# STATE OF MICHIGAN

# COURT OF APPEALS

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JACQUE L. HUTCHISON,

Plaintiff-Appellee,

v

MICHAEL J. HILL,

Defendant/Third-Party Plaintiff-Appellant.

and

WILLIAM HUTCHISON,

Third-Party Defendant-Appellee.

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UNPUBLISHED
December 10, 1999

No. 209199
Saginaw Circuit Court
LC No. 96-010409 CZ

Before: Hoekstra, P.J., and McDonald and Meter, JJ.

PER CURIAM.

In this equity action, plaintiff requested that defendant/third-party plaintiff (hereinafter "defendant") be ordered to remove a pole barn that defendant had constructed with plaintiff's permission on land owned by plaintiff.[1] Defendant maintained that plaintiff's request should be denied because he had not breached the parties' original agreement to allow construction of the pole barn and because defendant had incurred considerable expense in erecting the pole barn. The trial court found for plaintiff and ordered removal of the pole barn, holding that the agreement between the parties constituted a license that was revocable at will. Defendant appeals as of right. We affirm.

We review a trial court's decision in an equity action de novo. *Day v Lacchia*, 175 Mich App 363, 372; 437 NW2d 400 (1989). Unless its findings are clearly erroneous or the reviewing court is convinced that it would have reached a different result, a trial court's decision in an equity action will not be reversed. *Id*. Here, the trial court determined that the arrangement between plaintiff and defendant constituted a license. "A license grants permission to be on the land of the licensor without granting any permanent interest in the realty." *Forge v Smith*, 458 Mich 198, 210; 580 NW2d 876 (1998).

Licenses are generally revocable at the will of the licensor, *id*., even if supported by consideration and even if the licensee spends some money in reliance upon the license. See *McCastle v Scanlon*, 337 Mich 122, 128; 59 NW2d 114 (1953). In *Morrill v Mackman*, 24 Mich 279, 282 (1872), our Supreme Court noted that a license is "founded on personal confidence, and therefore [is] not assignable. [Citations omitted.] It may be given in writing or by parol; it may be with or without consideration; but in either case it is subject to revocation, though constituting a protection to the party acting under it until the revocation takes place." However, the Court continued:

> But there may also be a license where the understanding of the parties has in view a privilege of a less precarious nature. Where something beyond a mere temporary use of the land is promised; where the promise apparently is not founded on personal confidence, but has reference to the ownership and occupancy of other lands, and is made to facilitate the use of those lands in a particular manner and for an indefinite period, and where the right to revoke at any time would be inconsistent with the evident purpose of the permission; wherever, in short, the purpose has been to give an interest in the land, there may be a license but there will also be something more than a license, if the proper formalities for the conveyance of the proposed interest have been observed." [*Id*. at 282-283.]

Defendant first claims that he had more than a mere license based on the language in *Morrill*, *supra*, and that his right to maintain the pole barn on plaintiff's property is supported by the result in *Maxwell v Bay City Bridge Co*, 41 Mich 453; 2 NW 639 (1879). We find defendant's claim without merit. Although language in *Morrill*, *supra*, provides that an agreement to use land may give rise to more than a license under unusual circumstances, we do not believe that the facts of this case merit the creation of such a right for defendant's benefit. Even though the pole barn was erected on the property at some expense, there was nothing remarkable surrounding the negotiating of the agreement that leads us to believe that plaintiff's permission was intended to remain for an indefinite period of time.

Further, contrary to defendant's assertion, we find that the facts in *Maxwell*, *supra*, are distinguishable. In *Maxwell*, *supra* at 461, the improvement made to the property was a timber and iron bridge, spanning the Saginaw River, and open to the public. The plaintiff's predecessor in interest signed his name to a petition requesting that the defendant build the proposed bridge on his property. *Id*. at 465-466. From the facts, it would appear that the plaintiff's predecessor in interest knew that the bridge was intended as a permanent structure for the use of the public. *Id.* We do not believe that the construction of a bridge across a river to be used by the general public is comparable to the facts presented here.

Defendant also contends that the trial court erred in finding that defendant breached the terms of the agreement by engaging in commercial activity. Again, we find defendant's argument without merit because the opinion of the trial court states that it found it unnecessary to decide whether defendant's conduct constituted a commercial use of the property. Specifically, the trial court found that defendant's permission to use plaintiff's land was by license revocable at will.

Having decided to revoke the license, plaintiff was within her rights to request removal of the pole barn. We find no error in the trial court's decision.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Gary R. McDonald
/s/ Patrick M. Meter

[1] Plaintiff, Jacque Hutchison, and third-party defendant William Hutchison are married. The discussions resulting in defendant constructing the pole barn on plaintiff's property were entered by defendant and William Hutchison, and presumably plaintiff initially approved of the arrangement. After plaintiff filed this cause of action against defendant seeking removal of the pole barn, defendant added William Hutchison to the action by filing a third-party complaint against him.