Supreme Court declared that "[d]edications to public use . . . are not governed by the strict rules which apply to private property."[148] The jurisprudential

143. *Id.* at 780 (Moore, J., dissenting).
144. *Id.*
145. *Id.* at 781.
146. *Id.* at 780.
147. *Id.* at 774 (Caraway, J., concurring).
148. Anderson v. Thomas, 117 So. 573, 579 (La. 1928).

development of dedication law in Louisiana reflects the special position that courts have granted this unique category of conveyance.[149] For instance, consider the fact that Louisiana courts have not required dedications to be made by authentic act in order to take effect.[150] In a sense, a dedication is a form of donation.[151] Under Civil Code article 1541, donations of immovable property are required to be made by authentic act.[152] Nevertheless, because this form requirement would be cumbersome and discourage dedications, "Louisiana courts have taken a much broader view of formal dedication that has no foundation in legislative texts."[153] In sum, Louisiana courts have consistently relaxed the ordinary rules governing conveyances of immovable property when dealing with dedications in order to promote certain public policies.[154]

The *Webb* majority's reasoning clearly reveals that the dedication forms were evaluated in the context of a private party transaction.[155] Not only does the court rely on cases interpreting grants between private parties, but it also uses Professor Yiannopoulos's statements in his treatise on predial servitudes to discount the Louisiana Supreme Court's ruling in *St. Charles* on formal dedication.[156] However, this section of Professor Yiannopoulos's treatise exclusively contemplates instruments granting rights between private parties. In fact, this part of the treatise does not cite a single decision that interprets a dedication to public use.[157] Thus, analyzing dedications to the public under the same standards as transfers between private parties—which are subject to the strict provisions of the Civil Code—is illogical. Different sets of rules govern these two types of transactions; consequently, landowners are likely to use different language in a dedication to the public than in a transaction between private parties. Dedication, having appeared in Louisiana jurisprudence for almost two centuries,[158] is a term of art in Louisiana property law. As such,

149. *See supra* Part I. This policy is not unique to Louisiana. *See* McCall, *supra* note 25, at 606 ("It is fundamental in other jurisdictions that the rules governing dedications to the public are different from those governing private grants.").

150. *See* St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218, 221 (La. 1996).

151. YIANNOPOULOS, *supra* note 7, § 97, at 211.

152. LA. CIV. CODE art. 1541 (2015).

153. YIANNOPOULOS, *supra* note 7, § 97, at 212.

154. *See* Page, *supra* note 21, at 603 (stating that the "policy favoring grants to the public dispenses with the ordinary rules of conveyance").

155. *See supra* Part II.A.

156. Webb v. Franks Inv. Co., 105 So. 3d 764, 769–70 (La. Ct. App. 2012).

157. *See* YIANNOPOULOS, PREDIAL SERVITUDES, *supra* note 121, § 130.

158. *See supra* Part I.

special consideration should be given to the context in which it is used. Failure to do so when interpreting dedicatory language inevitably discredits the true intentions of the dedicator from the outset.

B. Reliance on the Typical Factors Used to Interpret Transfers Between Private Parties is Inappropriate

The clearest example of the court's misplaced reliance on jurisprudence, nevertheless, is the majority's considerations of the five factors used to determine intent.[159] Although the court did not explicitly reference their origin, these factors are borrowed from the framework that Louisiana courts apply when determining whether a document conveying a "right-of-way" has transferred ownership or a servitude.[160] However, consideration of these factors has historically been limited to analyzing documents between private parties.[161] With the exception of *Webb*, no case in the modern jurisprudence has undertaken a similar analysis when interpreting a formal statement of dedication—and with good reason. Reliance on these factors is wholly inapposite when interpreting dedicatory language.[162]

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159. The five factors are: (1) that no compensation was given, (2) specific limitations were placed on the use of the property, (3) there is an absence of language conveying title of the property, (4) the dedications were historically treated as servitudes by the Parish, and (5) there is no need for the public ownership of roadbeds because the public interest is in the use of the roads. *See supra* Part II.A.

160. *See* Porter v. Acadia–Vermillion Irrigation Co., 479 So. 2d 1003 (La. Ct. App. 1985). The *Porter* court listed some additional factors which were not relevant in the *Webb* case: who paid taxes on the property and whether the grant was made "in perpetuity" or "forever." *Id.* at 1007. Also excluded in *Webb* was whether a specific measurement was given to the right of way. *Id.* The dedication forms in *Webb* did include precise measurements of the dedicated land, which would tend to indicate an intent to transfer ownership. *See supra* Part II.

