

STATE OF MICHIGAN  
COURT OF APPEALS

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CITY OF CHEBOYGAN,

Plaintiff-Appellee,

v

BRANDON BORIS and CHRISTINE BOMEN,

Defendants-Appellants.

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UNPUBLISHED

December 14, 2004

No. 249976

Cheboygan Circuit Court

LC No. 03-007117-CH

Before: Murphy, P.J., White and Kelly, JJ.

MEMORANDUM.

Defendants appeal as of right from the order of the circuit court enjoining them from keeping farm animals on land encumbered by an easement owned by plaintiff. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

In 2002, defendants purchased land through which the Little Black River runs, and upon which one of the river's dams was placed. The title was encumbered by a flowage easement covering the land on either side of the river, and a construction easement, covering the earthen dam and surrounding land. Defendants began allowing farm animals to graze on land encumbered by the latter easement, and plaintiff objected, and presented expert testimony to the effect that the grazing of farm animals, and erection of structures attendant to that activity, damaged the soil and vegetation in ways that could interfere with the flow of water should such be needed, and weaken the dam itself.

Defendants do not dispute that conclusion, but argue that the easement in question did not extend to preventing them from allowing grazing animals on the land, and thus that plaintiff was demanding more than what it bargained for. We disagree.

"[E]quitable issues are reviewed de novo, although the findings of fact supporting the decision are reviewed for clear error. However, the granting of injunctive relief is within the sound discretion of the trial court . . . ." *Cipri v Bellingham Frozen Foods, Inc.*, 235 Mich App 1, 9; 596 NW2d 620 (1999) (internal quotation marks and citations omitted). "The use of an easement must be confined strictly to the purposes for which it was granted or reserved. . . . [T]he owner of an easement cannot materially increase the burden of it upon the servient estate . . . ." *Delaney v Pond*, 350 Mich 685, 687; 86 NW2d 816 (1957), citing 17A Am Jur, Easements, § 115, p 723.

In this case, the purposes of the easement included allowing maintenance of the dam. Defendants, as successors to the grantor, retained the right to any uses of the land “not inconsistent with the full use and enjoyment by the Grantee . . . of the rights and privileges . . . granted.” Because there is no disagreement that the presence of grazing livestock, and of structures to support that practice, could impede the flow of water and otherwise threaten the functioning and structural integrity of the dam, the trial court did not err in regarding that practice on the encumbered land as inconsistent with the purpose of the easement. Plaintiff was not trying to extend its rights over the servient estate, but was instead demanding that defendants conform their uses to practices that comported with the stated purpose of the easement. The trial court properly issued the injunction.

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Kirsten Frank Kelly