STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL R. CRAWFORD,

Plaintiff-Appellee,

v

MARINA BAY SOUTH CONDO ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
December 8, 2009

No. 285037
Cheboygan Circuit Court
LC No. 05-007494-CH

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

Defendant appeals by right from a judgment, entered after a bench trial, granting plaintiff an easement implied by reservation to use a driveway on defendant's property for ingress and egress to plaintiff's property, and to access buildings located on plaintiff's property. Because the trial court did not err in finding the existence of an implied easement, and the granted easement does not exceed or expand the scope of the existing use of the easement, we affirm.

Richard Ziehmer was the common owner of two adjoining parcels of property. He sold the northern parcel to defendant's predecessor in title in 1995. Defendant purchased the property in 2003. This northern parcel had been used as a small marina with rented boat slips, but it is no longer functional. Plaintiff purchased the southern parcel of property from Ziehmer in 1999. A single storage building existed on the southern parcel when plaintiff bought it, which had been used to store boats and other items. Plaintiff added a second storage building on the property and rented out space in the buildings for the storage of boats and trailers beginning in approximately 2000. A driveway located on defendant's property was previously used by Ziehmer to access the storage building on what is now plaintiff's property, and plaintiff continued to use the driveway to access his property and the storage buildings.

A trial court's dispositional ruling on an equitable matter is reviewed de novo. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). The court's findings of fact in a bench trial are reviewed for clear error, and its conclusions of law are reviewed de novo. *Chapdelaine v Sochocki*, 247 Mich App 167, 169-170; 635 NW2d 339 (2001). The extent of a party's rights under an easement is a question of fact, and a trial court's determination of those facts is reviewed for clear error. *Blackhawk Dev Corp, supra* at 40. A trial court's finding is clearly erroneous when this Court is left with the definite and firm

conclusion that a mistake has been made. *Schumacher v Dep't of Natural Resources* (*After Remand*), 275 Mich App 121, 130; 737 NW2d 782 (2007).

Defendant first argues on appeal that the trial court erred in ruling that plaintiff enjoyed an easement implied by reservation over defendant's property. We disagree.

An easement is the right to use the land of another for a specified purpose. *Heydon v MediaOne*, 275 Mich App 267, 270; 739 NW2d 373 (2007). An easement holder's right to use the burdened land is limited to this specific purpose. *Schumacher, supra* at 130. The owner of an easement cannot displace the possessor or the owner of the land, but has a qualified right to possession to the extent necessary for enjoyment of the easement. *Terlecki v Stewart*, 278 Mich App 644, 660; 754 NW2d 899 (2008).

An easement may be created by express grant, by reservation or exception, or by covenant or agreement. *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 661; 651 NW2d 458 (2002). Here, the trial court held that plaintiff had an easement by implied reservation. Three things must be shown in order to establish an implied easement: (1) that during the unity of title an apparently permanent and obvious servitude was imposed on one part of an estate in favor of another, (2) continuity, and (3) that the easement is reasonably necessary for the fair enjoyment of the property it benefits. *Schmidt v Eger*, 94 Mich App 728, 731; 289 NW2d 851 (1980).

In this case, the first two requirements are not in dispute. Ziehmer, who had the unified title, used the driveway on defendant's property to access what is now plaintiff's property. He testified that this was the only driveway to plaintiff's property and that he utilized the driveway to back boats and other items into the storage buildings on plaintiff's property. Plaintiff used the driveway in the same manner, and even obtained a writing from one of defendant's predecessors in title that promised "existing agreements regarding shared rights of way . . . will remain in place."[1]

There is, however, a dispute regarding the necessity requirement. Defendant argues that an implied easement by reservation requires a showing of strict necessity—not the reasonable necessity the trial court found had been shown. However, in *Harrison v Heald*, 360 Mich 203, 207; 103 NW2d 348 (1960), the Supreme Court indicated that if, during unity of title, an apparently permanent and obvious servitude is imposed on one parcel, "with the grant of the one an easement is also granted *or reserved, as the case may be*, in the other, subjecting it to the burden of all such visible uses and incidents as are reasonably necessary to the enjoyment of the dominant heritage. . . . . " (emphasis in original), quoting *John Hancock Mut Life Ins Co v Patterson*, 103 Ind 582, 586; 2 NE 188 (1885); *Slachter v Olderman*, 116 Conn 156, 158; 164 A 202 (1933). The Court observed that "[t]he reference in the quoted material to a 'reservation' as well as a 'grant' by implication of law is to be noted." *Harrison, supra* at 207.

---

[1] In 1995, Ziehmer reserved an easement for use of the driveway in a land contract by which the marina parcel was sold to defendant's predecessor in title. However, no easement was ever included in a deed or recorded.

This Court in *Schmidt*, *supra* at 732, reversed a trial court and held that the "plaintiff needed only to establish that the easement was reasonably necessary" in a case involving an implied easement by reservation. This Court noted that Michigan law had been less than clear on the point and that prior cases had required strict necessity in granting quasi-easements. *Id*. at 732, 734. This Court then stated, "While it is true that the Supreme Court in *Harrison* did not specifically direct itself to the precise issue of what quantum of necessity was to be required in cases of implied reservations, as opposed to implied grants, it is clear that it intended the same rules to apply to each." *Id*. at 735. This Court pronounced *Harrison* as controlling. *Id.* We find no reason to deviate from this pronouncement. Thus, 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. *Chapdelaine*, *supra* at 173, citing *Schmidt*, *supra* at 735.

Here, Ziehmer testified that he always accessed the buildings by utilizing what is now defendant's property. The trial court granted the easement for ingress and egress to and from plaintiff's property, and for access to the storage buildings. There was substantial testimony establishing that it was only possible to use the current storage buildings for storage by utilizing the driveway on defendant's property, and that there was no other driveway to plaintiff's property. Plaintiff demonstrated that the easement was reasonably necessary for ingress, egress, and to access the storage buildings.

An easement is held to exist by implication because of the obvious intention of the parties. *Rannels v Marx*, 357 Mich 453, 458; 98 NW2d 583 (1959). Here, the original property owners agreed to use the driveway on what is now defendant's property to enter and exit plaintiff's property, and to access the storage building on the property. Plaintiff has demonstrated that use of defendant's property is reasonably necessary for this purpose, and that this use was continued from apparently permanent and obvious use of the driveway for these purposes when the properties were in common ownership. See *Schmidt*, *supra* at 731. Thus, the trial court did not err in granting plaintiff the easement implied by reservation.

Next, defendant argues that plaintiff's use of the easement impermissibly exceeds the scope of the original agreement. Once granted, an easement cannot be unilaterally modified by either party. *Schadewald v Brule*, 225 Mich App 26, 36; 570 NW2d 788 (1997). In addition, an easement holder may not materially increase the burden on the servient estate beyond what was originally contemplated. *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 577; 485 NW2d 129 (1992). The use exercised by the holders of the easement must be reasonably necessary and convenient to the proper enjoyment of the easement, with as little burden as possible to the fee owner of the land. *Blackhawk Dev Corp*, *supra* at 42.

Defendant argues that the evidence showed that Ziehmer used the driveway to access a single storage building to store his personal watercraft. Ziehmer did testify that the building was used to store boats, however, a neighbor testified that Ziehmer and plaintiff used the property in much the same way, to store boats and other vehicles. In addition, another former neighbor testified that he also stored his boat in the storage building when Ziehmer owned the same and also when plaintiff owned the property, and that he saw other boats, snowmobiles, and cars being stored. Ziehmer (who severed the parcels) also testified that any vehicle access to the property now owned by plaintiff was always over the area of the easement. Other witnesses stated that they had only seen the property accessed via the existing driveway, the area of the easement,

with one witness testifying that access to plaintiff's property had been solely via the easement since the 1960's.

It is clear that the driveway was originally used not only for access to boat storage, but also for any vehicle access to the property now owned by plaintiff. Plaintiff added a second storage garage and stored items other than boats, but it does not appear that this use deviates from the original grantor's use.

Defendant also argues that plaintiff has expanded the scope of the easement because he began using the building for commercial purposes, renting storage space and storing items other than boats in the buildings. Defendant refers to *Crew's Die Casting Corp v Davidow*, 369 Mich 541, 546; 120 NW2d 238 (1963), where the Court found that an easement originally intended for ingress and egress was impermissibly burdened when used for the operation of a business. However, Ziehmer testified that he used what was to become plaintiff's property for the storage of boats that were related to the rental of the marina's boat slips (the marina was on the adjoining parcel that is now defendant's property). And, once again, a former neighbor testified to storing his boat in the building when Ziehmer owned the property, and testified that he continued to do so when plaintiff purchased the property. The testimony indicates that storage in the buildings was not limited to the property owner's personal use.

Here, the trial court stated that the purposes of the easement were for ingress and egress and accessing the buildings, and that plaintiff's use of the easement was not limited to the sole purpose of boat storage. Given the history of the use of the easement and its surrounding area, the court did not clearly err in determining the permissible uses of the easement.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Deborah A. Servitto