

STATE OF MICHIGAN
COURT OF APPEALS

BLACKHAWK DEVELOPMENT
CORPORATION and DEXTER CROSSING,
LLC,

UNPUBLISHED
January 27, 2004

Plaintiffs-Appellants,

v

VILLAGE OF DEXTER and DEXTER
DEVELOPMENT,

No. 240790
Washtenaw Circuit Court
LC No. 00-000724-CZ

Defendants-Appellees.

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Plaintiffs Blackhawk Development Corporation and Dexter Crossing, LLC, own a strip of land north of Dan Hoey Road in defendant Village of Dexter (Village). Plaintiffs' predecessor in interest granted a public roadway easement to the Village over the strip of land in order to settle a 1990 condemnation action involving the land. With the approval of the Village, defendant Dexter Development began improving a portion of the strip of land in late 1999 or early 2000. Plaintiffs filed suit, alleging that the scope of the public roadway easement did not permit Dexter Development to construct access roads or sidewalks, place utilities, or make other improvements to the land. Plaintiffs sought a declaratory judgment and an injunction, as well as damages for trespass. The trial court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). Plaintiffs now appeal as of right. We affirm.

I

In 1990, Dan Hoey Road intersected with Dexter-Ann Arbor Road at a sharp angle in the Village of Dexter. Dan Hoey Road was an unimproved, gravel roadway at the time and was considered unsafe by the Village. The Village instituted condemnation proceedings over a strip of land owned by the Kingsley family's trusts in order to improve Dan Hoey Road by paving, widening, and moving it south of its then-present location. John Kingsley, the owner of Dexter Development, was the trustee of the two trusts that owned a large portion of land located south of Dan Hoey Road, including the land the Village sought to condemn. He negotiated with the Village, and a settlement was reached. The Village did not take the land in fee simple by condemnation, but obtained a public roadway easement. The settlement agreement between the Village and Kingsley contained numerous terms with respect to utilities, and the Village's duty

to provide utilities to the trust land located south of Dan Hoey Road if the land was developed. The agreement also included a provision that Kingsley needed to draft and transfer to the Village “*an easement for public roadway purposes over the premises.*” (Emphasis added.) The easement was written as follows:

IN CONSIDERATION of the sum of \$15,500.00, receipt whereof is hereby acknowledged, the undersigned, JOHN V. KINGSLEY, JR., as Successor Trustee of the John V. Kingsley, Sr. and Mildred I. Kingsley Trusts, whose address is 3805 W. Loch Alpine, Ann Arbor, Michigan, does hereby grant and convey unto the VILLAGE OF DEXTER, a Michigan municipal corporation, whose address is 8140 Main Street, Dexter, Michigan, *an easement for the purposes of relocating, establishing, opening and improving Dan Hoey Road* in the Village of Dexter, Washtenaw County, Michigan, which easement is further described on Exhibit B attached hereto and incorporated herein by reference.¹ (Emphasis added.)

James Graham, the Village’s manager, averred that the easement was for the public road and that it included all of the land in the strip over which the easement was given.

The relocated roadway, however, did not cover the entire portion of land encumbered by the easement. The relocated Dan Hoey Road was constructed in a curve and created a crescent-shaped parcel of land between the old roadway boundary and the new roadway boundary. When Dan Hoey Road was relocated, five residential properties situated to the north lost their direct connection to the road. The property between the new Dan Hoey Road and these properties was owned by the Kingsley trusts. E. Spaulding Clark, the Village’s attorney who negotiated the settlement with Kingsley, testified that the crescent-shaped piece of land created by the movement and curvature of Dan Hoey Road was meant to be used to provide rights of way to the north residences that were separated from the road. Although nothing in the express language of the easement addressed the north properties, the driveways from those properties were extended across the easement and connected to the new Dan Hoey Road. One new driveway was also created and connected directly to the new roadway.

Kingsley testified that access for the adjoining residential parcels was important during settlement negotiations because some of the residences were landlocked without such access. He indicated, for that reason, the easement was granted in an area larger than a traditional sixty-six-foot road easement. Kingsley believed the easement allowed the Village to do whatever it wanted with the land.

Clark testified that the easement was meant to service all parcels along Dan Hoey Road. He noted that it was not limited in time or duration. If the easement did not provide for access to

¹ The description of the land over which the easement was granted includes a portion of land owned by the trusts and also the land on which the old Dan Hoey Road was built. Kingsley could not explain why the easement encompassed the land on which the old road was built because the Village already owned that land in fee simple.

landlocked parcels, the Village would have had to expand the new Dan Hoey Road up to the easement line in order to service those properties. Clark also made a contradictory statement, however, testifying that the purposes of the easement—relocating, establishing, opening and improving Dan Hoey Road—were accomplished when the Village realigned the road. Clark and Kingsley both admitted that commercial or future development of the properties to the north of Dan Hoey was not an issue contemplated during settlement negotiations in the condemnation action. All of the land was residential.

After the settlement was reached, Kingsley sold the trust land that was located to the south of the old Dan Hoey Road, including the parcel subject to the easement. This land was acquired by plaintiffs, who developed the land south of the new Dan Hoey Road. Their development is Dexter Crossing. The development agreement between the Village and plaintiff Blackhawk Development for Dexter Crossing incorporated the terms of the 1990 settlement agreement between the Village and Kingsley.

After selling trust land to plaintiffs, Kingsley, over the course of a couple of years, purchased the five residential parcels to the north of the old Dan Hoey Road. As the owner of Dexter Development, Kingsley then proposed to the Village the construction of a planned unit development (PUD) known as the Dexter Commerce Center. The plan included three phases: a bank, a gas station, and retail shopping. There is no dispute that Dexter Commerce Center is a private development. Kingsley testified that the PUD could have been developed without the access roads from Dan Hoey Road. A traffic study he commissioned showed that the PUD would not bring a significant increase in traffic to the area.

In addition to access road issues, Kingsley testified that he was prevented from using or tapping into existing utilities running along Dexter-Ann Arbor Road. A property owner at the end of the water line was making “noise” at public meetings about the quality of water he would receive if the development was tapped into those utilities. There was no legal or engineering impediment to Kingsley tapping into the utilities running along Dexter-Ann Arbor Road. The issue was a political one that the Village wanted to resolve. Thus, with Village approval, Kingsley added a water main under a portion of the disputed land. A storm sewer was also planned and was going to run underneath the proposed center access road. By December 2000, Dexter Development had already made several improvements to plaintiffs’ property, including grading, installation of a water main, storm water improvements, sidewalks, lighting, and landscaping.

On November 8, 1999, the Village and Dexter Development entered into a PUD Agreement. The agreement refers to the easement and indicates that the Village had deemed two accesses from Dan Hoey Road necessary for the safety and welfare of its residents. The agreement further provides that the construction of a sidewalk and related landscaping and improvements are also deemed a necessity by the Village. The agreement gave Dexter Development a license to construct a public road, construct a public sidewalk, and landscape on the land encumbered by the easement. It declares that the portion of the access drive, which crosses the easement, “shall be maintained as a public road.” The agreement also provides that Kingsley will indemnify the Village in any action brought by anyone claiming an interest in the disputed property. Kingsley admitted that plaintiffs’ suit was anticipated.

On June 23, 2000, after construction of Dexter Commerce Center began, plaintiffs filed a verified complaint, requesting a declaratory judgment and pleading a cause of action for trespass.² Subsequently, Dexter Development filed a motion for summary disposition, with which the Village concurred. In granting defendants' motion pursuant to MCR 2.116(C)(10), the trial court stated that the terms "roadway purposes" and "improvement," which were used in the 1990 settlement agreement, were ambiguous. Looking at extrinsic evidence, the court found that the access roads were "sound development planning" and were a benefit to the public. Thus, the court concluded that "the improvements [access roads and underground utilities] sought by defendant fall within the parties' contemplated scope of the easement and reasonably serve its purpose."

II

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters*, 451 Mich 358; 547 NW2d 314 (1996).

III

In 1874, Justice Thomas Cooley, writing for our Supreme Court in *Warren v Grand Haven*, 30 Mich 24, 27-28 (1874), explained that an express easement for roadway purposes includes all appropriate uses to which roads and streets are usually devoted:

The dedication of land to the purposes of a village or city street must be understood as made and accepted with the expectation that it may be required for other public purposes than those of passage and travel merely, and that under the direction and control of the public authorities it is subject to be appropriated to all the uses to which village and city streets are usually devoted, as the wants or convenience of the people may render necessary or important. One of these uses is the construction of sewers, which are usually laid under the public streets; and the custom to lay them there must be assumed to be had in view when a way is dedicated [Citations omitted.]

Later in *Grosse Pointe Shores v Ayres*, 254 Mich 58, 64; 235 NW 829 (1931), the Supreme Court reiterated that an express easement for a public roadway includes, within its scope, improvements for sewer, water, gas, lighting, and telephone systems:

The dedication of property for the purpose of a highway carries the right to public travel and also the use for all present and future agencies commonly

² Plaintiffs also requested a preliminary injunction that was later denied.

adopted by public authority for the benefit of the people, such as sewer, water, gas, lighting, and telephone systems.

Furthermore, conditions in a deed for a public roadway easement that would restrict the normal and customary uses of the easement would be void as against public policy:

A condition in a deed of dedication prohibiting the uses above stated or circumscribing the future freedom of action of the authorities to devote the street to the wants and convenience of the public is void, as against public policy or as inconsistent with the grant. And where the condition in the dedication for a street is void as against public policy or as inconsistent with the grant, the dedication is effective but the condition is inoperative. [*Id.* at 65.]

In the present case, the language of the express easement clearly provides that it is “an easement for the purposes of relocating, establishing, opening and *improving* Dan Hoey Road in the Village of Dexter.” (Emphasis added.) The term “improve” is defined as: “To meliorate, make better, to increase the value or good qualities of, mend, repair, as to ‘improve’ a street by grading, parking, curbing, paving, etc.” Black’s Law Dictionary (5th ed), p 682.

After applying the plain and unambiguous language of the express easement, we hold that the access roads, sidewalks, utilities, and other improvements to the land at issue are clearly roadway “improvements” as provided for by the public roadway easement. See *Eyde Bros Dev Co v Eaton Co Drain Comm’r*, 427 Mich 271; 398 NW2d 297 (1986), and cases cited therein. While we disagree with the trial court’s conclusion that the term “improvement” was ambiguous and its use of extrinsic evidence, this Court will not reverse the lower court when it reaches the right result for the wrong reason. *In re Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993); *People v Lucas*, 188 Mich App 554, 557; 470 NW2d 460 (1991).

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin