STATE OF MICHIGAN

COURT OF APPEALS

RUSSEL WARNER; MARY WARNER; RICHARD DE LANO; PATRICIA DE LANO; D. SCOTT HOLKEBOER; JULIE HOLKEBOER; WILLIAM SPENCE; REBECCA SPENCE; ROBERT TYLER; MARLENE PLUMMER, Individually and as Trustee of the MARLENE M. PLUMMER TRUST; ROBERT FULTON; ROBERT HEFFNER; MELANIE HEFFNER; DONALD HOFFMAN; DONNA BAILEY; and KAAREN DEWITT,

Plaintiffs-Appellees,

v

JAMES SCAVO and HEATHER M SCAVO,

Defendants/Third-Party Plaintiffs-Appellants,

v

RIVERTOWN BUILDERS, LLC,

Third-Party Defendant-Appellee.

UNPUBLISHED
June 10, 2008

No. 274266
Allegan Circuit Court
LC No. 05-037930-CH

Before: Markey, P.J., and Meter and Murray, JJ.

PER CURIAM.

Defendants appeal by right from the trial court's orders entering judgment for plaintiffs and granting partial summary disposition in favor of third-party defendant Rivertown Builders (Rivertown). We affirm.

Green Lake Park is a platted subdivision located in Allegan County on land that forms a peninsula into Green Lake. In 1893, the Green Lake Park Association (the Association) established and recorded the plat. The plat consisted of numbered lots one to 44, designated additional common areas as the Court, Park Place, and Shore Commons, and named at least five

streets. In 1897, the Association replatted Green Lake Park to divide Park Place into lots 45 to 60 and the Court into lots 61 to 71.

Today, many residents of Green Lake Park have docks off of Shore Commons. There are no provisions contained within any of the Green Lake Park residents' deeds regarding their rights to access Short Street and Shore Commons. The plats are silent with regard to any dedication, public or private, of Short Street and Shore Commons. The Green Lake Park residents, however, have an understanding that they have access rights to Short Street and Shore Commons, which derive from their ownership of plat lots and a 1966 judgment, where the Allegan Circuit Court ruled that Short Street was a private street for the use of all of the lot owners in Green Lake Park plat as replatted in 1897. *Bailey v Miedema*, unpublished judgment of the Allegan Circuit Court, entered December 29, 1966 (Docket No. 1/1127). According to that judgment, those lots owners "have an easement appurtenant to their respective lots over said Short Street, for the purpose of traveling from Main Street . . . to Shore Commons and Green Lake for ingress and egress to and from Shore Commons and Green Lake." *Id.* Further, the Green Lake Park plat owners "have an easement appurtenant to their respective lots, in common, for the use of Shore Commons for park purposes, for gaining access to Green Lake, for bathing and launching boats on Green Lake, for docking boats, for holding picnics thereon, and for any other purposes not inconsistent with park purposes." *Id.*

Defendants' residence is located in the Rose Hill Addition to Green Lake Park. The Rose Hill Addition was platted in 1921, but its proprietors were not involved in the Green Lake Park plat, which is not referenced in the Rose Hill Addition plat. The Rose Hill Addition does not abut Green Lake Park or Green Lake. The Hahn Addition separates the Rose Hill Addition from Green Lake Park. The plat of Rose Hill Addition does not mention either Short Street or Shore Commons.

Defendants wanted to place a dock on Shore Commons, and for a time, plaintiffs (various lot owners in Green Lake Park plat) allowed defendants to do so. Later, however, plaintiffs obtained an attorney's opinion regarding their legal rights to Short Street and Shore Commons. In sum, the opinion, following the language from the *Bailey* judgment, provided that plaintiffs held easements rights over Short Street and Shore Commons, and the easement rights were limited to owners of lots in Green Lake Park plat, as amended in 1897. Thus, according to the legal opinion, defendants, as lot owners in Rose Hill Addition, did not have easement rights over Short Street and Shore Commons. Plaintiffs wrote a letter to the lot owners of the Rose Hill Addition and the Haan Addition, requesting those individuals, including defendants, cease and desist any use of Short Street and Shore Commons. When defendants refused, plaintiffs filed this action seeking declaratory and injunctive relief, as well as nominal damages.

Defendants filed a third-party complaint against Rivertown, the entity that sold defendants their Rose Hill Addition residence, alleging misrepresentation and violation of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* Defendants asserted that Rivertown made representations that Rose Hill Addition lot owners had water access through Short Street and Shore Commons.

Before the bench trial commenced, the trial court granted partial summary disposition to Rivertown pursuant to MCR 2.116(C)(10) as to defendants' misrepresentation, rescission, and reimbursement claims. After trial, the trial court ruled in favor of plaintiffs, concluding that:

> Plaintiffs are entitled to a declaratory judgment stating that [defendants] have no legal right to use any common areas of Green Lake Park including Short Street and Shore Commons; an injunction permanently enjoining [defendants] from placing a dock on Shore Commons; and nominal damages for trespass. [Defendants] are entitled to $250.00 for Rivertown's violation of the MCPA together with costs and attorney fees accrued in connection with their third-party complaint. [Trial court opinion, 08/15/2006, p 6.]

Defendants now appeal. This Court will address first the issues involved in the plaintiffs' action and then the issues implicated in the third-party action.

Defendants first argue that the trial court erroneously concluded that plaintiffs possessed an easement over Short Street and Shore Commons. This Court reviews de novo a trial court's ruling on an equitable matter. *Blackhawk Dev Corp v Dexter Village*, 473 Mich 33, 40; 700 NW2d 364 (2005). But the extent of a party's rights under an easement is a question of fact, and we review for clear error the trial court's factual determinations. *Id.* A trial court's finding is clearly erroneous when although there is evidence to support the finding, this Court is left with the definite and firm conclusion that a mistake has been made. *Heindlmeyer v Ottawa Co Concealed Weapons Licensing Bd*, 268 Mich App 202, 214, 222; 707 NW2d 353 (2005).

Easements may be created by express grant, by reservation or exception, by covenant or agreement, or be acquired by prescription. *Heydon v MediaOne of Southeast Mich, Inc*, 275 Mich App 267, 270; 739 NW2d 373 (2007). An easement is "a right to use the land burdened by the easement rather than a right to occupy and use the land as an owner." *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378; 699 NW2d 272 (2005) (citations omitted). An easement is a limited property interest that is generally confined to a specific purpose. *Id*. at 378-379. An "easement holder is said to enjoy all rights reasonably necessary and proper to fully use the easement." *Id.* at 403.

In the instant action, the trial court relied extensively on the decision in *Bailey*, finding that "Short Street, Shore Commons and the other areas within Green Lake Park are private, rather than public." The trial court also found that "the plat is silent as to dedication, and defendants did not present any evidence suggesting the proprietor intended to make a public dedication." Moreover, the trial court reasoned that even if the proprietor intended to dedicate the plat's roads to the public, there was no evidence that the public authorities accepted such alleged dedication. The trial court then opined:

> Perhaps the best evidence that Short Street and Shore Commons are private, however, is a prior judgment involving these same areas. In *Bailey v Miedema*, a group of lot owners in Green Lake Park brought an action to enjoin another lot owner from closing Short Street. Although joined as a defendant, the Road Commission defaulted. The court entered a declatory [sic] judgment finding as follows:
>
> "That Short Street lying south of lots 27 and 20, and north of lot 43, as shown on Green Lake Park Plat recorded in the Office of the Register of Deeds . . . is a private street for the use of all of the lot owners in said plat, and that Plaintiffs, as well as other lot owners in said plat, including the lot owners in any portion of

> said plat which was replatted, have an easement in common appurtenant to their respective lots over said Short Street, for the purpose of traveling from Main Street . . . to Shore Commons and Green Lake for ingress and egress to and from Shore Commons and Green Lake." [Trial court opinion, 08/15/2006, p 3, quoting *Bailey, supra* at 2.]

We agree. Nothing in the record supports that there was a valid public dedication of the streets or common areas in the 1893 or 1897 plats of Green Lake Park. "Generally, a valid statutory dedication of land for a public purpose requires two elements: (1) a recorded plat designating the areas for public use; and (2) acceptance by the proper public authority." *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 113; 662 NW2d 387 (2003). At common law, unless an owner intentionally dedicates a road for public use and the public authorities accept the dedication, the roads remain private. *Missaukee Lakes Land Co v Missaukee Co Rd Comm*, 333 Mich 372, 377-380; 53 NW2d 297 (1952). The plat here is silent with respect to designating streets and common areas for public use. Thus, even without an express private dedication, caselaw supports concluding that the common areas were dedicated to the use of the lot owners. See *Schurtz v Wescott*, 286 Mich 691, 697; 282 NW 870 (1938).

Moreover, Michigan caselaw provides that lot owners hold easements in privately dedicated common areas and streets. See *Kirchen v Remenga*, 291 Mich 94, 108; 288 NW 344 (1939). More recently, our Supreme Court has held that "dedications of land for private use in plats before 1967 PA 288 took effect convey at least an irrevocable easement in the dedicated land." *Little v Hirschman*, 469 Mich 553, 564; 677 NW2d 319 (2004). We conclude the trial court did not err in finding that Short Street and Shore Commons were private, because the common areas in Green Lake Park were not dedicated for public use; therefore, the common areas remained private. While the trial court did not expressly find that plaintiffs held easements in the common areas, plaintiffs hold "at least an irrevocable easement in the dedicated land." *Id*.

In fact, plaintiffs hold easements appurtenant. "The purchasers of lots in the original plat took not only the interest of the grantor in the land described in their respective deeds, but, as an incorporeal hereditament . . . appurtenant to it, took an easement in the streets, parks and public grounds mentioned and designated in the plat . . . ." *Kirchen, supra* at 108 (citation omitted). "An easement appurtenant is one 'created to benefit another tract of land, the use of easement being incident to the ownership of that other tract.'" *Carmody-Lahti Real Estate, supra* at 378 n 40, quoting Black's Law Dictionary (7th ed).

Defendants next argue that plaintiffs did not have standing to maintain a trespass action. We disagree. This Court reviews de novo whether a party has standing. *Mich Citizens for Water Conservation v Nestle Waters North America Inc*, 479 Mich 280, 291; 737 NW2d 447 (2007).

We view this issue as not so much whether plaintiffs have standing, but whether the trial court used the proper nomenclature. A trespass occurs when a person's interest in the exclusive possession of his land is invaded. *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 508; 686 NW2d 770 (2004). "In order to recover for trespass, a plaintiff must have title to or actual possession of the land on which the trespass is claimed." *Id.* An easement is the right to use, not occupy or possess, the burdened land. *Carmody-Lahti Real Estate, supra* at 378. Nevertheless, plaintiffs clearly have standing to enforce their easement rights. Plaintiffs possess an interest in the property in question and assert that defendants have violated their easement

rights, especially their recreational use of Shore Street and Shore Commons. "Standing may be proven by showing that the '[defendants'] activities directly affected the [plaintiffs'] recreational, aesthetic, or economic interests.'" *Kallman v Sunseekers Property Owners Ass'n, L.L.C.*, 480 Mich 1099; ___ NW2d ___ (2008), quoting *Michigan Citizens*, *supra* at 296.

Whether it is proper to refer to the interference with an easement as a "trespass" is debatable. The broad definition of a "trespass" is any "unlawful act committed against the person or property of another; esp., wrongful entry to another's property." Black's Law Dictionary (7th ed), p 1508. Further, our Supreme Court has referred to the obstruction of an easement as a "trespass." In *Longton v Stedman*, 182 Mich 405; 148 NW 738 (1914)(*Longton I*), the defendant erected a brick building right up to his property line, obstructing a five-foot strip of property reserved as a part of a joint easement with the adjoining property. *Id*. at 410. The Court referred to this building erected on the defendant's own property as an "encroachment and trespass." *Id*. at 415. On remand, the trial court ordered the defendant to remove the offending building from the easement. See *Longton v Stedman*, 196 Mich 543, 544; 162 NW 947 (1917) (*Longton II*). The *Longton II* Court rejected the defendants' statute of limitations "demurrer" opining:

> A sufficient answer to this contention is found in the fact that plaintiffs' action is not based on any covenant. It is an action in which plaintiffs seek by the aid of a mandatory injunction to *abate and restrain a continuing trespass*. This action is open to plaintiffs at any time until the trespasser has extinguished the easement claimed by plaintiffs by adverse possession 15 years. [*Longton II*, *supra* at 545 (emphasis added).]

On the other hand, our Supreme Court has held that trespass will not lie for the obstruction of an easement, explaining in *Hasselbring v Koepke*, 263 Mich 466, 476; 248 NW 869 (1933):

> Ejectment will not lie to recover an easement. Trespass to try title will not lie because there is no breach of the owner's possession. A party need not submit to an invasion of his rights and content himself with suing on the case for damages. Plaintiffs' remedy, if any, is in equity. [*Id*. (citations omitted).]

This Court relied on *Hasselbring*, among other decisions, in holding the plaintiffs could not "maintain an action in trespass *quare clausum fregit (q.c.f.)*"[1] against the defendant in possession of the property burdened with the easement for its obstruction. *Tittiger v Johnson*, 103 Mich App 437, 440-441; 303 NW2d 26 (1981). The Court held that for the plaintiffs to bring such an action, the plaintiffs would have "to establish that their rights in the easement equated to possession or title in the subject parcel." *Id*. at 440. Arguably, plaintiffs here made such a showing because their easement rights were exclusive and the fee owner, the Green Lake Park Association, has been defunct since 1923.

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[1] A trespass *quare clausum fregit (q.c.f.)* is defined as "[a] person's unlawful entry on another's land that is visibly enclosed." Black Law Dictionary (7th ed), p 1509.

We need not decide in this case whether it is proper to refer to such an action as one for trespass. As noted already, plaintiffs have standing to bring an action for the interference with their easement rights and may seek equitable relief or money damages. "For interference with an easement, the owner of it may sue for damages, for an injunction, or both." 25 MLP, Real Property, § 117; see, also, 2 Restatement Property, 3d, § 8.1, p 474 and § 8.3, p 492.

In the instant action, the trial court found the

> . . . testimony revealed that although Scavos did not physically prevent Plaintiffs from accessing Shore Commons, they did interfere with Plaintiffs' use and enjoyment of the area. By placing their dock on Shore Commons, Scavos diminished the already limited space available for docking. Additionally, Scavos' dock encroached on the common swimming space, and interfered with Plaintiffs' ability to safely navigate their boats in the area. Based on the evidence, this Court finds Scavos sufficiently interfered with Plaintiffs' easement rights to warrant, nominal damages for trespass. [Trial court opinion, 08/15/2006, pp 5-6.]

We find no clear error in the trial court's factual determination regarding the scope of plaintiffs' easement rights or that defendants interfered with the easement. Nor do we find any legal error in the court's determining plaintiffs were entitled to nominal damages for this interference with their easement rights. Even if the trial court erred by referring to defendants' actions as a "trespass," it is still proper for us to affirm: This Court will affirm a trial court when it reaches the right result albeit for the wrong reason, or in this case, uses a term that may not be technically correct. See *Hall v McRea Corp*, 238 Mich App 361, 369; 605 NW2d 354 (1999).

Defendant next contends on appeal that the trial court erred in granting plaintiffs declaratory and injunctive relief. We disagree.

We review a trial court's findings of fact following a bench trial for clear error and its conclusions of law de novo. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). Under MCR 2.605 a court *may* grant declaratory relief. "The language of MCR 2.605 is permissive rather than mandatory; thus, it rests with the sound discretion of the court whether to grant declaratory relief." *PT Today, Inc v Comm'r of the Office of Financial and Ins Services*, 270 Mich App 110, 126; 715 NW2d 398 (2006). "Under the deferential standard of review outlined in MCR 2.605, a reviewing court must affirm the trial court's decision even if a reasonable person might differ with the trial court in its decision to withhold relief." *Id.* at 129.

A trial court's grant of injunctive relief is reviewed for an abuse of discretion. *Mich Coalition of State Employee Unions v Civil Service Comm'n*, 465 Mich 212, 217; 634 NW2d 692 (2001). Our Supreme Court adopted a default standard of review in *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006):

> [A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome. . . . When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment.

We conclude that the trial court did not abuse its discretion in entering a declaratory judgment in favor of plaintiffs and against defendants. MCR 2.605(A) empowers a circuit court to issue a declaratory judgment in "a case of actual controversy." See *PT Today, supra* at 127. Here, there was an actual controversy regarding whether defendants had a legal right to use Short Street and Shore Commons. The trial court found that "Short Street, Shore Commons and other areas within Green Lake Park are private, rather than public." The trial court therefore concluded that "plaintiffs may have a judgment declaring that [defendants], as non-lot owners, are not entitled to use any common areas within Green Lake Park plat including Short Street and Shore Commons." Under the deferential standard of review in declaratory judgment actions, this Court affirms the trial court's decision "even if a reasonable person might differ with the trial court in its decision to withhold relief." *PT Today, supra* at 129.

We also conclude that the trial court did not abuse its discretion in granting injunctive relief. "Injunctive relief is an extraordinary remedy that courts normally grant only when '(1) justice requires it, (2) there is no adequate remedy at law, and (3) there exists a real and imminent danger of irreparable injury.'" *Higgins Lake Prop Owners, supra* at 106 (citations omitted). This Court has noted that a key inquiry in determining the propriety of injunctive relief is whether "'a real and imminent danger of irreparable injury must exist to support a grant of injunctive relief.'" *Id.* at 106 (citations omitted). But this Court has also held that "[w]hen an injury is irreparable, the interference is of a permanent or continuous character, or the remedy at law will not afford adequate relief, a bill for an injunction is an appropriate remedy." *Schadewald v Brule*, 225 Mich App 26, 40; 570 NW2d 788 (1997), citing *Soergel v Preston*, 141 Mich App 585, 589-590; 367 NW2d 366 (1985).

Michigan courts have long enforced easements with injunctive orders. See *Minnis v Jyleen*, 333 Mich 447, 453; 53 NW2d 328 (1952) (plat owners with easement in privately dedicated roads could maintain suit in equity for the protection and enforcement of their private rights), and *Ives v Edison*, 124 Mich 402; 83 NW 120 (1900) (an easement stairway in a building ordered replaced). In the latter case, the Court found that damages for having moved a stairway were inadequate and rejected the defendant's contention that irreparable injury had not occurred because the change was actually beneficial to the complainant. *Ives, supra* at 405. The Court observed: "It is the duty of the courts to protect persons in their right of property, even though the holdings may be small, instead of justifying a trespass, or compelling the owner of the property to accept something else in the place of it." *Id*. at 410.

Likewise, in *Schadewald, supra* at 40, this Court found that the trial court abused its discretion by not enjoining the use of an easement by owners/users of property not entitled to its benefit. The defendant Brule owned the dominant estate but used the easement for a lot (539) to which the easement was not appurtenant. This Court did not require proof of overburdening, only that the property was not permitted to use the easement. The Court found that "the pertinent question is not whether the burden on [the] plaintiffs' property has substantially increased, but rather whether lot 539 has any right to an easement over plaintiffs' property." *Id*. at 38. Further, the Court held that even if it were necessary to establish overuse of the easement, "the Brules have not established that relief is unwarranted" because declining to do so would grant "the owner of the dominant estate carte blanche to unilaterally extend an easement to other property as long as he is careful not to increase the present burden on the servient estate." *Id*. at 39.

Here, plaintiffs hold a valuable property right limiting the use of Shore Street and Shore Commons to plat owners. Allowing non-plat owners use of Shore Street and Shore Commons burdens the servient property beyond the intended scope of the easement. Furthermore, expanding use of the easement beyond Green Lake Park plat owners diminishes the plat owners' use and enjoyment of the easement. Because defendants do not own property with an appurtenant easement to use Shore Street and Shore Commons, plaintiffs are not required to show defendants' use was overly burdensome to obtain injunctive relief. *Schadewald, supra* at 39-40; *Soergel, supra* at 589. A fundamental principle governing easements is that its owner has all rights "'necessary to the reasonable and proper enjoyment of the easement.'" *Blackhawk, supra at* 40, quoting *Unverzagt v Miller*, 306 Mich 260, 265; 10 NW2d 849 (1943). Here, it would be very difficult to determine an amount of money damages because of defendants' interference with plaintiffs' easement. Further, the trial court did not clearly err by finding that defendants were persistent in the use of easements to which they were not entitled, and that this violation would likely continue without judicial relief. In essence, the trial court determined defendants' interference was permanent or continuous such that a remedy at law was inadequate. *Schadewald, supra* at 40; *Soergel, supra* 589-590. So, the trial court's granting injunctive relief was within the principled range of outcomes and not an abuse of discretion. *Maldonado, supra* at 388.

Next, defendants argue that the trial court erred by declining to allow the testimony of Darwin VanderArk, a former supervisor of Leighton Township. The trial court ruled that VanderArk's testimony as to Leighton Township's "understanding of the nature of Short Street" was not relevant. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *Barnett v Hidalgo*, 478 Mich 151, 158-159; 732 NW2d 472 (2007). Defendants fail to present any analysis or cite legal authority that would render VanderArk's testimony relevant. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims; nor may he give issues cursory treatment with little or no citation of supporting authority. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Moreover, an appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue on appeal. *Id*.

Next, defendants assert that the trial court erred in ruling that defendants abandoned their contention that the Rose Hill Addition was a part of the Green Lake Park plat. However, defendants appear to be arguing that the trial court failed to address whether the Rose Hill Addition was a replat of Green Lake Park. While the trial court noted that it would not make a finding as to the issue whether Rose Hill Addition was a replat of Green Lake Park, such a finding was, at least, implicit in the trial court's ultimate conclusion. Thus, the trial court addressed it. Moreover, defendants have abandoned this issue, because, again, they have failed to cite any authority to support their argument. See *Yee, supra* at 406.

Finally, this Court concludes defendants' allegations of error regarding the third-party action lack merit. Defendants first argue that the trial court erred in granting Rivertown's motion for partial summary disposition.

MCR 2.116(C)(10) provides that "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." This Court reviews de novo a trial court's grant of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Like the trial court,

this Court must view the evidence in favor of the nonmoving party, and determine if there exists a relevant factual issue about which reasonable minds might differ. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999). The moving party must support its motion with affidavits or other documentary evidence. MCR 2.116(G)(3). If the moving party does so, the burden shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The nonmoving party may not simply rely on allegations or denials in the pleadings. *Id.* If the nonmoving party fails to present evidence establishing the existence of a material factual dispute, the motion is properly granted. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-363; 547 NW2d 314 (1996).

In the instant action, in responding to Rivertown's motion for summary disposition, defendants failed to go beyond the pleadings to demonstrate that a genuine issue of material fact existed. Thus, we conclude that Rivertown was entitled to summary disposition on defendants' fraud claim because defendants failed to present documentary evidence establishing the existence of a material factual dispute. *Quinto, supra* at 361-363.

Further, we conclude that the trial court properly granted summary disposition with respect to defendants' rescission and reimbursement claims. Defendants' argument regarding these claims is premised on a finding that the trial court erred by granting summary disposition of the fraud claim. But the trial court did not err in that regard, so this issue is without merit. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003).

Defendants finally contend on appeal that the trial court erroneously denied defendants actual damages for their MCPA claim. This Court reviews de novo questions of statutory interpretation. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). We review the trial court's determination of damages after a bench trial for clear error. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 513; 667 NW2d 379 (2003).

MCL 445.903(1) prohibits unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce. MCL 445.904(1)(a) includes an exemption for any "transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States." A private person may bring an action for declaratory or injunctive relief, and actual damages or $250, whichever is greater. MCL 445.911(1), (2). "A party asserting a claim has the burden of proving its damages with reasonable certainty." *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). Generally, "damages based on speculation or conjecture are not recoverable;" however, "damages are not speculative merely because they cannot be ascertained with mathematical precision." *Id.*

On this record, we conclude that the trial court's award of the statutory minimum for damages under the MCPA was not clearly erroneous. Defendants had the burden of proving their damages with reasonable certainty. *Berrios*, *supra* at 478. At the bench trial, defendants provided only self-serving testimony regarding their damages. The testimony demonstrated that defendants believed that a residence with lake access was worth 10 percent more than a residence without lake access. However, defendants' testimony and documentary evidence established that defendants had at least two other access points to Green Lake within close proximity to their residence. Thus, defendants could access Green Lake from their residence. This Court will "defer to the trial court's superior position to observe and evaluate witness

credibility." *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002). After reviewing the record, we are not be left with a firm and definite conviction that the trial court erred with respect to its award of damages. *Id.*

In reaching this conclusion, we note that Rivertown argues it is exempt from the MCPA, because it is a residential homebuilder. Recently, our Supreme Court held that "under MCL 445.904(1)(a), residential home builders are exempt from the MCPA because the general transaction of residential home building, including contracting to perform such transaction, is 'specifically authorized' by the Michigan Occupational Code ("MOC"), MCL 339.101 et seq." *Liss v Lewiston-Richards, Inc*, 478 Mich 203, 206; 732 NW2d 514 (2007). We decline to address this issue because it is not properly before this Court since Rivertown did not file a cross-appeal. *Barnell v Taubman Co*, 203 Mich App 110, 123; 512 NW2d 13 (1993). Moreover, Rivertown may not raise new issues by filing a supplemental authority. MCR 7.212(F)(1).

We affirm.

/s/ Jane E. Markey
/s/ Patrick M. Meter
/s/ Christopher M. Murray