STATE OF MICHIGAN

COURT OF APPEALS

LLOYD CUDNOHUFSKY and NANCY CUDNOHUFSKY, Plaintiffs-Appellees,	UNPUBLISHED October 13, 2005
V JOHN MAKI and MARCIA MAKI, Defendants-Appellants.	No. 257835 Dickinson Circuit Court LC No. 03-012889-CZ

Before: Talbot, P.J., and White and Wilder, JJ.

MEMORANDUM.

Defendants appeals as of right from the trial court order that granted plaintiffs an easement by implied reservation of a road on defendants' property that is contiguous to plaintiffs' property. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case involves the parties' mutual use of a gravel road lying along the western boundary of plaintiffs' property but which is located entirely on defendants' property. Both parties, as had their predecessors in interest, used the road until a dispute arose and prompted plaintiffs to sue for legal recognition of a permanent easement.

In *Chapdelaine v Sochocki*, 247 Mich App 167, 172-173; 635 NW2d 339 (2001), this Court determined that an easement by implied reservation, which is also a product of necessity, may be created under certain circumstances:

> An easement by necessity may arise either by grant, where the grantor created a landlocked parcel in his grantee, or it may arise by reservation, where the grantor splits his property and leaves himself landlocked. Regardless of whether the easement at issue is implied by law or by reservation, the party asserting the right to the easement need only show that the easement is reasonably necessary, not strictly necessary, to the enjoyment of the benefited property. An easement by necessity is based on the presumed intent of the parties and is supported by public policy that favors the productive and beneficial use of property. In a conveyance that deprives the owner of access to his property, access rights will be implied unless the parties clearly indicate they intended a contrary result. [Citations omitted.]

It is undisputed in this case that defendants' and plaintiffs' properties were at one time held in fee under one title when owned by August and Elfie Peterson. The Petersons subdivided their land, leaving themselves landlocked on the property now owned by plaintiffs. When the land was subdivided, the road in question—the exclusive means of access to the Petersons' home—was located entirely on the parcel now owned by defendants. Although the conveyance by the Petersons to defendants did not reserve an express easement for the road, the Petersons continued to use the road. Plaintiffs also use the road as the only means to access their home. The court below made these findings based upon the evidence presented at trial. We conclude these findings were not clearly erroneous since we are not left with a firm and definite conviction that a mistake was made. *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990); *Gumma v D & T Constr Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999). As such, defendants' argument on appeal fails.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder