STATE OF MICHIGAN

COURT OF APPEALS

JOHN H. BULTEMA II and DEBORAH H. BULTEMA,

Plaintiffs/Counter-Defendants-Appellees,

v

STEVEN W. ONGERT and KATHY D. ONGERT,

Defendants/Counter-Plaintiffs-Appellants.

UNPUBLISHED
June 23, 2011

No. 296679
Muskegon Circuit Court
LC No. 07-045462-CB

JOHN H. BULTEMA II and DEBORAH H. BULTEMA,

Plaintiffs/Counter-Defendants-Appellants,

v

STEVEN W. ONGERT and KATHY D. ONGERT,

Defendants/Counter-Plaintiffs-Appellees.

No. 296727
Muskegon Circuit Court
LC No. 07-045462-CB

STEVEN W. ONGERT and KATHY D. ONGERT,

Plaintiffs-Appellants,

v

JOHN H. BULTEMA II and DEBORAH H. BULTEMA,

No. 296717
Muskegon Circuit Court
LC No. 07-045541-CB

Defendants-Appellees.

STEVEN W. ONGERT and KATHY D. ONGERT,

Plaintiffs-Appellees,

v

JOHN H. BULTEMA II and DEBORAH H. BULTEMA,

Defendants-Appellants.

No. 296728
Muskegon Circuit Court
LC No. 07-045541-CB

Before: TALBOT, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, the parties each contend that the trial court erred in resolving their property dispute. In Docket Nos. 296679 and 296717, Steven W. Ongert and Kathy D. Ongert appeal as of right the trial court's opinion and order concluding that their 40-foot easement over the adjoining property, which was owned by John H. Bultema II and Deborah H. Bultema,[1] should be "partitioned" into two separate easements: one 25-foot easement for ingress and egress and one 15-foot easement for utilities. The Ongerts also argue that the trial court should have examined the burden caused by the Bultemas' encroachment into the easement by considering both its effect on the easement for utilities as well as the easement for ingress and egress. In Docket Nos. 296727 and 296728, Deborah Bultema appeals as of right the trial court's opinion and order concluding that it was reasonable for the Ongerts to increase the elevation of a portion of the easement in order to decrease the grade of the driveway leading to the Ongerts' home. She also argues that the trial court erred when it determined that she and her guests were improperly interfering with the Ongerts' easement for ingress and egress by parking on the easement and erred when it issued an overly broad and inequitable injunction barring any and all parking and obstructions in the easement. We conclude that there were no errors warranting relief. For that reason, we affirm.

[1] John Bultema died in August 2008. After John's death, his wife, Deborah H. Bultema, proceeded with the cases individually and as her husband's successor. For ease of reference, we shall use the plural when referring to the Bultemas.

I. BASIC FACTS AND PROCEDURAL HISTORY

John and Deborah Bultema began developing the Waterstone site condominium project in 1995 with another couple. The Waterstone project was originally composed of seven units for single-family homes situated along Mona Lake in Norton Shores, Michigan. The units were generally located to the east of a private road, Waterstone Drive, that ended at unit one's southern boundary line. At the time, the Bultemas lived in a home located on property that was outside the project to the south of unit one. This property abutted the southern end of Waterstone Drive.

In 2005, the Bultemas amended the Waterstone master deed to include two new units: units eight and nine. The Bultemas established these units by dividing their lot to the south of the project site into two separate parcels. Unit eight comprised the northern portion of the lot along with a portion of unit one, which the Bultemas also owned, and unit nine comprised the southern portion of the lot. The southern lot—also called the point—is surrounded on three sides by water. Because Waterstone Drive did not extend past the original southern boundary of unit one, unit nine did not have access to the road or utilities. However, the amended master deed included a 40-foot easement for ingress, egress, and utilities across the western end of unit eight in favor of unit nine.

In November 2005, the Ongerts entered into an agreement to purchase unit nine from the Bultemas for $650,000. In an attachment to the purchase agreement, which was dated December 2005, the Bultemas agreed to provide an exclusive easement in favor of unit nine for use of a boat slip located on unit eight. They also agreed to "grant easements for ingress and egress over unit 8 to unit 9 to mirror the size of the existing road" and to provide a "drawing that shows the dimension of the road and the exact location" of the easement for ingress and egress. The attachment also provided that the Bultemas had already shown the Ongerts "the dimension of [the] road and location as provided with the Master Deed." The Bultemas also agreed to "grant an easement for water, sewer, and all utilities over unit 8 to unit 9." Finally, the Bultemas agreed to "provide [a] new blacktop road from the beginning of unit 8 to the beginning of unit 9 (consistent with the type of materials, width, thickness and workmanship used in the existing road)." The Ongerts and Bultemas closed the sale in February 2006.

The Bultemas at one point lived in a home that was located on what would be unit nine. However, before the sale of unit nine, the Bultemas moved and demolished the home located there. Eventually they came to live in the home located on unit one. The Bultemas then began construction of a new home on unit eight and moved into the home in May or June, 2006. Thereafter, in July, 2006, the Ongerts began construction of their home on unit nine.

John Bultema testified that he became concerned about the Ongerts construction project after he noticed that the Ongerts built their garage at a significantly higher elevation than the grade of the property on unit eight.[2] He thought that, as a result, the Ongerts' driveway "was going to be fairly steep once he took it to the property line." John Bultema said he and his wife were planning a trip around the time that he became concerned with the Ongerts' construction of a driveway. He testified that he cautioned Steven Ongert not to pour the remaining portion of his driveway until he and his wife returned from their trip. When they returned from their trip, John Bultema noticed that the Ongerts had finished the driveway, which extended north into the easement. He said it appeared that the Ongerts had raised the level of the land on the easement by about four feet above the natural grade in order to reduce the steepness of the driveway. He stated that this elevation change interfered with his family's ability to use the easement area for their own vehicles.

Steven Ongert testified that the first sign of trouble with the Bultemas occurred after they began constructing their home. He said that the Bultemas approached them about problems they were having when backing out of their garages. The Bultemas wanted the Ongerts to grant them the right to use a significant portion of their front lawn in order to back their cars out of the garages. Ongert stated that, John Bultema threatened to give him problems with his use of the easement if he did not comply with the request. Nevertheless, Ongert stated that he would not agree to give up so much of his lawn.

In August 2007, the Bultemas sued the Ongerts.[3] In their complaint, the Bultemas alleged that the Ongerts were responsible for ongoing trespasses to their property. Namely, they alleged that the Ongerts did not have the authority to raise the level of the easement and did not have the authority to pave over the property line and onto the easement. The Bultemas also alleged that the Ongerts trespassed on their land by building steps down to the boat dock. The Bultemas asked the court to enjoin the Ongerts from trespassing further and to order the Ongerts to restore the easement to its original grade. The Bultemas also moved for a temporary restraining order barring the Ongerts from entering unit eight for any reason other than ingress and egress.

In September 2007, the Bultemas amended their complaint. The amended complaint no longer alleged that the construction of the steps to the dock constituted a trespass. Instead, it alleged that the Ongerts were using the steps to access the beach and that this use constituted a trespass.

The Ongerts filed a counterclaim against the Bultemas in September 2007. The Ongerts alleged that the Bultemas breached the purchase agreement by failing to specifically grant the easements identified in the purchase agreement and by failing to pave the easement with a driveway.

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[2] This testimony is from the evidentiary hearing held on the Bultemas' motion for a preliminary injunction.

[3] The clerk assigned this case number 07-045462-CB to this suit.

The trial court held an evidentiary hearing on the Bultemas' motion for a preliminary injunction over several days in September and October 2007. The trial court issued an opinion and order on October 23, 2007. In its opinion, the trial court concluded that the Ongerts' "elevated concrete paving into the easement area was unnecessary and unreasonably increases the burden on the servient estate" and, if the facts were left unchanged, it would grant the requested relief. The trial court, however, refused to grant the requested relief through a preliminary injunction. It also concluded that the Bultemas were unlikely to prevail on their claim with regard to the steps and, for that reason, did not enjoin the Ongerts from using the steps to access the beach.

The Ongerts sued the Bultemas in October 2007.[4] In their complaint, the Ongerts noted that the Bultemas had submitted plans to move their garages from the south end of their home to the north end. The plans indicated that the new garages would encroach into the area of the easement for ingress and egress. The Ongerts asked the trial court to enjoin the Bultemas from proceeding with the construction and moved for a preliminary injunction barring the Bultemas from proceeding.

In an order signed on October 24, 2007, the trial court denied the Ongerts' motion for a preliminary injunction. The court noted that, although the easement of record spanned 40 feet, the purchase agreement provided that the easement for ingress and egress would "mirror the size of the existing road," which was significantly less than 40 feet. The court also explained that the existing utilities were in the eastern 15 feet of the easement and protruded from the ground in a way that would prevent that area from being paved. Because the proposed construction would only encroach into the area that was occupied by the utilities, the court determined that the proposed construction would not interfere with the Ongerts ability to use the easement for ingress and egress. As such, it denied the motion. The court did, however, explain that the use of the proposed garages—as opposed to their construction—could interfere with the Ongerts' easement. Specifically, the court stated that it would entertain a new motion for an injunction if the Bultemas or their guests parked in such a way as to block the Ongerts' ability to access their property.

The Ongerts amended their complaint in January 2008. In the amended complaint, the Ongerts alleged that the Bultemas' construction of a permanent structure within the easement for ingress, egress, and utilities constituted a trespass and a private nuisance. The Ongerts also alleged that the Bultemas engaged in a pattern of impeding the Ongerts' access to their property through the placement of obstacles in the easement and through their use of the easement to park vehicles. Finally, the Ongerts alleged that the Bultemas actions constituted a breach of the warranty deed that they granted to the Ongerts.

In February 2008, the trial court consolidated the two suits.

[4] The clerk assigned case number 07-045541-CB to this suit.

The trial court held a bench trial on September 29, September 30, and October 1, 2009. At the trial, the Bultemas' trial counsel stated that the Bultemas had withdrawn their trespass claim with regard to the steps leading to the boat dock. The remaining claims concerned whether the Ongerts' decision to raise the grade and pave a portion of the easement increased the burden on the Bultemas' estate and whether the Bultemas' decision to build a portion of their new garages in the area of the easement interfered with the Ongerts' right to use the easement. The trial court also had to determine whether the Bultemas use of the easement area for parking unreasonably interfered with the Ongerts' ability to use the easement for ingress and egress.

On October 27, 2009, the trial court entered its opinion and order. The court began by noting that, although the 40-foot easement over the Bultemas' property—as described in the master deed—was for ingress, egress, and utilities, there were no provisions within the easement that specified which part of the easement was for ingress and egress and which part was for utilities. The court explained that the parties provided greater detail in their purchase agreement; there, the Bultemas agreed to grant the Ongerts an easement for ingress and egress "to mirror the size of the existing road" and to grant "easements for water, sewer and all utilities over unit 8 to unit 9." The parties also agreed that the Bultemas would provide a "blacktop road from the beginning of unit 8 to the beginning of unit 9" that was "consistent with the type of materials, width, thickness and workmanship used in the existing road." The court also found that the easement was not exclusive to the Ongerts.

Turning to the disputed improvements, the court found that the Ongerts had paved their driveway into the area of the easement and raised the grade of the land to reduce the slope of the driveway. The Ongerts' driveway extended 27.1 feet into the easement at its northwest end, and 15.6 feet into the easement at its northeast end. The court stated that the grade change from the lot line to the end of the driveway within the easement was two feet.

The court explained that the Bultemas had originally built their garages on the south end of their home, but could not get out of these garages without backing on to the Ongerts' property. As such, the Bultemas decided to move their garages to the north end of their home. The court found that the new garages encroached into the easement. The court stated that the garage extended six feet seven inches into the easement at its northern end and ten feet six inches at the "interior northwest corner of the house." However, the court also found that these encroachments were in the same area of the easement that had utility boxes, utility poles, and a fire hydrant. The court noted that the utility boxes, poles and hydrant were in place at the time the Ongerts purchased their lot and "clearly prevent[ed]" that portion of the easement from being used for ingress and egress. Moreover, it found that the remaining 25 feet of the easement matched the "tarred portion of the existing road which approach[ed] the property line of unit eight."

Finally, the court found that, although the Bultemas had "seven to eight off-road parking spaces available", their guests consistently park in the easement, which makes it difficult for the Ongerts to enter and exit their driveway. Indeed, the trial court found that the "easement is often congested with parked vehicles" owned by visitors to the Bultema property.

After making these general findings, the court specifically found that the "extension of the driveway into the easement by the Ongerts at a two-foot slope [was] reasonably necessary and convenient to the proper enjoyment of the easement." The court characterized any additional burden on the Bultemas' property as "small." In reaching its conclusion, the court noted that the Ongerts had the discretion to place their garage at a higher elevation and to disregard the earlier plan that called for an increased slope to their driveway, because that would be an "undesirable condition in Michigan winters." For these reasons, the trial court refused to order the removal of that portion of the Ongerts' driveway that extended onto the easement.

The court next considered the Bultemas' construction of their garage into a portion of the easement. The court found that the Bultemas' construction of the garages into the easement was not "inconsistent" with the Ongerts' easement. The court explained that the area of the encroachment did not materially interfere with the Ongerts' access to their driveway:

> Although the Ongerts were granted a forty foot easement, that easement was for ingress and egress and utilities. Above-ground utility equipment occupies at least fifteen feet of the easement, and was clearly visible to the Ongerts prior to and at the time they purchased the property. The intrusions by the Bultema garages, and a few posts and nautical tiles, extend only within the fifteen feet of the easement used by utilities and a fire hydrant. Because of the above-ground utility equipment, that fifteen feet has never been available for ingress and egress. Thus, the construction of the garages is not inconsistent with the Ongert[s'] right of ingress and egress. Nothing on the record suggests that the garage intrusion into the easement area interferes with the utilities; thus, the intrusions are not inconsistent with the utility easement.

For these reasons, the trial court determined that the Ongerts' were not entitled to any relief for their claims premised on the Bultemas' decision to build their garages into the easement.

Finally, the trial court found that the "extent and scope" of the Bultemas' use of the easement for parking was "extensive, unreasonable, and improper." The court determined that the Ongerts were, therefore, entitled to relief as to this claim. The court stated that, if the parties could not agree to the area where there should be no parking, it would order that there be no-parking within the easement.

The trial court entered judgment and a permanent injunctive order in February 2010. In the case with lower court number 07-45462-CB, the trial court entered a judgment of no cause of action on both the Bultemas' and Ongerts' claims. With regard to the case with lower court number 07-45541-CB, the trial court entered a judgment of no cause of action on counts I, II, and IV of the Ongerts' complaint, but entered judgment in favor of the Ongerts on count III, which involved the Ongerts' claim that the Bultemas' use of the easement for parking interfered with the Ongerts' ability to use the easement for ingress and egress.

For relief, the court permanently enjoined any parking within the easement and prohibited the placement of obstructions within the easement. However, it stated that the injunction "shall not be construed to require" the removal of certain features, including some existing landscaping. The court also stated that the injunction did not apply "to prevent parking"

inside the Bultemas' garages. The court provided that the injunction would run with the land and bind any successors.

These appeals followed.

II. THE EASEMENT FOR INGRESS, EGRESS, AND UTILITIES

A. STANDARDS OF REVIEW

This Court reviews de novo a trial court's ruling on equitable matters. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). This Court also reviews de novo the proper interpretation of legal instruments, such as deeds or contracts. See *In re Rudell Estate*, 286 Mich App 391, 402-403; 780 NW2d 884 (2009). Whether a particular use by the owner of the dominant estate is reasonably necessary to his or her enjoyment of the easement is, however, a question of fact. *Unverzagt v Miller*, 306 Mich 260, 266; 10 NW2d 849 (1943), citing *Harvey v Crane*, 85 Mich 316, 322; 48 NW 582 (1891). This Court reviews a trial court's factual findings in a bench trial for clear error. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). A factual finding is clearly erroneous when, after reviewing the entire record, this Court is left with the definite and firm conviction that the trial court has made a mistake. *Id.*

B. THE ONGERTS' DRIVEWAY

On appeal, the Bultemas argue that the trial court erred when it entered a judgment of no cause of action on their claim that the Ongerts committed a trespass by placing fill on the easement and paving over it. Specifically, they argue that the trial court failed to recognize that a desirable improvement was not the same as a necessary improvement and, to the extent that the improvement could be deemed necessary, the trial court failed to recognize that the necessity was self-created. Because a self-created necessity cannot justify a trespass, the trial court should have found that the Ongerts' improvements to the easement exceed the scope of their right to use the easement and constituted a trespass.[5]

An easement is a limited property interest; it is the right to use the land burdened by the easement for a specific purpose. *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378-379; 699 NW2d 272 (2005). The land burdened by the easement is the servient estate and the land benefited by the easement is the dominant estate. See *D'Andrea v AT&T Michigan*, 289 Mich App 70, 73 n 2; 795 NW2d 620 (2010). Typically, this Court will examine the language of the instrument granting an easement to determine the full extent of the rights granted to the dominant estate. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003).

[5] In their reply brief, the Bultemas also argue that the Ongerts conceded on appeal that their improvement was not necessary. We do not agree that the Ongerts made a binding concession on this point. Rather, taken in context, it is clear that the Ongerts argued that the improvement was within that which was contemplated by the parties' agreement and that the law requires a lesser showing than necessity.

Where the language of the grant is plain and unambiguous, this Court will enforce the easement as written. *Id.*

Here, the Bultemas did not draft and execute a separate document establishing the easement at issue or describing the full rights and liabilities applicable to the owners of the dominant and servient estates. Instead, the Bultemas amended the documents for the site condominium project and identified the easement at issue on the revised site plan as being for ingress, egress, and utilities. The text on the plan did not address—one way or the other—whether the owner of the dominant estate had the right to make improvements to the easement in order to facilitate the use of the easement for ingress and egress. Indeed, the text did not even address whether the easement included the right to vehicular ingress and egress, as opposed to merely foot access, and did not even identify the dominant estate. Because the language at issue—ingress and egress—is susceptible to varying understandings, it was proper for the trial court to examine extrinsic evidence, such as the parties' purchase agreement, to determine the full scope of the right of ingress and egress. *Little*, 468 Mich at 700. But even the purchase agreement is silent as to whether the Ongerts had the right to change the grade and pave the easement. Therefore, whether the Ongerts exceeded their authority in making the improvements at issue depends on whether the Bultemas general grant of an easement for ingress, egress, and utilities included the right to grade and pave the easement.

Michigan courts have long recognized that the grant of an easement gives the owner of the dominant estate a limited right to make improvements to the land burdened by the easement. See *Harvey*, 85 Mich at 325. In *Harvey*, our Supreme Court examined whether the owner of a dominant estate could erect a fence along an easement for a right-of-way that she acquired from the servient estate through a statutory procedure.[6] *Id.* at 318. The lower court had found that the erection of the fence was necessary to the reasonable enjoyment of the easement because the owner of the dominant estate used the way to drive cattle and horses and the fence protected her from the usual hazards attending the driving of stock. *Id.* at 320. Before turning to the merits of the case, our Supreme Court surveyed various authorities discussing the right of an easement holder to make improvements to an easement. From these, it concluded that, whether the owner of the dominant estate could erect the fence depended on whether the fence was necessary to her enjoyment of the right acquired under the easement:

> Applying the rules laid down by these adjudications, it seems clear to me that plaintiff [the owner of the dominant estate] is entitled to make use of this way for any and all purposes for which a road may be used; . . . [and she] is entitled to do any act which may be necessary to promote its beneficial use, to the extent of

[6] Although the Bultemas correctly note that *Harvey* involved a statutorily created easement, we do not agree that this renders *Harvey* inapplicable to the present case. Our Supreme Court did not rely on the statute to determine the rights obtained by the owner of the dominant estate. Rather, the Court relied on principles generally applicable to easements, and specifically applicable to an easement for a right-of-way, in deciding the issue. See *Harvey*, 85 Mich at 322-324.

> inclosing same; that the only limit to the servitude which she is entitled to impose upon the fee is what may be deemed necessary and essential to her enjoyment of the rights acquired . . . . [*Id.* at 325]

Turning to the facts, the Court noted that the owner of the dominant estate sought "simply to be allowed, at her own expense, to make this way as convenient as the modes of passage which farmers usually provide for themselves upon their own premises." *Id.* In addition, the Court stated that the fence was within the land burdened by the easement and was "built, not for ornament, or to mark the line of the way merely, but for utility, because actually necessary." *Id.* Given these facts, the Court concluded that the trial court did not err in finding that the fence was an "incident necessary to the reasonable enjoyment" of the easement. *Id.*

Since the decision in *Harvey*, Michigan courts have reiterated that the owner of a dominant estate may make necessary improvements to the easement. But the courts have not held that the improvement must be strictly or absolutely necessary; rather, they have described the necessity requirement in terms of what is reasonable. Thus, the courts have held that the improvement must be *reasonably necessary* or necessary to the *effective* or *reasonable* enjoyment of the rights conveyed under the easement. See *Blackhawk*, 473 Mich at 42 (stating that there is a two-step inquiry: "whether the proposed developments are necessary for the village's effective use of its easement and, if the developments are necessary, whether they unreasonably burden [the] plaintiffs' servient estate."); *Little*, 468 Mich at 701 (stating that the dominant estate may not make improvements to the servient estate if such improvements are unnecessary for the effective use of the easement or unreasonably burden the servient estate); *Unverzagt*, 306 Mich at 265 (recognizing that the use exercised by the holders of an 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."); *Schumacher v Dep't of Natural Resources*, 256 Mich App 103, 107 (citing with approval 1 Restatement Property, Servitudes, 3d, § 4.10 for the proposition that the holder of an easement is entitled to use the servient estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude);[7] *Mumrow v Riddle*, 67 Mich App 693, 700; 242 NW2d 489 (1976) ("The first determination is whether the repair or improvement is necessary to effective enjoyment of the easement. The second determination is whether the repair or improvements, if necessary, unreasonably increases the burden on the servient tenement."); *Carlton v Warner*, 46 Mich App 60, 62; 207 NW2d 465 (1973) (noting that the owner of the dominant estate may make "[r]easonable alterations for the

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[7] This section of the Restatement provides:

> Except as limited by the terms of the servitude determined under § 4.1, the holder of an easement or profit as defined in § 1.2 is entitled to use the servient estate in a manner that is reasonably necessary for the convenient enjoyment of the servitude. The manner, frequency, and intensity of the use may change over time to take advantage of developments in technology and to accommodate normal development of the dominant estate or enterprise benefited by the servitude. Unless authorized by the terms of the servitude, the holder is not entitled to cause unreasonable damage to the servient estate or interfere unreasonably with its enjoyment. [1 Restatement Property, Servitudes, 3d, § 4.10.]

enjoyment of the easement . . . without the express consent of the fee owner."). Further, what constitutes a necessary and reasonable improvement will depend on the extent of the grant, the nature and uses of the properties involved, as well as the customary improvements for such uses. See *Harvey*, 85 Mich at 325 (noting that the improvement at issue was of the type that farmers typically make for their rights-of-way and was necessary to safely drive stock along the right-of-way). For that reason, whether a particular use is necessary and reasonable is a question of fact that must be decided on a case-by-case basis. See *id.* (holding that whether a particular improvement was reasonably necessary is a question of fact); see also, e.g., *Mumrow*, 67 Mich App at 493 (explaining that the evidence showed that the defendants had effectively used the gravel driveway at issue for more than 20 years and concluding that the defendants had "made no showing" that it was now necessary to pave it with concrete).

Here, the trial court found that, under the totality of the circumstances, the Ongerts' improvement of the easement was necessary to their effective enjoyment of the right of ingress and egress. The court also found that the burden imposed on the easement was "small and reasonable." Accordingly, it determined that the Ongerts' improvement did not constitute a trespass. See *Blackhawk*, 473 Mich at 42.

Considering the record evidence as a whole, we cannot conclude that the trial court clearly erred in finding that the Ongerts' improvements were reasonably necessary to their enjoyment of the easement. The evidence showed that the parties agreed that the easement would be paved to permit vehicular access to unit nine from the private road. Although the purchase agreement provided that the Bultemas would pave the easement with blacktop rather than concrete, this agreement was nevertheless clear evidence that the parties agreed that the easement included the right to *paved* access. And typically, it is the owner of the dominant estate that is responsible for maintaining the improvements on the easement. See *Bowen v Buck Hunting Club*, 217 Mich App 191, 193-194; 550 NW2d 850 (1996) (noting that the owner of a dominant estate must generally bear the entire cost of maintaining it, but holding that, where the dominant and servient tenants both use the easement, the court may apportion costs). Moreover, the agreement did not preclude the use of concrete; rather, the reference to the blacktop was clearly meant to limit the Bultemas obligation to pave the easement rather than serve as a perpetual limitation on the types of materials that could be used. The Bultemas, as the fee owners, do not hold an "unrestricted veto power over the improvements sought to be made." *Carlton*, 46 Mich App at 62. The trial court did not err when it found that the use of concrete rather than blacktop did not materially increase the burden on the fee—notwithstanding the aesthetics involved.

It was undisputed too that the properties at issue were part of a development of single-family residences that were intended for year-round occupancy. As such, the Ongerts' use of the easement included the right to make any improvements necessary to ensure that they, their guests, and invitees had the ability to make use of the easement for ingress and egress under all types of weather conditions and particularly with regard to the weather conditions attendant to occupying property near Lake Michigan. Here, the trial court found that, without the change in grade, the Ongerts' driveway would have an "undesirable condition" for Michigan winters. That is, it implicitly found that the Ongerts would not be able to effectively use the easement year-round for ingress and egress without the elevation change and the record supports that finding. Moreover, assuming—without deciding—that Michigan law recognizes some type of rule

excluding self-created necessities, we cannot agree that Ongerts' need to improve the easement would fall within such an exception.[8]

At trial, a witness testified that the Ongerts had to build their home, which included the basement level of the home and the garage, above the high water mark. The same witness also stated that there were important reasons for building their garage at a grade that was a close as possible to the main level of their home. Nevertheless, rather than building at the most favorable grade, the Ongerts chose to build their garage midway between the levels of their home. He testified that, given that the easement for ingress and egress was on the west end of the property, it was quite reasonable for the Ongerts to build their garage on the same end. By building on the west end and at a higher elevation, however, the Ongerts' driveway would be too steep unless they placed some fill out into the easement to extend the driveway and make the descent more gradual. This testimony established that, in order to effectively utilize their property as a permanent residential home—a purpose clearly contemplated by the parties when the Bultemas sold the property to the Ongerts—the Ongerts had to build their garage at a higher grade, which in turn led to the need for a change in the grade of the easement to facilitate access to the garage.[9] In light of this evidence, we cannot conclude that the trial court erred when it refused to find that the necessity was self-created and failed to bar the improvement on that basis.

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[8] We question whether there is a definite rule of preclusion founded on self-created necessity. The foreign authorities cited by the Bultemas in support of this rule primarily dealt with the creation of easements by necessity, rather than with the necessity for an improvement to an existing easement. See *Seibert v Levan*, 8 Pa 383 (1848); *Ogden v Grove*, 38 Pa 487 (1861); *O'Hara v Chicago Title & Trust Co*, 115 Ill App 3d 309; 450 NE2d 1183 (1983); *Graff v Scanlan*, 673 A2d 1028 (Pa, 1996). The equities governing the compelled creation of an easement are far removed from the equities governing the improvement of a voluntarily created easement. As such, those cases are readily distinguished from the facts here. Further, we do not agree that the rule that an exception to a zoning ordinance for hardship cannot be premised on a self-created hardship is applicable to cases involving the improvement of an easement. See, e.g., *Cryderman v Birmingham*, 171 Mich App 15; 429 NW2d 625 (1988). Zoning ordinances involve legislatively created *limitations* on the improvement of property that should not lightly be excepted. In contrast, with the grant of an easement, the grantor has made an informed choice to convey the right to use land to another for value, which grant implicitly includes the right to make reasonably necessary improvements. Nevertheless, we do not preclude the possibility that a trial court might properly consider the fact that the owner of a dominant estate willfully created the need for an improvement when considering whether the improvement was reasonably necessary. See *Mich Nat'l Bank & Trust, Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992) ("A court acting in equity 'looks at the whole situation and grants or withholds relief as good conscience dictates.'") (citation omitted).

[9] The grantor of an easement impliedly understands that the owner of the dominant estate's use of the easement might vary depending on his or her lawful use of the dominant estate. And, in the absence of an express limitation applicable to the easement, it would be unreasonable to preclude the owner of a dominant estate from making full use of his or her easement rights

The trial court did not err when it found that the Ongerts' improvement of the easement was reasonably necessary and did not unreasonably burden the Bultemas' property.[10] See *Blackhawk*, 473 Mich at 42, citing *Unverzagt*, 306 Mich at 265 (stating that the improvement must be "reasonably necessary and convenient to the proper enjoyment of the easement" and must not "unreasonably burden . . . [the] servient estate."). The trial court did not err when it determined that the Bultemas had no cause of action for the removal of the Ongerts' improvements to the easement.

C. THE BULTEMAS' GARAGES

On appeal, the Ongerts argue that the trial court erred in several respects when it refused to grant their request to order the Bultemas to tear down that portion of their garages that encroached into the easement. Specifically, the Ongerts argue that the easement must be enforced as written and plainly provides that the entire 40-foot width of the easement must be left open for ingress and egress. Further, the trial court plainly erred when it partitioned the easement into a portion for ingress and egress and a portion for utilities. It also erred by limiting its analysis to whether the encroachment burdened the easement for utilities rather than examining whether it also limited the Ongerts' ability to use the easement for ingress and egress.

As a preliminary matter, we agree that the easement at issue unambiguously provides that it is for ingress, egress, and utilities and—to that extent—it must be enforced as written. *Blackhawk*, 473 Mich at 42. It does not, however, provide that the easement is exclusive and does not otherwise limit the Bultemas ability to use the area of the easement. Further, as identified on the site plan, the private easement plainly mirrors the adjacent common element within the project, which includes an approximately 25-foot wide paved road.

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simply because he or she chose to use the dominant estate in a way that the owner of the servient estate does not approve. On appeal, the Bultemas essentially argue that, because the Ongerts could have chosen to build a home that risked drainage problems and that did not take into consideration their future physical limitations, the failure to build such a house should be held against them when considering whether the improvement to the easement was reasonably necessary. By the same logic, the Court in *Harvey* should have concluded that the need for fencing along the road was a self-created necessity because the owner of the dominant estate chose to use her property to raise livestock when she could have chosen some other use that did not require fencing along the road. See *Harvey*, 85 Mich at 320.

[10] We also do not agree that the trial court erred somehow when it noted that the Ongerts paid $650,000 for the property at issue—let alone agree with the Bultemas' characterization that this "ruling" was "appalling." The trial court did not rule that the Ongerts could make the improvement because they paid a substantial premium for the property. Rather, when read in context, it is clear that the trial court found that, given the very large sum of money paid for a vacant lot, the Bultemas must have understood that the Ongerts would build a home that was commensurate with the price paid for the lot, which might necessitate modifications to the existing lot. And, in the absence of a violation of an ordinance or contractual provision, the Bultemas should not be heard to complain in equity about the Ongerts' reasonable exercise of discretion in designing their home.

An easement is the right to use the property of another. *Carmody-Lahti Real Estate*, 472 Mich at 378-379. It does not dispossess the fee owner of the land over which the easement is exercised. See *Greve v Caron*, 233 Mich 261, 266; 206 NW 334 (1925). And, unless otherwise provided in the grant of the easement, the fee owner retains "undoubted right to make any use of the premises not inconsistent with the easement." *Id.*; see also *Murphy Chair Co v American Radiator Co*, 172 Mich 14, 28-29; 137 NW 791 (1912) ("[T]he grantor of the easement of a right of way may use the way in any manner he sees fit, provided he does not unreasonably interfere with the grantee's reasonable use in passing to and fro."). Further, even though the easement at issue here was 40 feet in width, the Bultemas could make improvements within the easement as long as the improvements did not unreasonably interfere with the Ongerts right of ingress and egress or their ability to use the land for the provision of utilities. See *Kirby v Meyering Land Co*, 260 Mich 156, 169-170; 244 NW 433 (1932) (holding that a grant of an easement for passage does not entitle the grantees to a wholly unobstructed way).

Here, there was evidence that the private road that serviced the remainder of the site condominium project was generally 25 feet wide and that the various utility improvements were located above-ground on the eastern edge of the road. There was also evidence that similar above-ground utility improvements were located within the eastern 15 feet of the easement at issue even before the Ongerts purchased unit nine. Further evidence showed that the Ongerts used only a portion—not exceeding 25 feet in width—of the easement for ingress and egress to unit nine.

In commenting on the evidence, the trial court did find it noteworthy that the eastern portion of the easement appeared to have been utilized for above-ground utilities. But it did not partition the easement. Instead, it merely found that, because the eastern 15 feet of the easement already contained above-ground utility improvements, this area was not capable of use for ingress and egress.[11] And this finding was fully supported by the record; there were photos that plainly show lamp posts, utility boxes, and a fire hydrant in the disputed area. Although these obstructions might not prevent portions of the eastern 15 feet of the easement from being used for the maneuver of vehicles, the improvements pose a clear barrier to the use of the eastern portion of the easement as a driveway or road to access unit nine. The trial court also correctly recognized that there was no evidence that the construction interfered with the Ongerts' utilities.

The Ongerts argued that local ordinances required a larger area for ingress and egress to facilitate the maneuvering of emergency vehicles. But the Ongerts did not present any evidence that the portion of the Bultemas' home that encroached into the easement would actually prevent emergency vehicles from accessing unit nine. The Ongerts also presented evidence and testimony that they might need to utilize the eastern 15 feet of the easement when backing down

[11] We reject the Ongerts' contention that the trial court clearly erred in finding that the eastern 15 feet of the easement was occupied by utility improvements. When fairly read, the trial court found that that area of the easement was effectively incapable of being used for ingress and egress as a result of the utility improvements. It did not find that the utility improvements occupied the whole area of the eastern 15 feet of the easement.

their driveway. However, there was also evidence that the Ongerts could back down their driveway without any difficulty and, in any event, did not actually need to back down their driveway in order to access the private road. Testimony established that the paved area located in front of the Ongerts' garage was sufficient for them to turn around and that they routinely used it for that purpose. Moreover, there was evidence that, in moving their garages to the north of their home, the Bultemas removed a berm that prevented this area from being used for any vehicular traffic. Thus, the evidence showed that the Bultemas' encroachment into the area of the easement occupied by utility improvements did not interfere with the Ongerts' ability to use the easement for ingress and egress or for utilities and might actually have improved the Ongerts vehicular access.

Given this evidence, we cannot conclude that the trial court clearly erred when it found that the Bultemas' encroachment into the easement area did not, at present, unreasonably interfere with the Ongerts' right to use the property for ingress, egress, and utilities. *Murphy Chair Co*, 172 Mich at 28-29; see also *Lakeside Assoc v Toski Sands*, 131 Mich App 292, 300-301; 346 NW2d 92 (1983) (stating that the trial court did not err when it refused to order the removal of a median, logs and fir trees within and along an easement for a road because the improvements did not interfere with the enjoyment of the easement given that the lot at issue was vacant and there were no present plans to build). The trial court did not err when it determined that the Ongerts had no cause of action for the removal of the Bultemas' garage.

