# STATE OF MICHIGAN

# COURT OF APPEALS

DANIEL J. IRVIN and CHARLENE B. IRVIN,

Plaintiffs-Appellants,

v

VILLE-DU-LAC TOWNHOUSES CONDOMINIUM ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
September 14, 2010

No. 291534
Macomb Circuit Court
LC No. 2007-003490-CH

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

This property dispute involves the existence of an easement over roads for purposes of ingress and egress in defendant Ville-Du-Lac Townhouses Condominium Association's (the Association) condominium complex. Plaintiffs Daniel and Charlene Irvin appeal as of right the trial court's judgment of no cause of action. We reverse and remand for entry of judgment for the Irvins.

## I. BASIC FACTS

This property dispute involves the Irvins' undeveloped parcel of lakefront property located in New Baltimore, Michigan. Lake St. Clair abuts the Irvins' property to the South and East. Another parcel of land, which the Irvins also own and on which a single family home sits, abuts the Irvins' property to the West. Properties that the Association and the Anchor Bay Apartment Complex own border the Irvins' property to the North. The Association's property abuts Jefferson Avenue, a public highway, at its northern border. Other than water access, the Irvins' property is accessible via the Association's property, the Anchor Bay property, or the property located to the West.

Hyman Gordon obtained the large plat of property between Lake St. Clair and Jefferson Avenue in New Baltimore via a warranty deed in 1971. In 1973, Gordon planned to construct 40 condominium units on the northern portion of this property. Gordon recorded a master deed and split the land into three parcels: the northern, front lot facing Jefferson Avenue, where he would build the condos; the western lakefront lot; and the back lakefront lot. (The western lakefront lot and the back lakefront lot, again, are currently the Irvins' properties).

The Master Deed provides in relevant part as follows:

> 10. The following easements are hereby created:
>
> * * *
>
> (c) *There shall be an easement for ingress and egress over the roadways in the condominium and also a twenty-foot wide easement for utilities along the southwest perimeter of the condominium, said easements being for the benefit of the owners, and their successors and assigns, of the land described in paragraph 3*[1] *above.*[2]

Shortly after Gordon split the properties pursuant to the Master Deed, he conveyed the parcels to the Michigan Condominium Corporation (MCC) via warranty deed subject to "[e]asements and restrictions of record." In 1975, the MCC conveyed both the western lakefront lot and the back lakefront lot back to Gordon via quitclaim deed.[3] In 1978, Gordon conveyed the western lakefront lot and the back lakefront lot to the Archdiocese of Detroit via a warranty deed "subject to easements of record." The Archdiocese transferred title to Canton Homes, LLC, in March 2006, via a warranty deed. Immediately after obtaining legal title, Canton Homes conveyed the properties to the Irvins via a covenant deed.

In August 2007, the Irvins filed a complaint for declaratory judgment and other relief, alleging that the Association interfered with their right to utilize an express easement over the Association's property for ingress and egress to the back lakefront lot. The Irvins wanted to develop the back lakefront lot by placing a five-unit condominium development on it. The Irvins alleged that they had a right to utilize the easement over the Association's property to access Jefferson Avenue. Specifically, the Irvins alleged that Gordon's original Master Deed created an express easement for the benefit of the owners and assigns of the back lakefront lot. The Irvins asserted that the property's chain of title reserved their right to the easement. The Irvins attached an undated survey depicting the Irvins' "property and the easement over [the Association's] property which were conveyed by the Archdiocese Deed."

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[1] Paragraph 3 apparently contains a metes and bounds description of the three lots described *supra*. Defendant does not dispute that plaintiffs' two lakefront parcels of land constitute land described in Paragraph 3 of the Master Deed.

[2] Emphasis added.

[3] The quitclaim deed provided that the transfer included:

> easement of access, ingrees [sic] and egress to Jefferson Road, said easement shall permit ingree [sic] and egress upon and over the existing road from Jefferson Avenue to the above described land as set forth in [the Master Deed] . . . . Together with any additional land if any is required to permit access from Jefferson Avenue to said existing roadway and from existing roadway to the land conveyed.

The Association denied that the Master Deed created an easement appurtenant to the Irvins' property. The Association claimed that the Irvins did not have easement rights because the condominium subdivision plan that Gordon attached to the Master Deed violated relevant regulatory rules because it did not refer to any ingress/egress easement burdening the condominium property. The Association acknowledged that the Master Deed created an easement but argued that the easement was reserved "only for the purpose of expansion" of the condominium development and that Gordon showed no intent to reserve an easement in favor of an unrelated third-party. The Association noted that Gordon abandoned any plans for future development when he conveyed the properties to the Archdiocese.

The Association also argued that the Irvins were not entitled to relief on the theory of easement by necessity because the back lakefront lot was not landlocked; according to the Association, the Irvins could access Jefferson Avenue via the western waterfront property, which the Irvins also owned. Additionally, the Association argued that any easement reserved in the Master Deed was invalid because the deed did not state with specificity the metes and bounds of the easement. The Association further argued that the transactions subsequent to the recording of the Master Deed were irrelevant and did not create an easement. The Association also objected to the survey that the Irvins attached to their complaint.

Following a two-day bench trial, the trial court denied the Irvins' request for relief and entered a judgment of no cause of action. The trial court held, in pertinent part, as follows:

> In this matter, the Court finds the language contained in the Master Deed fails to create an express easement. For the easement to be sufficient it needed to be more specific in writing in order to manifest a clear intent to create a servitude on [the Association's] property. Further, even if an easement was created by this language, [the Irvins] have failed to demonstrate the alleged easement was created at the location they request. The language of the Master Deed at paragraph 10(c) indicates an easement over the roadways; however, it is evident a roadway does not connect the two parcels at issue in this matter.

The Irvins now appeal.

## II. EXPRESS EASEMENT APPURTENANT

### A. STANDARD OF REVIEW

The Irvins contend that the trial court erred in finding that the Master Deed failed to create an express easement appurtenant to their property. The trial court's determination whether the Irvins held an easement over the Association's property involves a question of law that we review de novo.[4]

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[4] *Minerva Partners, LTD v First Passage, LLC*, 274 Mich App 207, 218; 731 NW2d 472 (2007).

## B. LEGAL STANDARDS

"Michigan courts recognize two types of easements: easements appurtenant and easements in gross."[5] "An appurtenant easement attaches to the land and is incapable of existence apart from the land to which it is annexed."[6] And, an easement appurtenant "may pass with the benefited property when the property is transferred."[7] A property owner can create an easement appurtenant by "express grant, by reservation or exception, or by covenant or agreement."[8] With respect to an easement by reservation:

> An easement may be created by an express reservation in a document of conveyance, as when, at the time a parcel of property is conveyed by its owner, the owner reserves an easement over it for himself. To create an express grant or reservation of an easement, there must be language in the instrument of conveyance manifesting a clear intent to create the easement. *It is not necessary that the party reserving the easement right use any particular words as long as the intent to claim an easement is apparent and it is described sufficiently so that the easement and the parcel of land to which the right is attached can be determined, using parol evidence if necessary*.[9]

"An inquiry into the scope of the [property] interest conferred by a deed . . . necessarily focuses on the deed's plain language[.]"[10] "[O]ur objective in interpreting a deed is to give effect to the parties' intent as manifested in the language of the instrument."[11]

## C. APPLYING THE STANDARDS

Here, Gordon conveyed an interest in property via the Master Deed to the Association. Therefore, we must determine whether the Master Deed reserved an express easement appurtenant to the Irvins' property.

Paragraph 10(c) of the Master Deed provides as follows:

> *There shall be an easement for ingress and egress over the roadways in the condominium . . . said easements being for the benefit of the owners, and their successors and assigns, of the land described in paragraph 3 above*.

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[5] *Heydon v MediaOne*, 275 Mich App 267, 270; 739 NW2d 373 (2007).

[6] *Id*.

[7] *Id*.

[8] *Id*. (quotations omitted).

[9] *Chapdelaine v Sochocki*, 247 Mich App 167, 170; 635 NW2d 339 (2001) (internal citations omitted) (emphasis added).

