STATE OF MICHIGAN

COURT OF APPEALS

THOMAS A. WOOTTON and LUCY X. YANG, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED October 19, 2010
v	No. 293435 Van Buren Circuit Court
JO DIANE CARLSON, Defendant/Counter-Plaintiff-Appellant.	LC No. 08-570078-CH

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

This case involves the parties' rights under a joint driveway easement. Defendant/counter-plaintiff appeals as of right from the trial court order granting summary disposition in favor of plaintiffs/counter-defendants pursuant to MCR 2.116(C)(10). We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E).

The relevant facts of this case are not in dispute. The parties own adjoining properties in South Haven, Michigan. Plaintiffs own the property located at 316 Indiana Avenue, while defendant owns the property located at 314 Indiana Avenue. Prior to April 1936, the properties were owned by Christian Niffenegger, Sr., and Anna Niffenegger, husband and wife. These properties were sold in April 1936 to two separate owners, creating two separate chains of title.

The plaintiffs' property was conveyed by the Niffenggers to Harry and Vada Teske, by warranty deed on May 6, 1936. The Teskes sold plaintiffs' property to a third party, and it was eventually purchased by plaintiffs from Claud W. Burrows and Nancy Sue Burrows by warranty deed recorded February 27, 2002.

The defendant's property was conveyed by the Niffenggers to James and Francis Steele on May 4, 1936. The Steele's later sold defendant's property to a third-party and was eventually purchased by defendant on December 13, 1996, from Jerry Friedman, Trustee of the Herman and Sidille Friedman Irrevocable Trust by warranty deed recorded on December 19, 1996.

The warranty deeds for both properties contain the same joint driveway language: "It being further understood and agreed that the said spaces shall not be used for parking purposes or obstructed in any way whatsoever and shall be kept free and clear so as to be available at all

times for use of the parties herein mentioned, their heirs and assigns, for the purpose of ingress and egress to the respective garages located in the rear of the aforesaid dwellings."

Neither plaintiffs' nor defendant's title insurance policy referenced the joint driveway easement.

The garages on both properties were removed at some point in time. Plaintiffs maintained the joint driveway during their ownership by controlling weeds on the area. In June of 2006, defendant erected a fence on the joint driveway within inches of plaintiffs' property. The fence blocks use of the joint driveway. Plaintiffs alleged in their complaint that they had occasionally used the joint driveway to park their cars in the backyard of their property and had been unable to do so since the fence was erected.

Plaintiffs filed an action in trespass seeking removal of the fence erected by defendant on the joint driveway. Defendant filed a counter-complaint seeking to quiet title in favor of her to her property, that the interest created by the 1936 Niffenegger deeds were licenses to use the property between the two houses for a specific limited purpose which terminated when the garages were destroyed, or whatever easement interest was granted had terminated because of the destruction of the garages.

Plaintiffs filed a motion for summary disposition pursuant to MCR 2.116(C)(8), (9), and (10) arguing that the joint driveway easement was still in effect. Defendant filed a separate motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court granted plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10) and denied defendant's motion for summary disposition.

On appeal, defendant claims the trial court erroneously determined that the joint driveway easement remained in effect after the original garages were taken down. We disagree and affirm the trial court order.

This Court reviews the grant or denial of a motion for summary disposition de novo. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007); *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). When reviewing a motion brought under MCR 2.116(C)(10), this Court considers the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Brown*, 478 Mich at 552. A grant of summary disposition is appropriate if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Brown*, 478 Mich at 552; *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006).

In addition, the language of a deed, which is a contract, is reviewed de novo on appeal. *In re Egbert R Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008); *In re Jane E Ruddell Estate*, 286 Mich App 391, 402-403; 780 NW2d 884 (2010). The scope of a party's rights under an easement is a question of fact that is reviewed for clear error. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005); *Unverzagt v Miller*, 306 Mich 260, 266; 10 NW2d 849 (1943).

An easement is a limited property interest that is generally confined to a specific purpose. *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378; 699 NW2d

272 (2005); *Schadewald v Brulé*, 225 Mich App 26, 35; 570 NW2d 788 (1997). As stated by this Court in *Heydon v MediaOne of Southeast Michigan, Inc*, 275 Mich App 267, 270; 739 NW2d 373 (2007):

> "An easement is the right to use the land of another for a specified purpose." *Schadewald v Brulé*, 225 Mich App 26, 35; 570 NW2d 788 (1997). Michigan courts recognize two types of easements: easements appurtenant and easements in gross. *Collins v Stewart*, 302 Mich 1, 4; 4 NW2d 446 (1942). An appurtenant easement attaches to the land and is incapable of existence apart from the land to which it is annexed. *Schadewald*, *supra* at 35. An easement appurtenant is necessarily connected with the use or enjoyment of the benefited parcel and may pass with the benefited property when the property is transferred. *McClintic-Marshall Co v Ford Motor Co*, 254 Mich 305, 318; 236 NW 792 (1931).
>
> "An easement in gross is one 'benefiting a particular person and not a particular piece of land.'" *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 379 n 41; 699 NW2d 272 (2005), quoting Black's Law Dictionary (7th ed). An easement in gross is thus personal in nature. *Smith v Dennedy*, 224 Mich 378, 381; 194 NW 998 (1923).

The use of an easement must be confined strictly to the purposes for which it was granted or reserved. Those purposes are determined by the text of the easement. *Blackhawk Dev Corp*, 473 Mich at 41; *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003). When the language of the easement is plain, it must be enforced as written and no further inquiry is allowed. However, if the text is ambiguous, extrinsic evidence may be considered by the trial court to determine the scope of the easement. *Little*, 468 Mich at 700. *Anglers of the Au Sable, Inc v Dep't of Environmental Quality*, 283 Mich App 115, 129-130; 770 NW2d 359 (2009).

The language used to indicate an easement for a particular purpose only is specific. *Odoi v White*, 342 Mich 573, 575-576; 70 NW2d 709 (1955). An easement limited to a particular purpose terminates when the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment. *Dep't of Natural Resources*, 472 Mich at 381-382 n 49.

Defendant erroneously argues that the joint driveway easement in this case was for the specific purpose of accessing the original garages only. The language of the deed does not support a finding of a "specific purpose" because it fails to contain any limiting language. Compare *MacLeod v Hamilton*, 254 Mich 653, 656; 236 NW 912 (1931) (language "for the construction of the said watercourse, ditch or drain and for no other purpose whatever" constitutes specific limiting language creating an easement for a particular purpose). The trial court correctly determined that, when read as a whole, the easement was plainly created to allow ingress/egress to the burdened properties, while ensuring that neither party used the joint driveway as a parking area. Although both properties originally had garages, the existence of the easement did not cease upon their removal. Rather, it could still be, and at various times through the years was, used to access the rear yards of the properties. Defendant's attempt to parse the language of the easement and focus on the last sentence is unconvincing given that the easement must be interpreted as a whole. *Blackhawk Dev Corp*, 473 Mich at 41; *Little*, 468 Mich at 700.

Defendant's reliance on *Andersen v Schmidt*, 16 Mich App 633; 168 NW2d 437 (1969), is similarly misplaced. Therein, the plaintiffs had an easement over the defendant's property for ingress to, and egress from, a boathouse on the shore of Silver Lake. The plaintiffs' predecessor in interest owned land on an island in Silver Lake. The plaintiffs' predecessor in interest never owned the land where the boathouse stood on the defendant's property and the defendant's predecessor in interest never owned the plaintiffs' land on the island in Silver Lake. The boathouse collapsed in 1960 after 16 years of nonuse. This Court held that the existence of the boathouse was essential to the purpose of the grant of the easement. *Andersen*, 16 Mich App at 635[1]. Since the plaintiffs did not own the underlying fee, they could not rebuild the boathouse. Because the land on which it was built was never owned by the plaintiffs, the collapse of the boathouse made the ultimate purpose for the creation and existence of the right of ingress and egress hopeless and impossible, and the easement was accordingly deemed terminated. *Id.*

As previously discussed, the easement in this case is not for a specific purpose. Even if it were, *Andersen* is distinguishable on the facts. Unlike *Andersen*, the easement is located on land that was originally owned by the original grantor who sold the two properties and benefits both properties. In addition, because plaintiffs herein own the property on which the garage was originally located, they could construct another garage or park on the grass in that location if so desired. Thus, unlike the boathouse in *Andersen*, the teardown of the garage did not make the easement unusable.

Accordingly, the joint easement is still in effect and the trial court properly granted plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10). *Brown*, 478 Mich at 552; *Greene*, 475 Mich at 507.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad

---

[1] The easement provided in relevant part: ". . . do hereby grant to H.S. Clark his heirs and assigns the rights and privileges of ingress and egress over my land to his boat house on the shore of Silver Lake. . . ." *Andersen*, 16 Mich App at 634.