

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN E. RANDALL and DIANE F.
RANDALL,

UNPUBLISHED
December 15, 2005

Plaintiffs-Appellees,

v

JOHN TRAHAN, LEONARD F. SWEET, BETTY
A. SWEET, JASON C. FULTZ, TRACI FULTZ,
RODNEY L. SIZEMORE, and LEONA
HERROD,

No. 255786
Roscommon Circuit Court
LC No. 03-724037-CH

Defendants-Appellants.

Before: Owens, P.J., and Saad and Fort Hood

PER CURIAM.

Defendants appeal from the trial court's judgment that reformed the description of an easement for ingress and egress. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The land at issue was subdivided by its original owner. Plaintiffs and defendants bought separate lots of the land. The land had a trail road that was intended to be the road used for ingress and egress. The original survey, conducted in 1983, did not follow the trail road. Instead, the easement was placed where a gully crossed the property. The gully made the easement virtually impassable.

The easement was recorded in 1991. However, the owner had discussed the discrepancy between the written description of the easement and the actual easement used before each sale with the purchasers. None of the parties ever improved the recorded easement or used it to gain access to their property. They continuously used the trail road and improved it.

The original owner sold a lot to defendant Herrod on a land contract. The quit claim deed, that described the easement as it was actually being used, remained unrecorded at the time of trial. The original owner consented to amend the easement.

The trial court used its equitable powers to reform the easement as recorded in the deed to conform to its existing use, a use that the owners enjoyed for over 14 years.

Defendants contend that the trial court erred in using its equitable powers to reform an easement to conform to the existing easement. Defendants-appellants argue that the reformation was an extinguishment of the easement and, therefore, the trial court erred in its application of the law.

This Court reviews the trial court's rulings on equitable issues de novo. *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002); *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 9; 596 NW2d 620 (1999). However, the extent of a party's rights under an easement is a question of fact for the trial court, which we review for clear error. *Little, supra*; *Blackhawk Development Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005); *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003).

"An easement is a right to use the land of another for a specific purpose." *Bowen v Buck & Fur Hunting Club*, 217 Mich App 191, 192; 550 NW2d 850 (1996). "[A]n easement may be created by express grant, by reservation or exception, or by covenant or agreement." *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652, 661; 651 NW2d 458 (2002).

The easement here was granted by a deed, which was recorded on 1991 upon sale of the first lot. The deed allowed for the use of thirty-three feet of land on each side of the boundary line of Herrod's and plaintiffs' property. The parties actually used twenty-seven feet of plaintiffs' land and forty feet of defendant Herrod's land for the purpose of ingress and egress, which followed the trial road and avoided the impassable gully.

In reforming the easement, the trial court ruled that the description should reflect the actual use of the land and the intent of the parties whose land was burdened by the easement. In so ruling, the court found that the easement, as recorded, was virtually impassable and would have been difficult to improve and maintain because of the dimensions of the gully. The court also found that defendant Herrod had agreed to the use of forty feet of her property. Further, the court found that the improvement made by the parties to the easement evidenced the intent of the parties to use the easement as it existed and not as it was recorded. These factual findings are supported by the record and are not clearly erroneous.

Furthermore, contrary to defendants' argument, the easement was not extinguished. The right of ingress and egress remains and the actual use of the land has not changed. The court simply changed the legal description of the easement as it was recorded, to conform to the parties' use of the easement.

As the trial court recognized, there is no case law directly allowing for reformation of an easement description after it has been recorded. However, the court analogized the situation to the reformation of a deed. In *Langschwager v Pinney*, 351 Mich 473, 482; 88 NW2d 276 (1958), our Supreme Court upheld the trial court's decision to reform the description of the boundary line in the deed. In *Langschwager*, a fence was in place for twelve years with the parties' knowledge and consent. The Michigan Supreme Court upheld the trial court's reformation of the deed based on equities and facts almost identical to the facts and equities in this matter.

Accordingly, the trial court's ruling is affirmed.

/s/ Donald S. Owens

/s/ Henry William Saad

/s/ Karen M. Fort Hood