[10] *DNR v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005).

[11] *Id*.

Neither party disputes that the Irvins own the property "described in paragraph 3" of the Master Deed.

We conclude that the plain language of paragraph 10(c) of the Master Deed expressly reserved an easement appurtenant to the owners, successors, and assigns of the Irvins' property for purposes of ingress and egress. Notably, contrary to the Association's contention, there is no language that ties the easement to further development of the condominium project.

Although the easement language does not delineate the precise location of the easement—that is, there is no metes and bounds description—"[i]t is not necessary that the party reserving the easement right use any particular words as long as the intent to claim an easement is apparent and it is described sufficiently so that the easement and the parcel of land to which the right is attached can be determined, using parol evidence if necessary."[12]

Here, the Master Deed specifically sets forth the benefited parcel of land—"the land described in paragraph 3"—and there is no dispute that the Irvins currently own that land. Further, with respect to the easement, although the site plan does not depict it, we can determine its location by reference to the plain language of the Master Deed and parol evidence. Specifically, the Master Deed reserved the easement for ingress and egress over the "roadways" of the Association's property. Although the Master Deed does not define the term "roadways," where a deed does not define a term, this Court will interpret the term in accord with its "commonly used meaning."[13] And, "under the doctrine of *noscitur a sociis*, we give a word or phrase meaning by its context or setting."[14] The term "roadway" is defined in relevant part as "the land over which a road is built . . . the part of a road over which vehicles travel . . ."; the term "road" is defined as "a long, narrow stretch with a leveled or paved surface, made for traveling by motor vehicle . . . etc."[15] According to testimony, surveys, and photographs admitted at trial, the condominium has one main area that is not a parking area, is paved and extends toward the Irvins' waterfront property, and is utilized by motor vehicles for ingress and egress to and from Jefferson Avenue. Applying the commonly used meanings of "road" and "roadway" set forth above, we conclude that this paved area is a "roadway" for purposes of determining the location of the easement.

Although this roadway over the Association's property ends a short distance from the Irvins' property, we find that the Irvins' easement rights necessarily incorporate the right to extend the roadway and join the two parcels together. "It is an established principle that the conveyance of an easement gives to the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement."[16] In addition, an easement holder can make

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[12] *Chapdelaine*, 247 Mich App at 170.

[13] *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 215; 737 NW2d 670 (2007) (quotation omitted).

[14] *Id.* (quotations omitted).

[15] *Random House Webster's College Dictionary* (1997).

[16] *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 41; 700 NW2d 364 (2005).

improvements to the servient estate that are necessary "for the effective use of the easement" that do not "unreasonably burden" the servient estate.[17] Thus, extension of the Association's roadway to the Irvins' property to connect both parcels is necessary for the "reasonable and proper enjoyment" and effective use of the easement.[18] If the Association's roadway is not connected to the Irvins' property, there will be no way for the Irvins and their successors or assigns to access Jefferson Avenue by vehicle without traversing the grassy area separating the two properties. This would subvert Gordon's intent in granting the easement rights.

Further, extending the roadway to connect the two parcels of property will not amount to an "unreasonable burden."[19] There is only a short distance between the two properties, extension of the roadway does not require interference with any of the Association's residents' use of their property, and the extension does not require the removal or demolishment of any improvements on the Association's land. Although the roadway will come close to one of the Association's condominium units, that unit will not be overburdened by the extension, as evidence showed that an excessive number of vehicles will not utilize the extension. Finally, as the owners of the easement, the Irvins will be responsible for the upkeep and maintenance of the extended portion of the roadway.[20]

In sum, we conclude that the Master Deed reserved an express easement appurtenant to the Irvins' property over the roadway on the Association's land for purposes of ingress and egress. This easement includes the right to extend the roadway to provide access to the Irvins' property. The trial court clearly erred in holding otherwise.

We reverse and remand for entry of judgment for the Irvins consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen Fort Hood

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[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] See *Morrow v Boldt*, 203 Mich App 324, 329; 512 NW2d 83 (1994) ("[I]t is the owner of the easement . . . who has the duty to maintain the easement in a safe condition . . . .").