STATE OF MICHIGAN

COURT OF APPEALS

DONNA OLSON, Plaintiff-Appellee,	UNPUBLISHED March 19, 1999
v WALTER LARSON and GRACE LARSON, Defendants-Appellants.	No. 198241 Cheboygan Circuit Court LC No. 95-005174 CH

DONNA OLSON, Plaintiff-Appellee,	
v JOYCE OMEY, ROBERT SACKER, GEORGIANA SACKER, MARIE CHARBONEAU, and THERESE CESARZ, Defendants-Appellants.	No. 199139 Cheboygan Circuit Court LC No. 95-005290 CH

Before: White, P.J., and Markman and Young, Jr., JJ.

PER CURIAM.

In these consolidated cases, defendants appeal as of right from a judgment, entered after a bench trial, granting plaintiff "an easement by grant for ingress and egress over and upon an existing private roadway known as Terry Creek [Road]." We affirm.

On appeal, defendants essentially maintain that the trial court erred in finding an easement by grant because plaintiff's deed gave her an easement over Riverside Road, not Terry Creek Road. We review de novo a trial court's decision in an equity case such as this one, and the court's factual findings

supporting its decision are reviewed for clear error. *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997).

The parties do not dispute that plaintiff's deed created an easement for ingress and egress. Rather, they dispute the location of that easement. Plaintiff's deed provides a

> right of ingress and egress over a road *to be established* at the rear of said above described premises and extending from Laparell Creek to the present road or land now utilized by said first party[1] for ingress and egress to the dwelling which he occupies, 1090 feet more or less northeasterly from the north bank of Laparell Creek; said roadway, lane or easement for the purpose of ingress and egress and to run with the land; and the same to remain open to the use of the property owners along said easement. [Emphasis added.]

The easement that is rather ambiguously described in the deed was a road "to be established" sometime in the future. While there was some testimony at trial suggesting that Riverside Road was originally intended to be that easement, the evidence supports the trial court's finding that an easement over Riverside Road was never in fact established. Therefore, the trial court properly considered the subsequent conduct of plaintiff, her husband, and the original grantor in determining where the parties intended the easement in question to be located. See *Galloway v Wilder*, 26 Mich 97, 98 (1872); see also generally 25 Am Jur 2d, Easements and Licenses, §§ 74-77, pp 644-646. When interpreting a conveyance, the court looks to the language of the instrument *and* the surrounding circumstances to determine the intention of the parties. *Wisniewski v Kelly*, 175 Mich App 175, 178; 437 NW2d 25 (1989). Here, defendants do not dispute the trial court's finding that plaintiff and her husband used Terry Creek Road for some fifty years as their exclusive means of ingress and egress. Plaintiff and her husband also maintained the road.[2] Gerald Charboneau, the original grantor's grandson, testified that Terry Creek Road was "more or less given by my grandmother when she sold the lot to [plaintiff's husband]." We find no error in the trial court's determination that plaintiff, her husband, and the original grantor all intended Terry Creek Road to be the easement.

Affirmed.

/s/ Helene N. White
/s/ Stephen J. Markman
/s/ Robert P. Young, Jr.

[1] Identified in the deed as Annie Charboneau, the grantor.

[2] Richard Schramm testified that he plowed Terry Creek Road for at least twenty-five years, and that he was paid by plaintiff for this service.