D. THE INJUNCTION AGAINST PARKING

Finally, the Bultemas argue that the trial court erred in several respects when it enjoined them from using any portion of the 40-foot easement for parking. Specifically, the Bultemas argue that the trial court failed to properly apply the law by recognizing that they could lawfully use the area for parking, so long as the parking did not interfere with the Ongerts' ingress and egress. The Bultemas also argue that the trial court's findings were inadequate to support the injunction and that its ultimate ruling was inequitable on its face and overly broad.

We do not agree that the trial court failed to recognize or correctly apply the applicable law to the facts of the Ongerts' parking claim. It is evident that the trial court understood that the Bultemas retained the right to use the easement as long as their use was not inconsistent with the Ongerts' right to use the same property. Indeed, the trial court applied that law in declining to order the Bultemas to tear down the portion of their garages that encroached into the area of the easement. It is also clear that the trial court found that the Bultemas' actual use of the easement for parking unreasonably interfered with the Ongerts' easement rights. Accordingly, the trial court applied the correct legal framework. See *Murphy Chair Co*, 172 Mich at 28-29.

We also do not agree that the trial courts findings were inadequate. A trial court sitting as the trier of fact must make findings to support its judgment. MCR 2.517(A)(1). But the findings do not need to be elaborate: "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2); see also *Kemerko Clawson, LLC v RxIV, Inc*, 269 Mich App 347, 355; 711 NW2d 220 (2005).

In its opinion, the trial court found that the "Bultemas, their guests, and their tradespeople consistently park in the easement . . . ." It further found that they did so in a manner that made "it difficult at times for the Ongerts to enter and exit their driveway." The court explained that the "easement is often congested with parked vehicles" from visitors to the Bultema property. The court found that this was true even though the "Bultema property has seven to eight off-road parking spaces . . . ." The court concluded by finding that the "extent and scope of [the] parking in the easement by the Bultema family, their guests, and tradespeople is extensive, unreasonable, and improper, and constitutes a trespass on the easement." These findings and conclusions were sufficient to meet the requirements of MCR 2.517(A).

In addition, the findings were not clearly erroneous. There was evidence that the eastern 15 feet of the 40-foot easement is congested with landscaping, lamp posts, electrical boxes, a fire hydrant, and part of the Bultemas' home. Further evidence shows that the entrance to the Ongerts' driveway is near the Bultemas' new garage and that another neighbor's driveway accesses the road in the same vicinity. Thus, the evidence shows that the area of the easement cannot effectively support extensive parking without significantly obstructing the Ongerts' ability to access their property.

The Ongerts also presented photos that demonstrate that the Bultemas and their guests routinely park within the area of the easement in such a way as to not only block the area primarily used for utilities, but also to encroach or block the area of the easement that has been used for vehicular traffic. There was also testimony that, if believed, supported the conclusion that the Bultemas have instructed their guests and invitees to park in areas that obstruct access to the Ongerts' home. Accordingly, there was clear evidence to support the trial court's findings that the Bultemas' use of the easement for parking was excessive and unreasonably interfered with the Ongerts' easement rights.

Finally, under the unique facts of this case, we cannot conclude that the trial court's permanent injunction was inequitable or overbroad. In evaluating the propriety of an injunction, the trial court had to consider—among other things—the nature of the interests at issue, the adequacy of the proposed remedy, the relative hardships likely to result from the injunction, and the practicability of framing and enforcing the order. *Michigan Citizens for Water Conservation v Nestle Waters North America, Inc*, 269 Mich App 25, 79; 709 NW2d 174 (2005) (listing the factors that courts should consider in determining whether to grant injunctive relief), rev'd not in relevant part, 479 Mich 280 (2007). Without specifically commenting on each factor, it is plain that the trial court balanced the need to protect the Ongerts' right to use the easement for ingress and egress against the Bultemas' concomitant right to put the area to their own use and considered the conduct of the parties in fashioning its remedy. The trial court implicitly recognized that the area at issue could not support the kind of extensive parking that the Bultemas routinely allowed and that it could not support further obstructions to the maneuvering of vehicles. And, although the trial court initially left it to the parties to agree to reasonable limits on the parking within the easement, the parties could not agree and ultimately returned to court. It is plain from the testimony at trial and the conduct of the parties that they cannot—at least for the time being—be trusted to cooperate over the use of the easement for parking, even temporary parking. Instead, as the parties repeatedly demonstrated in the lower court, they would rather bring every violation of their rights —actual or perceived—to the court for resolution. Given that situation, it was reasonable for the trial court to craft a solution that

presented the parties with a bright-line rule that would, hopefully, require less court supervision—a permanent injunction against all parking and obstructions. See, e.g., *Rosen v Mann*, 219 Mich 687; 189 NW 916 (1922) (affirming a permanent injunction against two adjoining landlords from using or permitting the use of the area covered by an easement for foot traffic in any way other than for foot traffic, notwithstanding that each landlord owned one-half of the fee covered by the easement). On the record evidence and findings, we cannot agree that the trial court's decision in this regard was inequitable or overbroad. Similarly, because both parties have improvements within the easement, the trial court could properly conclude that it was necessary to conclusively settle the rights of the parties by making its injunction run with the land. Nothing prohibits the parties from negotiating a more nuanced solution at some future point and bringing it to the court, or from seeking a modification of the order on the basis of changed circumstances.

There were no errors warranting relief.

Affirmed. None of the parties having prevailed in full, none may tax costs. MCR 7.219(A).

/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly