STATE OF MICHIGAN

COURT OF APPEALS

JAMES ALLEN MROZINSKI and JANE D. MROZINSKI,

Plaintiffs/Third Party Defendants-Appellants,

and

ONEKAMA MARINE INC.,

Plaintiff/Third Party Defendant-Appellant.

v

STUART ROSS ROTHIG d/b/a ROTHIG FOREST PRODUCTS, INC.

Defendant/Third-Party Plaintiff-Appellee.

and

JOHN ZIELINSKI

Third-Party Defendant/Third-Party Plaintiff-Appellee

and

ARLENE ZIELENSKI

Intervening Plaintiff/Third-Party Plaintiff-Appellee.

UNPUBLISHED
July 30, 2002

No. 230315
Manistee Circuit Court
LC No. 97-8522-CH

Before: Murray, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Following a bench trial, the trial court ordered that a prescriptive easement traversing plaintiffs' property was thirty-three feet wide. Plaintiffs[1] appeal as of right. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

I. Basic Facts and Procedural History

Defendants John and Arlene Zielinski's property is landlocked but for a strip of land, approximately one-half mile in length, that runs across plaintiffs' property. This strip permits the Zielinskis' to access their parcel, and had been so used for over the past fifty years. The Zielinskis also employed it when harvesting timber from their property. Testimony at trial indicated the strip of land was formerly a public roadway. The testimony described and exhibits show a built up roadway with an underpass. The roadway is several feet higher than the surrounding land. There are sustained fence lines on either side of the road way, apparently erected in times past to contain cattle. The fences were between thirty-two and thirty-three feet apart and ran the entire length of the land to the Zielinski property.

There now exists a two track trail in the contested strip of land, approximately eight feet wide[2]. The dispute in the instant case arose when the Zielinskis contracted with defendant Rothig Forest Products Inc. (Rothig Forest) to harvest trees on their property. To gain access to the trees, Rothig Forest secured defendant John Zielinski's permission to use the trail that traversed plaintiffs' property. Because the equipment employed by Rothig Forest to harvest the timber was so large, Rothig Forest had to re-grade and widen the existing eight foot wide two track trail to accommodate the heavy machinery. This necessarily included cutting down certain trees along the track.

Plaintiffs became aware of the changes to the trail when one of Rothig Forest foreman's advised that they were using the trail to harvest timber from the Zielinskis' property. Plaintiffs thereafter secured an injunction against Rothig Forest which prohibited the company from further use of the trail. After being served with the injunction, Rothig Forest immediately vacated the premises.

The case proceeded to trial before the bench. After hearing all of the evidence, the trial court found by clear and convincing evidence that the Zielinskis' had a prescriptive easement across plaintiffs' property and that the easement was congruent with the former fence-line running on either side of the strip of land thus providing plaintiffs with a thirty-three foot easement across plaintiffs' property. Because the work performed by Rothig Forest was entirely

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[1] Although plaintiff Onekama Marine Inc. owns one of the three parcels currently at issue, the term "plaintiffs" as employed herein refers only to John and Jane Mrozinski as the issue presented in this appeal addresses the easement owned by the Zielinski's relative to the Mrozinskis' interest.

[2] At this juncture, we note that plaintiffs produced a recorded document entitled "Grant of Easement" which provided for a ten foot easement across the two-track trail at the core of this dispute. However, that a ten foot easement was previously granted to a non-party is not dispositive relative to the width of the easement that the Zielinskis claim that they prescriptively commandeered.

within the existing easement, the trial court held that plaintiffs did not have a cause of action on the claims set forth.

II. Standard of Review

On appeal, the plaintiffs no longer dispute the existence of a prescriptive easement herein. Rather, plaintiffs quarrel with the trial court's finding that the existing easement is thirty-three feet wide. Plaintiffs thus dispute the trial court's findings relative to the scope of the easement and the burden placed thereupon by the timber harvest.

This Court reviews de novo a trial court's determination of equitable issues. *Cipri v Bellingham Frozen Foos, Inc*, 235 Mich App 1, 9; 596 NW2d 620 (1999). However, a trial court's factual findings are reviewed for clear error. *Christiansen v Gerrish Township*, 239 Mich App 380, 390; 608 NW2d 83 (2000). A finding is clearly erroneous when, although evidence exists to support it, we are nevertheless left with a definite and firm conviction that a mistake has been made. *Cipri, supra* at 9. The extent of a party's right under an easement is a question of fact. *Dobie v Morrison*, 227 Mich App 536, 541; 575 NW2d 817 (1998).

III. Analysis

An easement confers the right to use another's land for a specific purpose. *Killips v Mannisto*, 244 Mich App 256, 259; 624 NW2d 224 (2001). One who procures an easement by prescription may do that which is "necessary to make effective the enjoyment of the easement . . .. *Id*. at 261. And, the scope of the privilege is confined only by what is considered reasonable under the circumstances. *Id*. Stated another way, the holder of an easement may not materially increase the burden placed upon the servient tenement beyond that originally contemplated. *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 577; 485 NW2d 129 (1992).

In essence, plaintiffs are arguing that the two-track trail running down the strip of land operates to limit the width of the easement to no more than ten to twelve feet. We disagree.

After hearing all of the evidence, the trial court considered the historical purpose of the now existing trail noting that in the earlier part of the century, that trail was once a road traveled by the public at large for many years. The trial court also considered the landlocked nature of the Zielinskis' property along with the layout of the entire road, which bolstered the testimony indicating that the trail was once a public easement. Additionally, the trial court also considered the character of the road remarking that the road is built up and even had an underpass at one time. From this evidence, the trial court determined that the contested strip of land was once a public roadway.

That established, the trial court then took notice of the fence lines The court commented that trees have grown into the fence which demonstrates that the roadway existed for quite some time. From this evidence, the trial court concluded that the easement itself spanned in between the two pre-existing fence lines on either side of the strip of land making the existing easement thirty-three feet wide. And, because Rothig Forest only cut trees within the existing easement so that its trucks could access the Zielinskis' property to harvest the timber, the trial court concluded that Rothig Forest did nothing improper and plaintiffs' had no cause of action.

Once the width of the prescriptive easement is established, plaintiffs must show a legal reduction of width or change in character of its use. *Berkey and Gay Furniture Company v Valley City Milling Company*, 194 Mich 234; 160 NW 648 (1916). Just as a easement holder cannot unilaterally increase the extent of the easement, neither can the servient estate unilaterally decrease the extent of the easement. Furthermore, the holder of easement rights has the privilege to make changes necessary for effective enjoyment unless the burden on the servient estate is unreasonably increased. *Munrow v Riddle*, 67 Mich App 693, 699; 242 NW2d 498 (1976). Here, the use of two track trail actually decreases the burden on the servient estate.

Upon review of the record, we cannot conclude that the trial court clearly erred in its factual findings that the easement was thirty-three feet wide. We note that plaintiffs primarily take issue with the trial court's determination relative to the size of the easement and only tangentially raise an issue concerning the reasonableness of the burden placed upon the easement. Because plaintiffs did not specifically and clearly raise this issue for our consideration, we thus decline to address it. Indeed, one may not merely announce their position and leave it to this court to discover and rationalize a basis for the claim. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Our de novo review of the record in this equitable proceeding reveals that the trial court did not err in any regard.

We also decline to assess actual attorney fees requested by defendants-appellees because we do not find any evidence in the record demonstrating that the instant appeal was taken for purposes of delay or otherwise lacked a reasonable basis for plaintiffs' belief that the issue herein presented was unmeritorious as required by MCR 7.216(C)(1)(a).

Affirmed.

/s/ Christopher M. Murray
/s/ William B. Murphy
/s/ Kirsten Frank Kelly