[Cite as *Shikner v. Stewart*, 2010-Ohio-1478.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

James Shikner

Appellee

v.

Jeffrey L. Stewart, et al.

Appellants/Cross-Appellees

v.

John J. Stifter, et al.

Appellees/Cross-Appellants

Court of Appeals No. OT-09-015

Trial Court No. 07 CVH 333H

DECISION AND JUDGMENT

Decided: March 19, 2010

* * * * *

Justin D. Harris, for appellee James Shikner.

Michael N. Schaeffer and Richard G. Murray, II,
for appellants/cross-appellees.

Richard R. Gillum, for appellees/cross-appellants.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from the Ottawa County Court of Common Pleas which entered two judgments regarding the scope of an easement on the village of Put-in-Bay, Ohio. Because we find that the trial court did not err in granting summary judgment, we affirm.

{¶ 2} A review of the relevant facts is as follows. Appellees/cross-appellants, John and Lee Stifter, owned four contiguous parcels of property (parcels A-D)[1] on the island of Put-in-Bay, Ottawa County, Ohio. The parcels B, C and D run behind parcels abutting the road; the easement allows access to these properties. Parcel D (referred to in the deed as "Lot 171.") abuts Lake Erie. In 1988, appellees conveyed parcel D to appellant/cross-appellee, Jeffrey Stewart. The deed contained a legal description of the easement "to be used jointly with Grantor, their successor and assigns, for ingress, egress and lake access" and further provided:

{¶ 3} "That portion of the above easement lying in Lot 171, Bayview Subdivision shall be maintained equally by the grantors herein and the grantees each paying 50% of the improvements and maintenance of said easement, the remaining portion of said easement shall be maintained by the grantors herein. The grantors are further granted the right to install within said easement an effluent discharge line for effluent approved for discharge into Lake Erie by the Ottawa County Department of Health and have the right

[1]The parcels are also known as: A,B: 0 Chapman Road; C: 104 Chapman Road; D: 114 Chapman Road.

to enter in upon said easement for repair and maintenance of the line and shall return the surface of said ground to its prior condition subsequent to any installation or repair."

{¶ 4} In 1993, appellees conveyed parcel B to appellee, James Shikner (for clarity referred to herein as "Shikner"). As in the 1988 Stewart deed, the Shikner deed contained language describing an easement over all four parcels of property for "ingress, egress and lake access to and from parcels 'A', 'B', 'C', and 'D' * * *." The deed further provided:

{¶ 5} "Maintenance of this Easement shall be that portion lying in Lot 171 Bay View Subdivision shall be maintained 50% by the Grantees in deed recorded in Volume 330, Page 310, Ottawa County Deed Records, 25% by the Grantee herein, and 25% by the Grantor; that portion adjacent to Lots 162 through 170 shall be maintained by the Grantee herein and 50% by the Grantor herein. The Grantee is further granted the right to install within said Easement an effluent discharge line for effluent approved for discharge into Lake Erie by the Ottawa County Department of Health and have the right to enter in upon said Easement for repair and maintenance of the line and shall return the surface of said ground to its prior condition subsequent to any installation or repair."

{¶ 6} The parties do not dispute that the easements contained in the deeds provide for ingress, egress, and lake access and that, within the Stewart property (parcel D, or Lot 171), Stewart was responsible for 50 percent of the improvements and maintenance of the easement; Shikner and the Stifters were each responsible for 25 percent. Outside of the Stewart easement, Shikner and the Stifters were equally responsible for the maintenance of the remainder of the easement.

{¶ 7} Shikner commenced this action on June 19, 2007. Shikner argued that appellant, by constructing landscaping walls and planting vegetation, had denied him access to Lake Erie in contravention of the easement and had damaged the common driveway. Shikner requested that the court permanently enjoin appellant from blocking or destroying the easement and from threatening him or his invitees. Shikner further requested declaratory judgment that appellant did not have the right to prevent access to the easement.

{¶ 8} On July 9, 2007, appellant filed his answer and counterclaim. Appellant added appellees as third-party defendants. In his counterclaim, appellant requested that the court enter declaratory judgment as to the rights and obligations of the parties regarding the easement. Appellant also alleged that Shikner and appellees, in contravention of the Stewart deed, failed to maintain or be financially responsible for the full costs of the maintenance and improvement of the easement lying outside of appellant's lot.

{¶ 9} On April 4, 2008, appellant filed a motion for summary judgment as to his claim for declaratory judgment regarding maintenance and improvement of the easement area outside Lot 171. Specifically, appellant requested that the court declare that "he has a right to improve the easement area to make same practicably useable and functional (including excavation, leveling and installing of gravel) and that New-Party Defendants and Plaintiff are responsible for a portion of the improvement maintenance of same as set forth in the various deeds."

{¶ 10} In response, appellees argued that they had no obligation to "improve" the easement area outside of Lot 171; however, if the court were to find an obligation, an issue of fact remained as to the level of improvement and maintenance. Appellees also filed a cross-motion for summary judgment. In their motion, appellees agued that the clear language of the deed required that appellant clear all vegetation and landscaping from the easement and return the easement to its intended 15 feet, including clear access to the lake. Shikner agreed with appellees' argument that they had no obligation to "improve" the easement area. Appellant opposed the cross-motion for summary judgment.

{¶ 11} On June 12, 2008, the trial court granted, in part, appellant's and appellees' and Shikner's motions for summary judgment. The court found that a question of fact remained as to whether the vegetation present on the easement within Lot 171 unreasonably interfered with use of the easement. The court further found that a material issue of fact remained as to whether appellant interfered with the use of the easement by decreasing its width and by verbally telling others not to use the easement.

{¶ 12} The court determined that appellees and Shikner were obligated to improve and maintain the easement area outside of Lot 171. The court also found that appellees and Shikner had an obligation to share in the cost of improving and maintaining the easement area inside Lot 171. However, the court concluded that genuine issues of fact remained regarding the level of maintenance and improvement required.

{¶ 13} On February 24, 2009, Shikner filed a second motion for summary judgment. In his motion, Shikner requested that the court determine whether the easement width is required to be 15 feet as set forth in the deeds, whether the easement provides for lake access and, if so, the extent and scope of the access. Shikner argued that the clear language of the deed required that the easement was to be 15 feet wide. Shikner also asserted that the provision in the easement allowing for lake access included pedestrian, vehicular, and the use of a boat ramp or dock.

{¶ 14} On March 12, 2009, appellant filed an opposition to Shikner's motion for summary judgment and filed a cross-motion for summary judgment. Appellant argued that the term "lake access" as used in the deeds, did not include vehicular and boat access. Appellant noted that the area is short, does not loop or provide for vehicular ingress or egress. Further, appellant argued that historically the area had remained unimproved and was used only for the placement of effluent discharge pipes. Appellant asserted that the lake easement area is appropriate for only pedestrian traffic. Regarding the width of the easement, appellant stated that he did not dispute that the deeds provide that the width may be up to 15 feet, not that it must be 15 feet. Specifically, appellant stated that because the lake access portion of the easement was intended for pedestrian traffic only, it need not be 15 feet wide. Appellees filed an opposition to appellant's motion for summary judgment and joined Shikner in his motion for summary judgment.

{¶ 15} On May 12, 2009, the trial court granted appellees' and Shikner's motion for summary judgment and denied appellant's motion for summary judgment. The court

concluded that the easement language contained in the deeds was not ambiguous and is enforceable. Specifically, the court found that the easement width is 15 feet. With regard to the scope of lake access, the trial court found that the language was clear and unambiguous and that the easement includes all uses reasonably necessary to effectuate the purpose of the easement. The court then concluded that the easement holders were entitled to lake access by foot or vehicle. The court further indicated that nothing in the easement prohibits filing the necessary applications for the installation of a boat ramp or dock.

{¶ 16} On June 18, 2009, the parties entered into a stipulation regarding the improvement and maintenance of the easement; the agreement was stayed pending appeal and the case was deemed final and appealable. This appeal followed.

{¶ 17} Appellant/cross-appellee Jeffrey Stewart, now raises the following two assignments of error for our consideration:

{¶ 18} "1. The trial court erred when it found that an easement for 'lake access' must include, as a matter of law, the 'right' to pedestrian, physical and vehicular access to a lake as well as the 'right' to construct a dock and ramp thereon where the deed and easement language were silent as to the scope and purpose of the easement and such findings were in contravention of the undisputed historical use of the easement.

{¶ 19} "2. The trial court erred when it failed to consider evidence of historical use, lack of improvement, lack of maintenance and similar evidence/testimony where the easement language was silent as to scope and purpose."

{¶ 20} Appellees/cross-appellants, John and Lee Stifter, set forth the following assignment of error:

{¶ 21} "1. The trial court erred in holding that the duty to 'maintain' the property outside of Lot 171 included the affirmative duty to improve."

{¶ 22} We first note that appellate review of a trial court's grant of summary judgment is de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 1996-Ohio-336. Accordingly, we review the trial court's grant of summary judgment independently and without deference to the trial court's determination. *Brown v. Scioto Cty. Bd. Of Commrs.* (1993), 87 Ohio App.3d 704, 711. Summary judgment will be granted only when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66; Civ.R. 56(C). The burden of showing that no genuine issue of material fact exists falls upon the party who moves for summary judgment**.** *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 294, 1996-Ohio-107. However, once the movant supports his or her motion with appropriate evidentiary materials, the nonmoving party "may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E).

{¶ 23} In appellant's first assignment of error, he argues that the easement language providing for "lake access" does little to explain the purpose or the scope of the

access. Appellant explains that this requires the court to consider the size and nature of the easement as well as its historical use. Conversely, appellees assert that the purpose—lake access—is clearly stated in the deeds and, thus, the holders of the easement are entitled to all rights that are necessary to the reasonable and proper enjoyment of the easement.

{¶ 24} In general, "[a]n easement is the interest in the land of another, created by prescription or express or implied grant, that entitles the owners of the easement, the dominant estate, to a limited use of the land in which the interest exists, the servient estate." (Citations omitted.) *Crane Hollow, Inc. v. Marathon Ashland Pipe Line, LLC* (2000), 138 Ohio App.3d 57, 66. "The grant of an easement includes the grant of all things necessary for the dominant estate to use and enjoy the easement." Id., citing *Day, Williams & Co. v. RR. Co*. (1884), 41 Ohio St. 392. Further, where the language granting the easement is clear and unambiguous, it is presumed that the deed expresses the intent of the parties. *Esteph v. Grumm*, 175 Ohio App.3d 516, 2008-Ohio-1121, ¶ 10.

{¶ 25} The parties cite to this court's case captioned *Walbridge v. Carroll*, 172 Ohio App.3d 429, 2007-Ohio-3586, for their respective positions. In *Carroll*, the village of Walbridge brought a declaratory judgment action against the Carrolls regarding the scope of an easement that ran along the side of the Carrolls' business. The Carrolls had attempted to block access to the easement arguing that it was only a fire lane. The village claimed that the easement was to be used as a "street/right of way." Id. at ¶ 7. The

easement at issue provided: "'And in addition for easement purposes the following parcel of land * * *.'" Id. at ¶ 8.

{¶ 26} The trial court held that because the deed was silent as to the purpose of the easement it could be used "for any reasonable government purpose." However, the court determined that whether it was reasonable for the village to allow the general public and private business to use the easement was a question of fact. The case proceeded to trial and the court concluded that the easement was for the benefit of the village and the public. Id. at ¶ 14.

{¶ 27} On appeal, we concluded that because the "purpose for the easement is not expressly stated" the court was "required to apply the rules of construction and consider parol evidence to determine the intent of the parties and the scope of the easement." Id at ¶ 23, citing *Gans v. Andrulis* (May 18, 2001), 11th Dist. No. 99-P-0118 and *Murray v. Lyon* (1994), 95 Ohio App.3d 215, 219.

{¶ 28} Unlike the *Carroll* easement, we agree that the easement in this case specifically set forth its purpose as "ingress, egress and lake access." Thus, as stated in *Carroll*, "[t]he unrestricted grant of an easement gives the holder of the easement all such rights as are necessary to the reasonable and proper enjoyment of the *purpose* for the grant of the easement." (Emphasis in original; citations omitted.) Id. at ¶ 22. It is reasonable to conclude that "lake access" on an island would include vehicular and boat access. Accordingly, appellant's first assignment of error is not well-taken.

{¶ 29} In appellant's second assignment of error, he argues that the trial court erred when it failed to consider evidence of historical use in determining the purpose and scope of the easement. As stated above, the easement set forth a specific purpose; thus, the court was not required to look beyond the clear language of the deeds. *Carroll*, supra. Further, because the purpose is expressly stated, the scope of the easement includes all uses that are reasonable and necessary to effectuate the purpose. *Carroll* at ¶ 22. Appellant's second assignment of error is not well-taken.

{¶ 30} Appellees/cross-appellants, John and Lee Stifter, argue in their cross-assignment of error that the trial court erred when it determined that the deeds created an affirmative obligation to improve the easement area outside of Lot 171. Appellees contend that the language of the Stewart and Shikner deeds clearly demonstrate that appellees and Shikner were required only to maintain the easement outside of Lot 171. Again, the relevant portions of the deeds provide:

{¶ 31} Stewart Deed: "That portion of the above easement lying in Lot 171, Bayview Subdivision shall be maintained equally by the grantors herein and the grantees each paying 50% of the improvements and maintenance of said easement, the remaining portion of said easement shall be maintained by the grantors herein."

{¶ 32} Shikner Deed: "Maintenance of this Easement shall be that portion lying in Lot 171 Bay View Subdivision shall be maintained 50% by the Grantees in deed recorded in Volume 330, Page 310, Ottawa County Deed Records, 25% by the Grantee herein, and

25% by the Grantor; that portion adjacent to Lots 162 through 170 shall be maintained by the Grantee herein and 50% by the Grantor herein."

{¶ 33} Appellees contend that because the deeds specifically refer to maintenance and improvement regarding the portion of the easement within Lot 171, and only maintenance as to the remainder of the easement, the trial court erred in finding that appellees and Shikner had an obligation to maintain and improve the easement area outside of Lot 171. We disagree.

{¶ 34} The language that appellees used in the deeds, though not artfully worded, evidence a clear intention to create an obligation on the parties for maintenance and improvement of the entire easement. There is nothing in the deeds to suggest that the easement area within Lot 171 should be treated any differently than the remainder of the easement. Appellees' cross-assignment of error is not well-taken.

{¶ 35} On consideration whereof, we find that substantial justice was done the parties complaining and the judgment of the Ottawa County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant and appellees/cross-appellants are ordered to equally share the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, P.J.
CONCUR.

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JUDGE