

STATE OF MICHIGAN
COURT OF APPEALS

SHELBY OIL COMPANY, INC. and SANDRA
MONICATTI,

UNPUBLISHED
October 21, 1997

Plaintiffs-Appellees,

v

No. 185645
Macomb Circuit Court
LC No. 92-000491-CH

ROBERT HARVEY PENTZ,

Defendant-Third-Party
Plaintiff-Appellant,

and

SANDY JEWELL,

Defendant-Third-Party
Plaintiff,

and

WILLIAM S. NEAL,

Defendant,

and

GLORIA SCHETTLER, THOMAS F.
SCHETTLER, LAWRENCE A. MONICATTI,
and KATHLEEN M. MONICATTI,

Third-Party Defendants.

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Defendant Robert Pentz (hereinafter defendant) appeals as of right from a judgment entered following a bench trial in which the trial court determined that defendant had no claim or interest in any easement across plaintiffs' property, quieted title to plaintiffs and issued a permanent injunction preventing defendant from using a driveway on plaintiffs' property to gain access to Ryan Road. We affirm.

Defendant purchased two parcels of land in approximately 1987, Pentz One and Pentz Two, that were once part of a larger parcel owned by the Monicatti family. The Monicatti family retained ownership of a third parcel of land, the Shelby Oil property, which contained the Shelby Oil business. Originally, all three parcels were purchased as one piece of land by Linda and Michael Monicatti in the 1940s. The land is located on the northeast corner of Auburn and Ryan Roads in Shelby Township. The Shelby Oil property abuts Ryan Road. Pentz One is east of Shelby Oil and Pentz Two is located in the northeast corner of Pentz One.

Two houses are located on Pentz One. The first one is referred to as the "big house" and was the residence of Linda and Michael Monicatti, and the second house was built in 1954 and is referred to as the "little house." Initially, Monicatti family members lived in the little house. It was subsequently occupied by various tenants. The driveway of the big house leads to Auburn Road. Tenants of the little house mainly used the driveway of the big house for ingress and egress to Auburn Road. However, they also occasionally used a pathway across the Shelby Oil property to gain access to Ryan Road.

On appeal, defendant argues that he has an easement over plaintiffs' Shelby Oil property, using this pathway for ingress and egress to Ryan Road. In his counter-complaint, defendant alleged that he had an easement by necessity, implication, prescription and estoppel. We disagree.

The granting of injunctive relief is within the sound discretion of the court, and must be based on the facts of the particular case. *Soergel v Preston*, 141 Mich App 585, 590; 367 NW2d 366 (1985). An easement is a right to use the land of another for a specific purpose. *Bowen v Buck Hunting and Fur Club*, 217 Mich App 191, 192; 550 NW2d 850 (1996).

First, for defendant to establish an implied easement, he needed to prove that during the unity of title an apparently permanent and obvious servitude was imposed on one part of an estate in favor of another, continuity, and that the easement is reasonably necessary for the fair enjoyment of the property it benefits. *Schmidt v Eger*, 94 Mich App 728, 731; 289 NW2d 851 (1980). The party asserting the easement has to prove his claim by a preponderance of the evidence. *Id.* We agree with the trial court that the alleged easement is not reasonably necessary for the fair enjoyment of Pentz One. It is undisputed that the pathway across Shelby Oil has been blocked off since October 1991 and the tenants of the little house currently enter and exit from both Auburn and Greenview Roads. Moreover, during the unity of title defendant failed to establish a permanent and obvious servitude on the Shelby Oil property. Even though the Shelby Oil Property was used occasionally to access Ryan Road, the Auburn Road access was ordinarily used for ingress and egress. Therefore, defendant did not prove by a preponderance of the evidence that he had an implied easement.

Next, we find that defendant's claim based upon necessity is without merit because defendant is obviously unable to meet the requirement of proving strict necessity. See *Schmidt, supra* at 732.

With regard to defendant's claim of easement by prescription, we conclude that defendant cannot establish that he used the pathway continuously for fifteen years. Thus, there can be no easement by prescription. *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 645; 528 NW2d 221 (1995).

Finally, there can be no easement by estoppel because there is no indication that defendant was induced to believe that he had an easement across plaintiffs' property for ingress and egress to Ryan Road, and because he will not be prejudiced by being prevented from accessing Ryan Road exit. *Cook v Grand River Hydroelectric Power Co, Inc*, 131 Mich App 821, 828; 346 NW2d 881 (1984).

Accordingly, we find that the trial court did not abuse its discretion in granting plaintiffs' request for an injunction prohibiting defendant from using the pathway across the Shelby Oil property because defendant did not have an easement over plaintiffs' property.

Affirmed.

/s/ Maura D. Corrigan

/s/ Richard A. Griffin

/s/ Joel P. Hoekstra