STATE OF MICHIGAN

COURT OF APPEALS

NORMAN L. WOOLLEY, RUTH D. WOOLLEY and SILAS W. DENNY,

Plaintiffs/Counterdefendants-Appellees,

V

JOHN E. BAIER and JANE P. BAIER,

Defendants/Counterplaintiffs Third-Party Plaintiffs-Appellants,

and

ALTENBURG CORPORATION, CYNTHIA HAYES, MIRIAM TRUDEAU, JAMES C. CONBOY, JR., LAWRENCE P. HANSON and BODMAN LONGLEY & DAHLING, L.L.P.,

Third-Party Defendants.

UNPUBLISHED
February 19, 2002

No. 224168
Cheboygan Circuit Court
LC No. 98-006453-CH

Before: Bandstra, C.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment defining the boundaries of plaintiffs' deeded easement, establishing prescriptive easements in favor of plaintiffs over defendants' property, ordering removal of defendants' fence, and barring further litigation over plaintiff's boat docks on res judicata grounds. We affirm.

This case arose out of disputes concerning interests in adjacent lands owned by the parties near Mullett Lake in Cheboygan County. Defendants first challenge on appeal the trial court's holding that an intermediate traverse line set by a surveyor, rather than the "water's edge" described in the deed, constituted the monument that defined the eastern boundary of plaintiffs' recreational easement. The trial court's interpretation of the deed language resulted in an expansion of the easement that encroached on what had been a noneasement portion of defendants' land. Because this is an action in equity, we review de novo the trial court's ultimate decision and will reverse only if the findings supporting the decision are clearly erroneous or if

we are convinced we would have reached a different result. *Walch v Crandall*, 164 Mich App 181, 191; 416 NW2d 375 (1987).

Defendants argue that because the deed unambiguously states that the easement begins at the "water's edge," this description must be honored in construing the deed. A deed that contains no ambiguities generally must be construed according to its terms. *Fry v Kaiser*, 60 Mich App 574, 577; 232 NW2d 673 (1975). Although the term "water's edge" appears unambiguous, the application of this description to the ground results in uncertainty because of the fluctuation of water levels, thus rendering the deed itself ambiguous. *Weimer v Gilbert*, 7 Mich App 207, 212; 151 NW2d 348 (1967). When an ambiguity exists in a deed, a court determines the parties' intent in light of the circumstances existing when the instrument was executed, *Ross Properties v Sheng*, 151 Mich App 729, 735; 391 NW2d 464 (1986), and adopts a construction that does not produce unusual or unjust results. *Wisniewski v Kelly*, 175 Mich App 175, 178; 437 NW2d 25 (1989).

The trial court relied on expert testimony of surveyors who explained that the boundary lines of plaintiffs' easement would not meet if the water's edge were used as a boundary. Furthermore, one surveyor's examination of various surveys and deeds indicated that the original grantor intended to leave a fifty-foot corridor open for easement purposes, and that applying the intermediate traverse line as a boundary of plaintiffs' easement would align plaintiffs' easement with the fifty-foot corridor. In light of this testimony, we cannot characterize as clearly erroneous the trial court's finding that the intermediate transverse line constituted a boundary of plaintiffs' easement. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Defendants next argue that plaintiff Norman Woolley relinquished his prescriptive easement claims in 1986 by filing a release of previously announced adverse possession claims. Apart from the lack of consideration supporting the release, which alone would render it unenforceable, *Binard v Carrington*, 163 Mich App 599, 604-605; 414 NW2d 900 (1987), the scope of a release covers only those claims intended by the parties to be included in the release. *Auto-Owners Ins Co v Higby*, 57 Mich App 604, 606; 226 NW2d 580 (1975). The instant release made no mention of a possible prescriptive easement claim. Accordingly, the trial court correctly found that the release had no effect on Woolley's right to bring a prescriptive easement claim.

Defendants further challenge the trial court's holding that plaintiffs established a prescriptive easement. A prescriptive easement is created by a use of the servient estate that is open, notorious, adverse and continuous for a period of fifteen years. *Killips v Mannisto*, 244 Mich App 256, 258-259; 624 NW2d 224 (2001). The trial court based its findings on testimony that for more than fifteen years plaintiffs regularly and openly had used the area as though it were their own front yard, had brought in fill dirt and mowed the easement area, and had paid taxes on the property. Furthermore, the evidence indicated that during the relevant period plaintiffs had received no express consent to use the area and in fact attempted to prevent defendants from using it. The evidence was sufficient to establish continuous use of seasonal property. *Dyer v Thurston*, 32 Mich App 341, 344; 188 NW2d 633 (1971). Because the trial court's findings were not clearly erroneous and the law was properly applied, we affirm the trial court's holding that plaintiffs established a prescriptive easement. *Killips*, *supra*.

We also affirm the trial court's holding that defendants' fence represented a spite fence subject to injunction. The fact that defendants can name some purported benefit or advantage to themselves derived from the fence does not immunize it from injunction if the court finds that spite constituted the motive for its erection. *Flaherty v Moran*, 81 Mich 52, 54-55; 45 NW 381 (1890); *Burke v Smith*, 69 Mich 380, 381; 37 NW 838 (1888). Considering the facts on record concerning the relationship between the parties and the physical nature and location of the fence, we cannot conclude that the trial court clearly erred in finding that spite motivated defendants to construct the fence, and we therefore affirm the injunction. *Walters*, *supra*.

Defendants' remaining challenge to plaintiffs' right to maintain boat docks in the area of their recreational easement is barred by res judicata. The scope of plaintiffs' permissible uses of their easement was determined with finality in a previous action involving the same parties, *Woolley v Baier*, unpublished opinion per curiam of the Court of Appeals (Docket No. 210262, issued 6/18/99), slip op. at pp. 2-3, and defendants could have raised this claim in the earlier suit. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage