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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-22-719

DAVID TREECE AND NANCY
TREECE

APPELLANTS

V.

BREE CALLEY AND RICHARD
CALLEY

APPELLEES

Opinion Delivered November 1, 2023

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CV-21-994]

HONORABLE LYNN WILLIAMS,
JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

This appeal concerns the use of an easement for ingress and egress. Appellants, David and Nancy Treece, appeal the July 2022 order of the Garland County Circuit Court that recognized the existence of a nonexclusive easement in the deed of the Treece property. The circuit court’s order permanently enjoined the Treeces from attempting to block or restrict their neighbors, appellees Bree Calley and Richard Calley, from using the driveway easement. On appeal, the Treeces assert that the circuit court erred because the Treeces’ predecessor in title did not “convey” or “grant” an easement to the Calleys. We affirm.

The Treeces live at 143 Lonesome Pine Terrace in Hot Springs, which is at the end of the road. By a deed recorded on November 16, 2018, the Calleys purchased 0.72 acres at

144 Lonesome Pine Terrace, which had an abandoned, dilapidated home on it.¹ The Treece and Calley properties abut one another. By a deed recorded on November 16, 2018, the Treeces purchased a triangular 0.22-acre parcel that also adjoins the Calley property. The grantor of the 0.22 acres was the Gloria G. Phillips Revocable Trust, and the deed describes a “non-exclusive easement for use as ingress and egress” containing .02 acre.

In September or October 2018, prior to the land purchases, the Calleys and the Treeces jointly discussed the Calleys’ need for an easement to get to 144 Lonesome Pine Terrace, and they both hired a surveyor to set the metes and bounds of the easement. Ms. Treece went out to the property to help the surveyor identify the shape and location of the easement. The Calleys thereafter used the easement as their only means of access to their property to build their residence.

In July 2021, the Calleys discovered that the Treeces had barricaded the driveway. The Calleys had their attorney contact the Treeces and demand that they stop interfering with their use of the driveway. In September 2021, the Treeces put a tractor and a trailer across the gravel driveway. The Calleys then filed suit seeking a temporary and permanent injunction against the Treeces to keep them from blocking access to the Calley property. The Calleys complained that they had hired movers but could not move into their home

¹The initial intent in purchasing the property was to build a home in which Bree’s parents could live. The deed was titled in the names of Richard Calley, his wife Susan Calley, his son Bree Calley, and his daughter-in-law Dara Calley. Richard’s wife died before the house at 144 Lonesome Pine Terrace was completed. Bree divorced, and Dara quitclaimed her interest in the property. Thus, Bree and his father are the remaining owners.

and that their subcontractors could not finish their jobs on the homesite. In October 2021, the circuit court entered a temporary injunction prohibiting the Treeces from restricting the Calleys' use of the easement.

A bench trial was held in June 2022. Bree Calley testified that he and the Treeces hired a surveyor, Aaron Rasburry, to survey the properties so they could identify precisely where the access easement was located. Mr. Rasburry testified that Ms. Treece walked the property with him to show him where the easement should be set and stated his belief that all the parties knew that the Calleys needed access to their property via the easement; otherwise, the Calleys would be landlocked. All of this happened before the Calleys and the Treeces filed their November 2018 deeds. The Treeces did not file any pleadings seeking to change their deed or have the easement modified.

The circuit court found that this “non-exclusive easement for use as ingress and egress” in the Treece deed permitted the Calleys to use it. Furthermore, the circuit court found that the Treeces helped the surveyor locate what they knew was an easement for the Calleys to access their otherwise landlocked property. Thus, the circuit court entered a permanent injunction against the Treeces in favor of the Calleys preventing the Treeces from interfering with the Calleys' use of the driveway. The Treeces appeal.

Because the issuance of a permanent injunction sounds in equity, our review is de novo. See generally *Ark. State Game & Fish Comm'n v. Sledge*, 344 Ark. 505, 42 S.W.3d 427 (2001). We review the circuit court's factual findings leading to the issuance of the injunction under a clearly erroneous standard. *Vera Lee Angel Revocable Tr. v. Jim O'Bryant*

Ex parte Kay O'Bryant Joint Revocable Tr., 2018 Ark. 38, 537 S.W.3d 254. A finding is clearly erroneous when, although there is evidence to support it, the appellate court, upon viewing the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.* The same standard of review is utilized when the question is the interpretation of a deed. *Fox v. Alexander*, 2023 Ark. App. 247, 668 S.W.3d 191.

The Treeces argue that no easement was “conveyed” to the Calleys. Their argument, however, misses the mark. The Treeces were aware that the piece of property they were about to purchase was subject to a “non-exclusive easement for use as ingress and egress.” Exclusive easements are not generally favored, and an instrument creating an easement must be construed as creating a nonexclusive easement unless the instrument clearly shows an intention that the easement is to be exclusive. 28A C.J.S. Easements § 222, Westlaw (database updated Aug. 2023). The deed from the trust to the Treeces granted ownership of a triangular piece of property subject to a “non-exclusive easement for use as ingress and egress.” Because the ingress and egress easement was not exclusive to the Treeces, the circuit court did not clearly err in entering a permanent injunction so that the Calleys could use the easement to access their property.

Affirmed.

ABRAMSON and THYER, JJ., agree.

Brett D. Watson, Attorney at Law, PLLC, by: *Brett D. Watson*, for appellants.

Jonathan D. Jones, for appellees.