STATE OF MICHIGAN

COURT OF APPEALS

ROBERT F. LaPOINT, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED February 12, 2002
v	No. 229677 Chippewa Circuit Court
BENJAMIN HODDER and NELSON HODDER, Defendants/Counter-Plaintiffs-Appellees.	LC No. 99-003972-CH

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from a judgment for defendants entered after a bench trial. Plaintiff alleged that he was entitled to a road across defendants' property because he had obtained an easement by necessity, but the trial court disagreed. We affirm.

Plaintiff contends that he sufficiently proved the existence of an easement by necessity. We review a trial court's factual findings in a bench trial for clear error, and we review its conclusions of law de novo. MCR 2.613(C); *Walters v Snyder (After Remand)*, 239 Mich App 453, 456; 608 NW2d 97 (2000). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake occurred, even though evidence may exist to support the finding. *Id*.

A party claiming an easement bears the burden of proving it by a preponderance of the evidence. *Schmidt v Eger*, 94 Mich App 728, 731; 289 NW2d 851 (1980). Here, plaintiff did not establish the crucial element of necessity.[1] See *id*. at 732. Indeed, access to plaintiff's parcel

[1] Plaintiff admits in his appellate brief that

> [i]n Michigan, there is a substantial body of case law holding that easements implied from necessity require a showing of strict necessity; mere convenience or even reasonable necessity will not suffice. To demonstrate strict necessity, one must demonstrate the parcel truly is landlocked, not that access over another's parcel would be easier or more convenient.

had traditionally been gained from a northerly route, and plaintiff did not demonstrate that this route was or had been unavailable such that an easement over defendants' land was necessary. See *Schmidt, supra* at 732 ("[m]ere convenience, or even reasonable necessity, will not be sufficient if there are alternative routes, even if these alternatives prove more difficult or more expensive"). See also *Eitner v Becker*, 272 Mich 386, 390; 262 NW 270 (1935).

Although the lack of demonstrated necessity justified the trial court's ruling in this case, we further note, for the sake of completeness, that plaintiff also failed to demonstrate an *implied* easement (which, in some cases, requires a showing of only *reasonable* necessity, see *Schmidt, supra* at 733) because he failed to show that the alleged common grantor created an easement across defendants' parcel *for the benefit of plaintiff's parcel*. While there was testimony that some type of road existed across defendants' parcel at the time the alleged common grantor held the two parcels, the evidence tended to show that this road was used to access the southern part of defendants' parcel and not to benefit plaintiff's parcel. There was simply insufficient evidence that when the alleged common grantor held the property, a road across defendant's parcel was used regularly to access plaintiff's parcel. See *Schmidt, supra* at 733 (certain implied easements require "that at the severance of an estate an obvious and apparently permanent servitude already exists over one part of the estate and in favor of the other").

Given plaintiff's failure to establish the necessary elements for an easement, the trial court did not err in ruling for defendants.[2]

Affirmed.

/s/ Richard Allen Griffin
/s/ Jane E. Markey
/s/ Patrick M. Meter

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[2] Plaintiff raises additional issues on appeal, two of which we need not address in light of our resolution of the case. The third issue, regarding the trial court's award of sanctions, has not been properly briefed or properly raised in the statement of questions presented. Accordingly, we also do not address this issue. See *Grand Rapids Employees Independent Union v Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999), and *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).