

STATE OF MICHIGAN
COURT OF APPEALS

CROWN ENTERPRISES INC,
Plaintiff-Appellee,

UNPUBLISHED
May 20, 2010

v

No. 286525
Wayne Circuit Court
LC No. 05-519614-CZ

CITY OF ROMULUS,
Defendant-Appellant,

and

AMERICAN DIESEL TRUCK REPAIR INC,
RUBEN CHACON, and JUAN MOLINA,
Defendants.

Before: BECKERING, P.J., and MARKEY and BORRELLO, JJ.

BECKERING, J. (*concurring*).

I concur in the outcome, but write separately because I respectfully disagree with the majority's conclusion that plaintiff abandoned its easement in the vacated portion of Harrison Avenue.

The majority concludes, and I agree, that plaintiff Crown Enterprises, Inc. obtained an easement in the vacated portion of Harrison Avenue as the successor in interest to owners that acquired lots in Gordon's Detroit Park Subdivision, in which the street that became Harrison Avenue was platted, but that the scope of the easement did not include the heavy, commercial truck traffic initiated by plaintiff in 2004. The majority further concludes, however, that plaintiff abandoned its easement through nonuse and the submission of its 1995 site plan, which proposed using only Harriet Avenue for ingress and egress. I disagree.

As indicated in the majority opinion, "[n]onuse, by itself, is insufficient to show abandonment. Rather, nonuse must be accompanied by some act showing a clear intent to abandon." *Ludington & Northern R v Epworth Assembly*, 188 Mich App 25, 33; 468 NW2d 884 (1991). Courts of this state have been reluctant to find "clear intent to abandon." See, e.g., *Choals v Plummer*, 353 Mich 64, 72-73; 90 NW2d 851 (1958) (holding that an easement continued to exist although it was covered with shrubs and small trees and had never been used); *Strong v Detroit & Mackinac R Co*, 167 Mich App 562, 569; 423 NW2d 266 (1988) (holding

that there was no intent to abandon where the railroad no longer used the easement and the railroad tracks were removed). Our courts have found abandonment where, for example, the easement holder erects a permanent obstruction to the easement, see, e.g., *Carr v Bartell*, 305 Mich 317, 322; 9 NW2d 556 (1943); *Bricault v Cavanaugh*, 261 Mich 70, 73; 245 NW 573 (1932), or otherwise destroys the object for which the easement was created, see, e.g., *Jones v Van Bochove*, 103 Mich 98; 61 NW 342 (1894). Additionally, as the majority points out, in *Goodman v Brenner*, 219 Mich 55, 59-61; 188 NW 377 (1922), our Supreme Court found abandonment of an easement implied in necessity where the defendant did not use the easement for 30 years and denied having a right to use the easement.

In this case, plaintiff committed no act expressing a clear intent to abandon its easement. Two witnesses testified that plaintiff's predecessor allowed its employees to travel on Harrison Avenue in their personal vehicles, as well as in trucks. Specifically, the employees drove the "tractor" portion of the company's trucks, not the "trailer" portion of the trucks, on Harrison Avenue. In 1994, plaintiff acquired the property from its predecessor and, apparently, no longer allowed employees to travel on Harrison Avenue. In 1995, plaintiff submitted its site plan to the city. Although the site plan proposed using Harriet Avenue for ingress and egress, I do not believe that the plan expressed a clear intent to permanently abandon the easement in Harrison Avenue. There is a fence bordering plaintiff's property, but there is a gate between the property and Harrison Avenue. While plaintiff kept the gate locked prior to 2004, it could be unlocked at any time. Plaintiff erected no permanent obstruction to its easement, and believed that it could begin using Harrison Avenue at any time, which it did in 2004. Plaintiff's actions do not rise to the level of those actions where our courts have found abandonment.

While I disagree with the majority's conclusion on the issue of abandonment, I agree that plaintiff never held an easement for heavy, commercial truck traffic and, therefore, cannot establish its procedural due process claim. "An easement is, by nature, a limited property interest Accordingly, an easement, whether appurtenant or in gross, is generally confined to a specific purpose." *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359; 378-379; 699 NW2d 272 (2005). "The owner of an easement cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden." *Schadewald v Brule*, 225 Mich App 26, 36; 570 NW2d 788 (1997). The use of Harrison Avenue, an unimproved road, for as many as 100 tractor-trailers a day, seven days a week, was outside the scope of the easement that arose out of a 1926 plat creating a subdivision of lots for residential development. As noted by the majority, while plaintiff argues that the barricades erected by defendant City of Romulus also precluded plaintiff from using Harrison Avenue for non-truck traffic, both the facts and plaintiff's complaint belie plaintiff's claim that it sought to use Harrison Avenue for that limited purpose. As such, I concur in the outcome.

/s/ Jane M. Beckering