161. *See Porter*, 479 So. 2d at 1007 (citing Meaux v. Southdown Lands, Inc., 361 So. 2d 974 (La. Ct. App. 1978); Sohio Petroleum Co. v. Hebert, 146 So. 2d 530, 532 (La. Ct. App. 1962)).

162. This Note pretermits discussion of consideration of the historical treatment by the parties. This factor may be useful in interpreting both grants between private parties and grants to the public; however, this Note takes the position that consideration of this factor in *Webb* would be premature because the clear intent of the parties can be determined from the four corners of the acts of dedication.

1. No Compensation and Limitation to Specific Purpose

The most glaring error in the majority's reasoning is its position that the lack of compensation paid to the dedicators and the dedicators' limitations on the use of the properties for purposes of a public road indicated an intent to retain ownership in the dedicated land.[163] First, dedications simply do not involve compensation, regardless of the right transferred to the public. In fact, the absence of compensation is often considered to be a defining quality of dedications.[164] There does not appear to be one case in the Louisiana jurisprudence where a landowner has specifically purported to "dedicate" an interest in his land in exchange for some form of compensation. This is because a party would not use the verb "dedicate" if his or her intent was to be compensated in exchange for the interest in the land. Instead, a party would most likely frame the transaction in terms of a sale or other form of conveyance that is typically associated with bilateral compensation.

Likewise, limiting the purpose for which dedicated property can be used is also a foundational aspect of dedications.[165] As one court noted while discussing the "fundamental principles" of dedication, "the most definite form of dedication is by a deed setting forth the exact purposes for which the land is conveyed."[166] Although the designation of land for a limited purpose can be helpful in determining the intent behind conveyances between private parties, this consideration simply has no place in the interpretation of dedicatory language. In the context of dedication, a limitation of use is more indicative of a "conditional donation" rather than an intent to only transfer a servitude.[167] Characterizing common traits of dedications, such as absence of compensation or the limitation to a specific purpose, as indicating intent to retain ownership not only reflects a deep misapplication of the doctrine, but also effectively transforms almost all formal dedications into transfers of only a servitude.

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163. Webb v. Franks Inv. Co., 105 So. 3d 764, 771 (La. Ct. App. 2012).

164. Regina Nelson Eng, Note, *Alabama Law of Dedication and Reservation: It's a Good Thing*, 10 JONES L. REV. 37, 41 (2006) ("A dedication is the uncompensated conveyance of land . . . .").

165. *See id*.

166. Joyce v. Brothers Realty Co., 127 So. 2d 756, 759 (La. Ct. App. 1961).

167. Louisiana Civil Code article 1556 provides that a donation may be revoked for the nonfulfillment of a suspensive condition. In the context of dedication, the limitation of use may serve as a suspensive condition of the dedication.

2. Absence of Language Specifically Conveying Title to the Land

The majority opinion in *Webb* also claimed that "[t]he fact that the dedications did not include any language conveying fee title to the underlying roadbeds is indicative of an intent to retain ownership."[168] Although this principle can be helpful in interpreting conveyances between private parties, its consideration is simply inapplicable in the context of dedications to a public body. The dedications in *Webb* were executed at a time when the law regarding public ownership in public things was uncertain, with some courts still maintaining that public things were owned by the public as a matter of law.[169] Considering both the jurisprudence and the legislative implications at the time, a party executing a formal act of dedication likely believed that title to the land would pass to the public by the execution of an act of dedication.[170] The mere use of the word "dedicate" was likely understood by the parties to be sufficient language to transfer title to the public. "Dedication" is a legal term of art in Louisiana property law, and it must be interpreted with its historical understanding in mind.

The Second Circuit's analysis in *Webb* sets a precarious precedent because it draws on authority unrelated and contradictory to the doctrine of dedication in Louisiana. Unfortunately, this decision encourages the placement of formal dedication in a sort of middle ground with respect to the type of interest that the public acquires. For instance, it is well settled that statutory dedications typically vest ownership in the public, and it is also well settled that implied and tacit dedications vest only a servitude.[171] Formal dedications, on the other hand, have been subjected to elaborate interpretations in order to determine whether the intent of the dedicator was to transfer ownership or a servitude.[172] Although courts often parrot the standard laid out in *St. Charles*—that a formal dedication transfers ownership unless it is expressly or

168. *Webb*, 105 So. 3d at 771.

169. *See* Kemp v. Town of Independence, 156 So. 56 (La. Ct. App. 1934). "Under our laws, when a dedication is made, the dedicator is irrevocably divested of his ownership, and the thing dedicated is out of commerce, and is not susceptible of private or individual ownership." *Id.* at 58. *See also supra* Part I.

170. Act 134 provided that a dedication of land could result in the permanent divestiture of one's title. *See Webb*, 105 So. 3d at 774–75 (Caraway, J., concurring).

171. YIANNOPOULOS, *supra* note 7, § 98, at 217; § 99, at 219; § 100, at 224.

172. *See supra* Part I.D.

impliedly retained[173]—two appellate courts, the Second Circuit and the Third Circuit, have taken an approach that strips *St. Charles* of its intended effect.[174] Consequently, depending on a circuit's approach, identical dedicatory language has yielded different results with respect to whether the public or the dedicator owns the land.[175]

IV. GETTING BACK ON TRACK: A FRAMEWORK FOR CONSISTENT TREATMENT OF FORMAL DEDICATIONS

In order to provide both clarity and consistency to the doctrine of formal dedication, courts should presume that a formal dedication was intended to transfer ownership to the public unless there is clear and convincing evidence to the contrary. This evidentiary presumption strengthens the intended effect of the *St. Charles* rule, and it would ensure that formal dedications are interpreted no differently than statutory dedications. Identical treatment of these two modes of dedication is merited because the reasoning behind the well-settled rule that statutory dedications transfer ownership is equally applicable to formal dedication—both modes of dedication are deliberate actions that require some degree of formality and precision. Moreover, a clear-and-convincing-evidence standard is warranted because it would result in more dedications transferring ownership. This outcome is beneficial for at least two reasons: (1) it brings the doctrine in line with the reasoning behind the recognition of formal dedication as a distinct mode of dedication, and (2) it advances the public policy of title simplicity by achieving consistent outcomes.

A. The Reasoning Behind the Rule That Statutory Dedications Generally Transfer Ownership Is Equally Applicable to Formal Dedications

Aligning the interpretation rules for formal dedications with those of statutory dedications brings uniformity to the law of dedication to public use. The rule in the Second and Third Circuits that formal dedications should be interpreted differently from statutory dedications unnecessarily complicates an already intricate

173. St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218, 221 (La. 1996).

174. *See* Webb v. Franks Inv. Co., 105 So. 3d 764, (La. Ct. App. 2012); Clement v. City of Lake Charles, 52 So. 3d 1054 (La. Ct. App. 2010); S. Amusement Co., Inc. v. Pat's of Henderson Seafood & Steak, Inc., 871 So. 2d 630 (La. Ct. App. 2004).

175. *Compare Southern Amusement*, 871 So. 2d at 630, *with Clement*, 52 So. 3d at 1054.

legal framework. First, the argument found in both *Clement* and *Webb* that different treatment is necessary in order to protect dedicators against "inadvertent mistakes" is questionable at best.[176] The courts have uniformly required that formal dedications be made by a written instrument under private signature or authentic act.[177] When a grantor undertakes this degree of formality to craft a legally binding document, the risk of inadvertent mistakes is unlikely. Moreover, because the recipient of a dedication is necessarily a governmental entity, the likelihood of a dedicator being swindled or the subject of any unfair dealing is also highly improbable. The Louisiana Supreme Court's opinion in *St. Charles* is especially persuasive on this issue.[178] In justifying the rule that implied dedications require an acceptance by the public (unlike formal and statutory dedications), the court stated that "[b]ecause implied dedication lacks *the formalities and safeguards of formal or statutory dedication*, courts have required a plain and positive intention to give and one equally plain to accept."[179] This language demonstrates that the court views formal dedication as operating in the same way as statutory dedication with regard to safeguards against mistake. As such, formal dedications should not be interpreted differently than statutory dedications.

Furthermore, on multiple occasions, the Louisiana Supreme Court has addressed the reasoning behind the rule that statutory dedication transfers ownership, and these cases reveal that the reasons behind this rule are equally applicable to formal dedications.[180] In *Goree*, the court explained why a tacit dedication transfers a servitude while a statutory dedication transfers ownership: "A tacit dedication is one which arises from silence, inactivity—one arising without express contract or agreement. A statutory dedication involves some deliberate, affirmative, active step . . . ."[181] As Judge Caraway noted in his concurrence in *Webb*, a formal dedication is also a "deliberate" and "affirmative" step because it requires the execution of an act under private signature or an authentic act as well as a sufficient description of the land to be dedicated.[182] Viewed in this light, there seems to be little basis

176. *Clement*, 52 So. 3d at 1058; *Webb*, 105 So. 3d at 770.

177. *See, e.g.*, *St. Charles*, 674 So. 2d at 221; *Webb*, 105 So. 3d 764; *Southern Amusement*, 871 So. 2d at 630; *Clement*, 52 So. 3d at 1054.

178. *See St. Charles*, 674 So. 2d at 218.

179. *Id.* at 222 (emphasis added) (internal quotation marks omitted).

180. Goree v. Midstates Oil Corp., 18 So. 2d 591, 596 (La. 1944); Richard v. City of New Orleans, 197 So. 594, 603–04 (La. 1940).

181. *Goree*, 18 So. 2d at 596.

182. *See Webb*, 105 So. 3d at 776 (Caraway, J., concurring).

for differentiating between the interests that the public acquires in formal and statutory dedications.

A similar analogy can also be drawn by the Louisiana Supreme Court's statements in *Richard v. City of New Orleans*.[183] In *Richard*, the court explained the reasoning behind the jurisprudential rule that a statutory dedication transfers ownership to the public:

> We think it may be safely asserted that much harm may result from the retention in remote dedicators of the fee in narrow strips of land, valueless for many years, because of their public or quasi-public use which, on the abandonment of such use, become valuable for private purposes. Certainly such agreements are likely to be productive of disputes and litigation.[184]

Even though the court was addressing statutory dedications that most likely involved municipal streets, the very same concerns apply to roads that have been dedicated in rural areas as well. Rural roads are often abandoned, and, as seen in *Webb*, the ownership of strips of rural land can affect the rights to highly valuable mineral rights.[185]

Furthermore, the suggestion by the Second and Third Circuits that *St. Charles* contemplates a different standard of interpretation for formal and statutory dedications is simply not supported by the text of the opinion. Although the court in *St. Charles* used the language "expressly or impliedly" to describe how ownership can be reserved in formal dedication, the court placed no modifiers on reservation of ownership in statutory dedication.[186] The court simply stated: "A statutory dedication vests ownership in the public unless the subdivider reserves ownership of streets and public places and grants the public only a servitude of use."[187] Thus, the court had an opportunity to draw a clear distinction between formal and statutory dedications in *St. Charles*, but it specifically chose not to do so.

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183. *See Richard*, 197 So. at 594.

184. *Id.* at 603–04.

185. Mark H. Tompkins, *Ownership of Roads, Streets, Alleys, Canals, Railroads, Etc.*, 42 ANN. INST. ON MIN. L. 210 (1995) ("Roads lying outside of corporate limits are often subject to change and abandonment."); *Webb*, 105 So. 3d 764.

186. "Expressly," the modifier used to describe reservations of ownership in statutory dedications in *Clement*, was borrowed from another lower court's decision, not the text of *St. Charles*. *See supra* note 112 and accompanying text.

187. St. Charles Parish Sch. Bd. v. P & L Inv. Corp., 674 So. 2d 218, 222 (La. 1996).

The decision by the court to not distinguish formal and statutory dedication in this regard should be taken seriously. The statements of dedication found in statutory dedications are predictably very similar—if not practically identical—to the statements found in formal dedications. Why, then, should courts interpret a dedicatory provision that appears on a subdivision plat differently from any other dedicatory provision? From a practical standpoint, tying the interpretation of formal dedications to that of statutory dedications is beneficial. There are already many cases interpreting statutory dedications, thus courts would have more jurisprudence to rely upon when considering formal dedications in the future.[188] This is especially helpful given the relative novelty of formal dedication as a distinct mode of dedication. To attach different meanings to identical dedicatory provisions merely because one provision appears on a subdivision plat is not a sound policy, and it will result in a confusing and inconsistent body of law.

B. Formal Dedications Were Distinctly Recognized to Allow for Transfers of Ownership

Prior to the *Anderson* case in 1984, courts consistently cited to *Parker* for the principle that Louisiana recognized only statutory dedication (which vests ownership in the public) and implied, common law dedication (which vests a servitude in the public).[189] However, this framework proved problematic in that courts were sometimes finding that non-statutory dedications were intended to transfer ownership to the public.[190] As a result, formal dedication was proposed and adopted as a distinct form of dedication in order to remedy this inconsistency within the *Parker* framework.[191] The fact that both scholars and courts determined a need for a "new" mode of dedication illustrates their belief that written instruments that did not qualify as statutory dedications should still be found to transfer ownership to the public. If such instruments were to be commonly interpreted as conveying only a servitude to the public, there would be no need to carve out a separate mode of dedication in the jurisprudence—this situation would simply fall into the

188. Judge Moore's dissenting opinion in *Webb* clearly makes this point. He notes that the Second Circuit has already interpreted dedicatory language in an earlier case very similar to the language at issue in *Webb*. That case, however, involved a statutory dedication and therefore was not considered by the majority opinion. *Webb*, 105 So. 3d at 780 (Moore, J., dissenting).

189. *See supra* Part I.

190. *See supra* Part I.C.

191. *See supra* Part I.

former category of common law dedication.[192] However, courts decided to expand the limiting framework of *Parker*.[193] Thus, to adhere to the underlying purpose behind the recognition of formal dedication as a distinct mode of dedication, formal dedications must be treated as presumptively transferring ownership to the public.

C. A Clear-and-Convincing-Evidence Standard Advances Public Policy by Providing Title Simplicity

Lastly, a default rule stipulating that formal dedications transfer ownership to the public in the absence of clear evidence to the contrary would promote consistent outcomes and reduce arbitrary guesswork. Evidentiary presumptions are useful because they "assist courts in managing circumstances in which direct proof, for one reason or another, is rendered difficult."[194] As such, a strong evidentiary presumption is especially warranted where courts are faced with interpreting documents of formal dedication. Given the historically inconsistent jurisprudential treatment of dedication in Louisiana, it is unlikely that courts can actually discern the true intent behind the document unless the author is available to testify.[195] Furthermore, evidentiary concerns are of paramount importance when crafting law regarding immovable property. Due to the high value of real estate, scholars often suggest that the law relating to land titles requires clearly defined legal rules that enable people to "know the nature of their rights and obligations and be able to plan their actions with some confidence about the legal consequences."[196] Adhering to a clear-and-convincing-evidence standard would result in many more consistent decisions. Instead of courts attempting to employ a wide range of factors to determine the grantor's intent, they would be able to engage in a much more straightforward analysis. For

192. Notably, this is how most common law jurisdictions approach this problem. *See* 26 C.J.S. *Dedication* §§ 15, 16 (1956). In most jurisdictions, a written document would fall into the category of an "express, common law dedication." *Id*. These documents are interpreted to give effect to the intent of the parties, but, generally, only a servitude or "easement" is deemed to have been transferred. *Id*.

193. *See supra* Part I.C.

194. Basic Inc. v. Levinson, 485 U.S. 224, 245 (1988)

195. *See supra* Part I.

196. John A. Lovett, *On the Principle of Legal Certainty in the Louisiana Civil Law Tradition: From the Manifesto to the Great Repealing Act and Beyond*, 63 LA. L. REV. 1397, 1397 (2003) (quoting JOHN HENRY MERRYMAN, THE CIVIL LAW TRADITION 48 (2d ed. 1985)) (internal quotation marks omitted).

instance, if the dedicatory language in the *Webb* case had been subject to the scrutiny of a clear-and-convincing-evidence standard, the court likely would have had no trouble concluding that the dedications vested ownership in the public. The simplicity of this standard benefits judges, lawyers, and title examiners alike.

CONCLUSION

A look at the recent formal dedication cases in Louisiana reveals that the law regarding the nature of the interest transferred by a formal dedication is clearly disorganized. Although the courts and legal scholars that first addressed this issue clearly favored vesting ownership of the dedicated property in the public, recent decisions from some of the lower courts have ignored this precedent and held that formal dedications presumptively transfer servitudes. The resulting jurisprudence has thus produced starkly different outcomes despite interpreting almost identical dedicatory language. Because there is no legislative foundation for formal dedication, it is up to the courts to reach a uniform rule. This can be easily accomplished by requiring a clear-and-convincing-evidence standard to rebut the *St. Charles* presumption that a formal dedication transfers ownership. This approach is not only supported by the underlying principles governing the law of dedication in Louisiana, but it would also bring a swift end to the confusion surrounding formal dedication.

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