

STATE OF MICHIGAN
COURT OF APPEALS

NORMAN L. WOOLLEY, RUTH E. WOOLLEY
and SILAS W. DENNY,

UNPUBLISHED
October 3, 1997

Plaintiffs-Appellees,

v

No. 194346
Cheboygan Circuit Court
LC No. 94-004028 CH

JOHN E. BAIER and JANE P. BAIER,

Defendants-Appellants.

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Plaintiffs, owners of a recreational easement over property the fee of which is owned by defendants, sought and were granted injunctive relief by the circuit court against defendants' use of the property in question for camping purposes. The trial court's injunctive order precludes any use of the property by defendants for camping, including the erection of any tents or other temporary or permanent structures or parking of campers or other vehicles, and "from interfering in any other way with the uses granted to the plaintiffs by said easements." Defendants appeal by right. This case is being decided without oral argument pursuant to MCR 7.214(E).

What is a reasonable and proper use of the fee and what may be necessary to the beneficial use and enjoyment of the easement by its owner are generally questions of fact to be determined upon a trial. *Hasselbring v Koepke*, 263 Mich 466; 248 NW 869; 93 ALR 1170 (1933). While here the trial court's findings of historical fact are not clearly erroneous, its dispositional ruling is subject to de novo review, which requires affirmance unless this Court is left with the firm conviction that the disposition was inequitable. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

Plaintiffs presented testimony, which the trial court apparently accepted, that defendants' camping activities were on one occasion, extending over six days, so extensive that they effectively occupied the entire property, and thereby interfered with plaintiffs' use of their recreational easement. Some injunctive relief was therefore clearly appropriate. The owner of the fee may rightfully use the

land for any purpose consistent with the rights of the owner of an easement. *Cantienny v Friebe*, 341 Mich 143; 67 NW2d 102 (1954).

However, neither may the owner of the easement overburden the servient tenement. *Cabal v Kent County Road Commission*, 72 Mich App 532; 250 NW2d 121 (1976). Defendants as fee owners are entitled to reasonable uses of the property, even if such uses require plaintiffs to “turn aside in passing to the lake.” *Kirby v Meyering Land Co*, 260 Mich 156, 169-170; 244 NW 433 (1932). The trial court’s injunctive order deprives defendants of such reasonable uses, and grants plaintiffs more than that to which they are entitled. This case is therefore being remanded to the Cheboygan Circuit Court for revision of the injunction to more equitably balance the conflicting rights of the parties, leaving each side reasonable scope for exercise of their respective rights without interference by the other.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad