

STATE OF MICHIGAN  
COURT OF APPEALS

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RICHARD F. HARRIS and MARLENE P.  
HARRIS,

UNPUBLISHED  
June 7, 2002

Plaintiffs-Appellants,

v

HANCHEK BROTHERS and NICHOLAS  
HANCHEK,

No. 236131  
Menominee Circuit Court  
LC No. 99-008945-CH

Defendants-Appellees.

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Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's entry of judgment in part for plaintiffs and in part for defendants in this real property dispute. We affirm.

Plaintiffs assert the trial court erred in holding that the easement created by a warranty deed was in gross rather than appurtenant and in ruling that defendants had the right to build a road across a portion of plaintiffs' property pursuant to that easement. Actions to determine interests in land are equitable, and we review the trial court's conclusions de novo. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996).

Michigan law recognizes two types of easements: easements appurtenant and easements in gross. An easement appurtenant serves or benefits one parcel of land by passing over or burdening another, while an easement in gross is personal, most commonly arises in connection with utility companies and railroads, and may not be transferred except by a utility or railroad. Cameron, § 6.4, p 192. If an easement is not expressly appurtenant or in gross, Michigan courts look at the surrounding circumstances to determine its nature. *Id.* at § 6.5, p 193. Michigan law favors easements appurtenant over easements in gross, and an easement will never be presumed to be a mere personal right where it can fairly be construed to be appurtenant to some other estate. *Todd v Nobach*, 368 Mich 544, 549-550; 118 NW2d 402 (1962).

The easement at issue here may fairly be construed to be appurtenant to another estate. The conveyance's language explicitly states the easement was intended to provide ingress and egress to another parcel of land owned by the grantors. *Smith v Dennedy*, 224 Mich 378, 381; 194 NW 998 (1923). Based on this connection with other property, and the preference for

easements appurtenant over easements in gross, we conclude that the trial court erred in ruling the easement was in gross rather than appurtenant.

The trial court determined the easement was in gross in part because the conveyance's language limits the easement to the grantors and their issue. Michigan law generally construes personal easements as in gross. See, e.g., *Lakeside Associates v Toski Sands*, 131 Mich App 292, 296; 346 NW2d 92 (1983). However, where a conveyance clearly creates an easement appurtenant, we simply disregard the language limiting the easement to particular individuals. See, e.g., *Todd v Nobach*, 368 Mich 544, 549-550; 118 NW2d 402 (1962). Thus, the easement appurtenant simply runs with the land. In the instant case, because defendants own the property, they are entitled to the easement.

For the above reasons, we conclude that the trial court reached the correct result, albeit for the wrong reason. Having reached this conclusion, we need not consider plaintiffs' remaining arguments.

Affirmed.

/s/ Richard Allen Griffin

/s/ Harold Hood

/s/ David H. Sawyer