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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3257-21**

**RYAN ROBERTS and
REBECCA ROBERTS,**

Plaintiffs-Appellants,

v.

KELLIE KRAUSE,

Defendant-Respondent.

Submitted September 11, 2023 – Decided October 2, 2023

Before Judges Mawla and Chase.

On appeal from the Superior Court of New Jersey,
Chancery Division, Gloucester County, Docket No.
C-000005-22.

Marmero Law, LLC, attorneys for appellants (Charles
A. Fiore, on the briefs).

Hoffman DiMuzio, attorneys for respondent (Dante B.
Parenti and Michael C. Donio, on the brief).

PER CURIAM

Plaintiffs Rebecca and Ryan Roberts ("the Roberts") appeal from a March 11, 2022 order, which denied injunctive relief and dismissed their verified complaint, and a May 13, 2022 order denying a motion for reconsideration of that order. They assert the court went beyond the issue of preliminary restraints and granted defendant Kellie Krause permanent relief without notice or a chance to present additional evidence. We reverse and remand for the reasons expressed in this opinion.

I.

On April 25, 2017, the Roberts purchased 1325 Janiver Road in Monroe Township, Gloucester County. The Roberts also own lots 42 through 48, which are behind their home. Krause has owned 1407 Janiver Road since 2004. The Roberts and Krause are neighboring property owners with residences fronting Janiver Road. Lots 42 through 48 are undeveloped and lie behind both residences.

Within Krause's property line, on the right side of her house, is a dirt road with concrete sidewalks and curbing called Grandison Terrace. Grandison Terrace is to the left of the Roberts' house, and not on their property, but it does extend to the back of both homes and to lots 42 through 48. In February 2022, Krause installed a fence on her property due to people dumping trash and ruining

the road. The fence goes across Grandison Terrace blocking anyone from using the sidewalks or the dirt road. Access to Grandison Terrace is the subject of this dispute.

II.

By way of background, in the 1960s, John and Vivian Grandison owned Krause's property. Nesbit Hill and Thelma Ector owned what is now the Roberts' property. In 1966, the Grandisons conveyed Lot 41 to Hill and Ector, which included the area where Grandison Terrace now sits. In November 1969, the Grandisons submitted for approval Grandison-Section 1, which included the creation of Grandison Terrace and the development of some of the lots. Preliminary approval was granted to the Grandisons on December 4, 1969. In an undated agreement bearing only the year of 1969 on it, the Grandisons entered into an agreement with Gloucester County for the installation of curb and pipe improvements on Grandison Terrace. This agreement required all work to be completed within three years.

In July 1977, Ector and Hill transferred a portion of Lot 41 to the Grandisons. This portion is Grandison Terrace. The Grandisons then combined the Grandison Terrace portion with Lot 49. This is what Krause owns.

The Grandisons had started work on the road. Curbing and sidewalks were installed along an approved 50-by-1,000-foot section. A graded dirt roadway was also created. These improvements remain today; however, the road was never paved.

In 1979, the Planning Board of Monroe Township once again granted the Grandisons approval for development of the lots. The approval was contingent upon Gloucester County's Planning Board approval, soil conservation approval, any other approvals required by the planning board, any conditions of the township engineer, and eight other conditions for the Grandisons to fulfill.

In 1988, the Grandisons applied for and received approval from the Monroe Township Planning Board to subdivide a small portion of Lot 45. The deed was consistent with the approval and Grandison Terrace is documented.

When Krause purchased her property, the listing described it as a corner property, possibly a reference to the intersection of Janiver Road and Grandison Terrace. The agreement of sale listed the property as 1.84 acres exclusive of Grandison Terrace. However, the deed was for over two acres and included the dirt road, which Krause now argues was never completed and never formally became Grandison Terrace.

In 2007, a developer sought to build a single-family residence on Lot 45. The proposed residence required a variance because the lot did not front a public road. The developer sent a letter to Krause proposing to purchase an easement over Krause's dirt road to provide Lot 45 with access to Janvier Road. On November 20, 2007, the Monroe Township Zoning Board passed Resolution No. 07-59 ("the Resolution"), approving the developer's application to build on Lot 45. The resolution states: "The Board's [p]lanner/[e]ngineer . . . testified that she is comfortable with the proposal because the access road/drive will be privately owned." Accordingly, the Resolution required the developer to obtain an easement over Krause's property prior to construction.

In 2009, the developer submitted an application to the zoning board to develop Lots 42, 43, and 44. A March 31, 2009 letter from an engineering consultant references the zoning board's prior grant of the developer's application to build a residence on Lot 45, which contained nine conditions of approval. The first requirement states: "[o]btain an easement over the intended right of way for access which currently rests on land titled to . . . Krause." However, the developer abandoned the project and no easement was ever recorded.

In November 2021, Krause applied for the permit to construct the fence. Although Grandison Terrace had been on the tax map of Gloucester County since 1969, it was removed from the tax map in November 2021. Based on the removal of Grandison Terrace from the tax map, the Roberts claim a zoning permit was issued to Krause to install the fence.¹

III.

The Roberts contend that because of the fence they are denied access to their garage on Lot 41 and to Lots 42-48. The Roberts claim they had previously obtained a zoning permit from Monroe Township to build the garage and other structures in the rear yard of their property based on access through a right of way on Grandison Terrace.

Therefore, in February 2022, the Roberts filed a verified complaint and order to show cause seeking injunctive relief restraining Krause from taking further action to interfere with Roberts' claimed property rights in using Grandison Terrace and ordering Krause to remove the fence. The complaint asserted the following causes of action against Krause: 1) intentional interference with plaintiffs' vested property rights; 2) private nuisance; 3) unlawful taking of plaintiffs' property rights within the fifty foot right of way;

¹ Neither Gloucester County nor Monroe Township are parties in this matter.

and 4) establishment of easement by necessity and legal right of way for the benefit of the plaintiffs. Krause filed an answer and opposition to the order to show cause, and the matter was heard in the Chancery Division.

Notably, during oral argument on the return date of the order to show cause the Roberts' attorney mentioned that additional documents were being obtained and were taking longer to get due to the length of time that had accrued since the creation of the road. However, at the hearing's conclusion, the court assessed the Crowe v. DiGioia factors² and concluded the Roberts could not prove by clear and convincing evidence that there was adverse possession, and the easement request "was only loosely described" in the verified complaint. The court made no credibility findings despite Krause and the Roberts having filed conflicting certifications. However, the court made factual findings as to what land was taxed to Krause, whether the back lots were landlocked, and whether there was final approval of Grandison Terrace. The court denied the order to show cause and announced it was adjudicating the matter in a summary fashion because there were no other matters to adjudicate. The Roberts filed a motion for reconsideration contending they were only arguing the injunctive relief aspects of their application at the order to show cause. They were not

² 90 N.J. 126, 132-34 (1982).

prepared or put on notice of the fact that the four counts of their verified complaint were going to be considered on the return date of the order to show cause. The Roberts' counsel argued his clients did not have their day in court and were deprived of the ability to amend their complaint. Counsel asserted he was still gathering evidence and the court should hold a plenary hearing. The court denied the motion again finding the Roberts did not meet the Crowe factors. It also rejected counsel's argument reconsideration was unwarranted on account of discovery and hearing because a motion for reconsideration was not a means by which to introduce newly discovered evidence. The court concluded the Roberts were improperly "attempting to expand the record."

IV.

On appeal, the Roberts argue that the court erred by dismissing the complaint and by denying their motion for reconsideration. They do not challenge the court's denial of the order to show cause.

Summary actions are governed by Rule 4:67. Our Supreme Court has stated the procedural requirements of Rule 4:67 "serve important objectives: to permit the presentation of a factual record and legal arguments to the court, and to ensure that the parties anticipate and address the standard for summary disposition before the court decides whether to grant that relief." Grabowsky v.

Twp. of Montclair, 221 N.J. 536, 550 (2015). Summary disposition is also permitted by agreement of the court and the parties, evinced by a "clear and unambiguous statement from the judge and the unequivocal consent of the parties to a final resolution" Waste Mgmt. of N.J., Inc. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 518-19 (App. Div. 2008).

Here, when the court dismissed the complaint, there were still several outstanding factual issues in dispute: whether Grandison Terrace was abandoned; whether Krause had paid taxes on the road; why Grandison Terrace was on the tax map from 1969 until 2021; why Grandison Terrace was removed from the tax map; who cared for the roads; and whether there could be other access to Lots 42-48. Some of these answers may have been contained in the additional evidence received after the court granted summary disposition but before the reconsideration motion was heard.

More importantly, the court neither had the parties' consent nor gave them notice before summarily ruling. "The minimum requirements of due process of law are notice and an opportunity to be heard . . . at a meaningful time and in a meaningful manner." Klier v. Sordoni Skanska Constr. Co., 337 N.J. Super. 76, 84 (App. Div. 2001). The trial court's unilateral adjudication of the matter in a summary fashion without notice contravened these principles.

Of course, a trial court has discretion to convert an application for a temporary restraining order into a motion for summary judgment. Major v. Maguire, 224 N.J. 1, 25 (2016). But as we have delineated, the material facts in this case were not developed to a point where the court could adjudicate the matter in a summary fashion at the order to show cause. Hence, summary judgment was an inappropriate disposition at the order to show cause stage. Both parties were still gathering documents. The complexity of the matter was not fully developed. The age of the development of Grandison Terrace and the applicable laws in the 1960s had not yet been briefed to the court. Therefore, the trial court's summary disposition in Krause's favor without notice denied the Roberts a fair opportunity to be heard on the merits.

Finally, because we have concluded the March 11, 2022 order dismissing the matter was improperly entered, we need not discuss the May 13, 2022 order denying reconsideration because it too was based on a misapplication of Rule 4:67.

Reversed and remanded for further proceedings consistent with this opinion. The trial court shall hold a case management conference within thirty days. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION