STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY PITTS and COLENE PITTS,

Plaintiffs/Counter-Defendants-Appellants

v

RAY E. JOHNSON and BESSIE M. JOHNSON,

Defendants/Cross-Defendants-Appellees,

and

STEVEN M. HABERLAND and VALERIE A. HABERLAND,

Defendants/Counter-Plaintiffs/Cross-Plaintiffs-Appellees.

UNPUBLISHED
May 17, 2002

No. 229673
Ogemaw Circuit Court
LC No. 98-652320-CH

Before: Saad, P.J., and Owens and Cooper, JJ.

PER CURIAM.

In this bench trial, plaintiffs Anthony and Colene Pitts appeal as of right the trial court's judgment.[1] We affirm.

I.

Plaintiffs are the owners of an easement for ingress and egress across a parcel of land owned by defendants. Plaintiffs originally filed suit against Ray and Bessie Johnson seeking to have a decaying shed removed from the easement. Plaintiffs amended their complaint to include defendants and defendants counterclaimed wherein they requested the court to determine the exact width of the easement across their property and enjoin plaintiffs from any encroachment or trespass beyond the boundaries of the easement. Plaintiffs thereafter amended their complaint to seek contribution from defendants for the maintenance expenses of the easement.

[1] Our Court granted plaintiffs' motion to stay proceedings pending appeal.

After opening arguments, but before taking testimony, the trial court made its finding regarding defendants' counterclaim and ruled in favor of defendants. The court ruled that the width of the easement is thirty-three feet. After the conclusion of proofs, the court determined that the shed located on defendants' property did not interfere with plaintiffs' use of their easement. The court awarded plaintiffs $48 for improvements made to the easement, but found that defendants were not required to contribute to the cost of snow removal until their use of the property increased beyond its current seasonal use. The court also granted defendants' request for injunctive relief; the court held that plaintiffs' driveway extended outside the boundary of the thirty-three foot easement, and therefore enjoined plaintiffs from using any portion of the driveway that went beyond the easement, and gave plaintiffs thirty days to remedy the encroaching driveway.

II.

Plaintiffs argue the trial court erred in refusing to permit them to place an objection on the record. Plaintiffs' brief consists of less than one full page of argument regarding this issue, and beyond the citation to a standard of review, plaintiffs present no citation to authority for their position and no factual basis for their claim. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mudge v Macomb Cty*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Because plaintiffs have failed to adequately brief their position or cite to supporting authority, we decline to review this issue.

Also, plaintiffs say the trial judge should have recused himself because of his bias against plaintiffs' counsel. Plaintiffs failed to preserve this issue by objecting to the trial court's conduct or filing a motion for disqualification. See MCR 2.003; *Meagher v Wayne State University*, 222 Mich App 700, 726; 565 NW2d 401 (1997); *In re Forfeiture of $53*, 178 Mich App 480, 497; 444 NW2d 182 (1989).

Nonetheless, plaintiffs' argument is without merit. Though the trial judge may have limited the extent of plaintiffs' counsel's questioning of some witnesses, the record does not show any evidence of bias or hostility and plaintiffs have failed to overcome the heavy presumption of judicial impartiality. *Armstrong v Twp of Ypsilanti*, 248 Mich App 573, 597; 640 NW2d 321 (2001), citing *Cain v Dept of Corrections*, 451 Mich 470, 496-497; 548 NW2d 210 (1996).

Plaintiffs also maintain that the trial court erred in ruling on the scope of the easement in defendants' favor without the benefit of testimony. However, plaintiffs did not specifically challenge the court's ruling on this basis and therefore, this issue is unpreserved. Nonetheless, because plaintiffs also argue that the court's ruling was wrong, we will review the factual findings for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

A review of the relevant deeds shows that, in the original grantor's deed to plaintiffs, the grantor attempted to convey a sixty-six-foot easement across defendants' property though the original grantor held title to only a thirty-three-foot easement. In fact, when she conveyed the servient parcel to defendants, she only created and reserved a thirty-three-foot easement.

Clearly, the trial judge did not err in determining the scope of the easement to be thirty-three feet. The deeds compel this conclusion.

Finally, plaintiffs say that the trial court erred in determining that defendants made no winter use of the shared easement. As stated above, we review factual findings of a trial court for clear error. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a firm conviction that a mistake was made. *Id*.

Maintenance costs of an easement used jointly by both the dominant and servient owners are to be paid in proportion to each party's use. *Bowen v Buck and Fur Hunting Club*, 217 Mich App 191, 194; 550 NW2d 850 (1996). Although defendant Steve Haberland's testimony shows that he may have used the easement during the winter months to occasionally check on his property, there is no evidence that the easement was ever plowed during these times. Haberland specifically stated that the easement was usually not plowed at these times and he did not require the easement to be plowed. A review of this testimony shows that defendants made no winter use of the shared easement that would entitle plaintiffs to maintenance costs. The trial court's ruling is not clearly erroneous.

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Jessica R. Cooper