STATE OF MICHIGAN

COURT OF APPEALS

ELWYN DOBSON and HELEN DOBSON,

Plaintiffs-Appellants,

v

BRET LEACH, MICHELLE LEACH, JAMES R. D. STACER and ANNETTE M. STACER,

Defendants-Appellees.

UNPUBLISHED
December 13, 2002

No. 235324
Tuscola Circuit Court
LC No. 00-018851-CH

Before: Griffin, P.J., and White and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right a trial court order denying their cause of action to establish fee simple title in an alley that is owned by defendants Bret Leach and Michelle Leach (the Leaches), but in which plaintiffs have easement rights, and granting costs and attorney fees to defendants. We affirm.

Plaintiffs argue that the trial court erred in failing to conclude that plaintiffs are entitled either to exclusive use or ownership of the disputed alley. We review the trial court's holdings in an action to quiet title de novo, *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993), and its findings of fact for clear error. *City of Grand Rapids v Green*, 187 Mich App 131, 135-136; 466 NW2d 388 (1991).

Well before the filing of the instant lawsuit, the parties' rights to the alley had already been determined through previous litigation. Defendants James R.D. Stacer and Annette M. Stacer (the Stacers) acquired title to the alley by adverse possession through a 1994 default judgment, and conveyed such title to the Leaches. Under a separate 1994 judgment, the Stacers had also acquired plaintiffs' *easement rights* through adverse possession. However, this Court subsequently reversed and remanded that judgment to the trial court. *Stacer v Dobson*, unpublished opinion per curiam of the Court of Appeals, issued December 3, 1996 (Docket No. 181316). On remand, the trial court found that the Stacers had "failed to prove their claim of adverse possession and further failed to prove their claim of abandonment or termination by cessation of existence of the original purpose" of the easement. Contrary to plaintiffs' contention, however, that 1997 judgment of the trial court establishing plaintiffs' *easement rights* did not affect the validity of the 1994 default judgment granting the Stacers *fee simple title* in the alley.

Accordingly, since 1997, plaintiffs have had the undisputed right to use the alley for ingress and egress, which were the terms of the original easement grant. However, plaintiffs' easement does not grant them the right to exclude defendants from using the alley. While an easement holder's rights are paramount to an owner's rights to the extent of the easement grant, the owner may rightfully use the land for any purpose not inconsistent with the rights of the owner of the easement. *Tittiger v Johnson*, 103 Mich App 437, 441; 303 NW2d 26 (1981). Likewise, plaintiffs' easement does not entitle them to an ownership interest in the alley. *Thies v Howland*, 424 Mich 282, 293; 380 NW2d 463 (1985); *Widmayer v Leonard*, 422 Mich 280, 285 n 4; 373 NW2d 538 (1985).

In light of the parties' respective rights, plaintiffs may only enjoin defendants from using the alley in a manner that interferes with their right of ingress and egress. Although plaintiffs' complaint indicates that defendants erected a fence in and generally exercise dominion over the alley, plaintiff's did not pursue the claim below.[1] Finally, even if defendants' use had encroached on plaintiffs' easement, the remedies plaintiffs sought – namely, exclusive use or ownership – are not legally supported.

Plaintiffs' remaining issue regarding the trial court's award of costs and attorney fees is unpreserved for appellate review because plaintiffs failed to object to such sanctions in the lower court on the same grounds they now raise on appeal. See *Kubisz v Cadillac Gage, Inc*, 236 Mich App 629, 637; 601 NW2d 160 (1999); *Jansen v Jansen*, 205 Mich App 169, 173; 517 NW2d 275 (1994). It is well established that an objection based on one ground is insufficient to preserve for appellate review an argument based on a different ground. *Kubisz, supra*. Accordingly, issues raised for the first time need not be addressed. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Nevertheless, we will not disturb the trial court's award of costs and attorney fees in this case as the trial court's determination that plaintiffs' claim was frivolous under MCL 600.2591 is not clearly erroneous. *In re Attorney Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999).

Affirmed.

/s/ Richard Allen Griffin
/s/ Helene N. White
/s/ Christopher M. Murray

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[1] Plaintiff Elwyn Dobson's deposition testimony, which plaintiffs submitted on appeal, cannot be considered in making this determination or in determining whether plaintiffs' claim was frivolous for purposes of granting attorney fees, see *infra*, because it is not part of the lower court record. "A party may not expand the record on appeal, as this Court is limited to the record established by the trial court." *Trail Clinic, PC v Bloch*, 114 Mich App 700, 713; 319 NW2d 638 (1982).