STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL DAVID CORBIN and MARILYN J. CORBIN,	UNPUBLISHED December 13, 2002
Plaintiffs-Appellees,	
v	No. 229712 Oakland Circuit Court
DAVID KURKO and ISABEL KURKO,	LC No. 97-002592-CH
Defendants-Appellants.	ON REHEARING

Before: Holbrook, Jr., P.J., and Jansen and Wilder, JJ.

PER CURIAM.

This case is before us on rehearing. Originally, defendants appealed as of right from the judgment entered after a bench trial in a declaratory action to enforce an easement on commercial property. We affirmed in part, reversed in part, and remanded for further proceedings. *Corbin v Kurko*, unpublished opinion per curiam of the Court of Appeals, issued August 30, 2002 (Docket No. 229712). Defendants argue in their motion for rehearing that our original opinion did not address that portion of trial court's judgment creating access easements over Lots 123 and 124 and the unencumbered portion of Lot 125, and precluding defendants from erecting a fence or wall on these lots. We now clarify our previous unpublished opinion in this case by reversing the trial court's opinion and judgment to the extent that the judgment is construed as creating access easements over these lots in question or precluding defendants from building a fence or wall on the lots that are not subject to the easements. Accordingly, we affirm in part, reverse in part.

As we noted in our previous opinion, plaintiff Michael David Corbin's father, who operated a barbershop on Lot 126, conveyed Lots 123, 124 and 125 to defendants in 1965. Since 1962, defendants have operated a bar on Lots 123, 124 and 125. To maintain parking space for his barbershop, plaintiff's father created easements along the common boundary of Lots 125 and 126. The easements are identical, allowing "travel on, over and across a strip of land of equal width, on Lot 125" and "on, over and across a strip of land of equal width, 10 feet wide, on Lot 126 . . . for the parking of motor vehicles by persons having business with occupants of either Lots 123, 124, 125 or 126." At trial, plaintiffs argued that based upon the wording of the easements, they had an easement to travel over Lots 123, 124 and 125 to access the parking area. In its opinion and final judgment, the trial court held that "the easements describe a common parking area which can be accessed from either direction and . . . which can be used jointly by patrons of Plaintiff's [sic] hair salon on lot 126 and of Defendant's [sic] bar on lots 123, 124,

125." The trial court added: "The court holds, as a matter of law, that this precludes Defendant from erecting a fence or wall on its side of the easements. It goes without saying that Plaintiff is also precluded from erecting such a fence or wall on its side of the easements."

In Part III of our previous opinion relating to the "Scope of Easement," we stated: "Although plaintiffs asked that easements be extended across Lots 123, 124 and the remainder of Lot 125 to permit access to Lot 126, we do not read the trial court's order as granting that relief." *Id*., p 2. In so doing, we found that the easements created by the deeds are limited to the respective ten-foot strips on Lots 125 and 126, and that no easements were created by implication.

On rehearing, defendants claim that the trial court's interpretation of the easements effectively created access easements, as opposed to use easements created by the deeds, "with its holding that Plaintiffs may access the easement by traveling across lots 123, 124 and the portion of 125 not including the 10 foot strip" and by precluding "Defendants from erecting a fence or wall on its side of the easements (this means lots 123, 124 and the portion of 125 not including the ten foot strip) is essentially a ruling that Plaintiffs and their customers must have access to the easements from Plaintiffs property not subject to the easement." According to defendants, our prior opinion did not reverse that portion of the trial court's opinion and judgment allowing access over Lots 123 and 124 and the unencumbered portion of Lot 125.

Incorporating our prior opinion by reference, we now clarify that the trial court's opinion and judgment is reversed to the extent that it is construed as creating an access easement over Lots 123 and 124 and the unencumbered portion of Lot 125. Further, defendants are not precluded from erecting a wall or fence on Lots 123 and 124 and the unencumbered portion of Lot 125. However, as previously indicated, the parties shall not unreasonably interfere with the use of the easements by erecting a fence or wall on the portion of Lots 125 and 126 that are subject to the easements.

Accordingly, we affirm in part, reverse in part, and remand for further proceedings. We do not retain jurisdiction. Costs shall not be taxed, neither party having prevailed in full.

/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen

I concur in result only.

/s/ Kurtis T. Wilder