STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER F. SNEIDERAITIS and BLYTHE KAREN SNEIDERAITIS, Plaintiffs-Appellants,	UNPUBLISHED November 23, 2010
v	No. 294620 Oakland Circuit Court
ELMER AUSTIN, a/k/a ELMER ROSCOE AUSTON, and TAMMY NICHOLS, a/k/a TAMMY AUSTIN, Defendants-Appellees.	LC No. 2009-100527-CH

Before: STEPHENS, P.J., and MARKEY and WILDER, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At issue is a purported ingress/egress easement across plaintiffs' property for the benefit of defendants' property. Plaintiffs are the owners of real property located at 2570 Silver Lake Road, Waterford, which they do not occupy themselves but rent to tenants. Defendants are owners-occupiers of adjacent property, 2560 Silver Lake Road. The easement is a twelve-foot-wide by fifty-foot-long strip that connects defendants' driveway to the road. A 1948 deed from Bruce and Jessie Anderson to Sarah Peck conveying 2570 Silver Lake Road included the following language:

> Subject to and excepting therefrom an easement by right-of-way for ingress and egress for and on behalf of the property now owned by grantors . . . lying immediately to the south of and adjoining the parcel of land by this deed conveyed . . . .

The deed was properly recorded, as were all the deeds relevant to this case. In November 1951, Peck conveyed plaintiffs' property to Charles and Clara Smith. The deed states it is subject to easements of record.

On December 4, 1951, the Andersons, who apparently still owned defendants' property at 2560 Silver Lake Road, together with Sarah Peck, conveyed to the Smiths 2570 Silver Lake Road by quitclaim deed, which included the following language:

> Together with the easement reserved to the [grantors] in [the 1948 deed], said easement being [description of the easement follows].
>
> The purpose of this deed is to convey to the present owners the above mentioned easement and right-of-way, reserved to the [grantors in the 1948 deed].

It is plaintiffs' contention that this terminated the easement created in 1948. However, in 1961, the Smiths deeded plaintiffs' property to Pauline Coe by warranty deed. After the legal description of the property, the deed included the following language:

> Excepting therefrom an easement by right-of-way for ingress and egress and on behalf of the property . . . lying immediately to the South of and adjoining the parcel of land above described . . . .

The same language was included in recorded deeds conveying 2570 Silver Lake Road in 1978 and in 2002. Nonetheless, plaintiffs provided affidavits and a letter from their title investigator, stating that the language in the 1961 deed was insufficient to create an easement. Plaintiffs' complaint sought declaratory and injunctive relief, asking the trial court to find there was no easement over their property and to enjoin defendants from using plaintiffs' property or from harassing or interfering with anyone on plaintiffs' property. In response, defendants contended that the deed language quoted above preserved their right to the purported easement. Both parties moved for summary disposition.

The trial court issued a written opinion in which is agreed with defendants that, although the 1951 deed extinguished the original easement, the language in later deeds "reinstated" it. The court found plaintiffs' affidavits unconvincing because they were conclusory and without an identified legal ground for the conclusions. The court also denied plaintiffs' request for injunctive relief because of its finding that the easement existed and because plaintiffs already had a personal protection order preventing defendant Elmer Austin from being on their property.

In this Court, plaintiffs argue that the language of both the 1948 and 1961 deeds did not create an easement because it is an *exception* to the estate conveyed and therefore violates the statute of frauds, MCL 566.106. Moreover, the 1961 deed was ineffective to convey an easement because defendants' property was a stranger to the conveyance. *Choals v Plummer*, 353 Mich 64; 90 NW2d 851 (1958). Defendants present no parole evidence showing an intent to create an easement and provide no theory why one would be created. The trial court's conclusion that the 1961 deed "reinstated" the easement was made without legal foundation and thus the court committed clear error in so concluding. Plaintiffs also argue that the trial court should have granted them at least some injunctive relief because the personal protection order is insufficient to protect them.

In a quiet title action, we review the trial court's factual findings for clear error. *Gorte v Dep't of Transp*, 202 Mich App 161, 171; 507 NW2d 797 (1993). A finding of fact is clearly erroneous only if the reviewing court is left with a definite and firm conviction that a mistake has

been made. *Kent Co Rd Comm v Hunting*, 170 Mich App 222, 232-233; 428 NW2d 353 (1988). Actions to quiet title are equitable, and we review the trial court's holdings de novo. *Gorte*, 202 Mich App at 165. We also review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Finally, we review a trial court's decision to grant injunctive relief for an abuse of discretion. *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 217; 634 NW2d 692 (2001).

We agree with the trial court's conclusion that an easement exists for the benefit of defendants' property. Plaintiffs correctly cite *Choals* for the rule that a grantor cannot by *reservation* create an easement for a third party. However, the law is clear that easements benefiting strangers to the conveyance may be created by *exception*. *Peck v McClelland*, 247 Mich 369, 370-371; 225 NW 514 (1929); *Martin v Cook*, 102 Mich 267; 60 NW 679 (1894). The language in the conveyances in this case clearly creates an exception rather than a reservation. Thus, assuming without deciding that the 1951 deed extinguished the original easement, the 1961 deed created a new one in the same location. Plaintiffs provide no legal argument in support of their conclusion that an exception is not a conveyance under the statute of frauds. Nor does there appear to be a valid argument to this effect because the deed was in writing and signed by the grantor.

Likewise, we find no abuse of discretion in the trial court's decision to deny plaintiffs' request for injunctive relief. In *Kernen v Homestead Dev Co*, 232 Mich App 503, 514; 591 NW2d 369 (1998), this Court articulated the factors to be considered in determining the propriety of issuing a permanent injunction:

> (a) the nature of the interest to be protected,
>
> (b) the relative adequacy to the plaintiff of injunction and of other remedies,
>
> (c) any unreasonable delay by the plaintiff in bringing suit,
>
> (d) any related misconduct on the part of the plaintiff,
>
> (e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied,
>
> (f) the interests of third persons and of the public, and
>
> (g) the practicability of framing and enforcing the order or judgment.

In the present case, plaintiffs do not live in the burdened property. Most of the activity complained about is directed toward plaintiffs' tenants. Against this, one of the tenants obtained a personal protection order. Plaintiffs do not explain why this is inadequate for such instances. Other conduct of defendants appears to be in response to plaintiffs' efforts to prevent them from using the easement. As discussed above, plaintiffs have no legal right to prevent use of the easement.

The trial court was fully briefed on these matters. It cannot be said that the trial court abused its discretion in refusing to grant any injunctive relief.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Jane E. Markey
/s/ Kurtis T. Wilder