STATE OF MICHIGAN

COURT OF APPEALS

BLACKMAN PLACE APARTMENTS, LLC,

Plaintiff/Counter-Defendant-Appellant,

v

GLENN KUNSELMAN,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
July 22, 2021

No. 354895
Jackson Circuit Court
LC No. 20-000197-CH

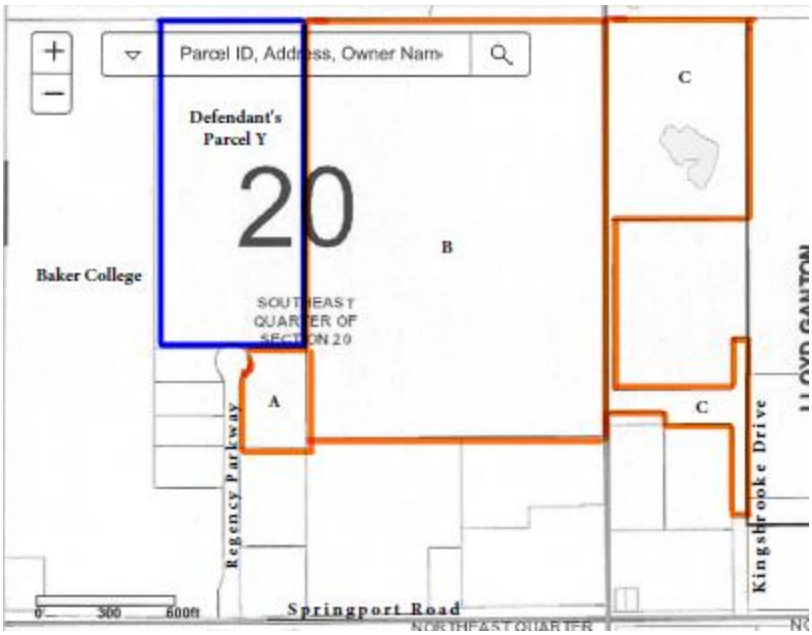
Before: FORT HOOD, P.J., and MARKEY and GLEICHER, JJ.

PER CURIAM.

At issue in this case is the right to use Regency Parkway, a private road in Blackman Township. Blackman Place Apartments, LLC owns three contiguous parcels upon which it intends to develop an apartment complex. It sought to construct the entrance to the complex from Regency Parkway. Glenn Kunselman, who owns the roadway as well as a parcel at its culmination, fought Blackman Place's efforts and Blackman Place brought suit to determine its rights. The circuit court summarily dismissed Blackman Place's action, concluding that only one of Blackman Place's three parcels was benefitted by an easement to Regency Parkway. We affirm.

I. BACKGROUND

Blackman Place Apartments, LLC has owned lots A, B, and C—75 acres in total—on the map shown below since 2019. Glenn Kunselman has owned lot Y and Regency Parkway since 2017.



Historically, these lots did not all share a common owner. Rather, lots A and Y and Regency Parkway were once owned by Robert and Marilyn Fox, while lots B and C were owned by the William A. Nelson Revocable Trust. In 2004, Springport 8, LLC purchased lots B and C from the trust and lot A from the Foxes. Access to these three parcels is at issue in this case.

In 2005, the Foxes sold lot Y to Kribec Investment Company, Inc. As part of the sale, the parties executed a contract under which Kribec agreed to construct Regency Parkway, a road "intended to serve as a means of ingress, egress and drainage; and for installation and maintenance of utilities." Upon completion of Regency Parkway, the parties "contemplated . . . that the Improvements will be owned by the appropriate Governmental Authority(ies) pursuant to permits to be issued by those Authorities and development agreements between Buyer and Governmental Authorities." The construction was to be completed by July 31, 2006.

In 2004, Springport 8 purchased lots B and C from the Nelson Trust and purchased lot A from the Foxes. These transactions occurred *before* the Foxes and Kribec agreed to the construction of Regency Parkway. The deed for lot A included "a 66 foot easement for ingress, egress and public utilities" across the area that would become Regency Parkway. Springport 8 deeded a portion of lot A back to the Foxes, which was transferred to Kribec along with the land for the parkway. Blackman Place describes that this land formed part of the cul-de-sac at the termination of Regency Parkway.

On December 22, 2005, Kribec "assigned" its interest to Regency Apartments-Jackson, LLC. Regency contracted with Kwest Group, LLC to construct the road. Kwest secured a Michigan Public Labor and Material Bond describing Regency Parkway as a "public roadway." And Jeffrey Leitner personally guaranteed the payment of $364,000 "[i]n the event that the construction of the Regency Parkway public roadway" was not completed by the contractual deadline.

In 2006, Regency transferred its property interest to Five Star Premium Properties. Two years later, Five Star defaulted on its mortgage loan and the lender, Wexford/HPC Mortgage Fund, foreclosed. Wexford purchased the property at the sheriff's sale.

In 2008, Richard Fox filed suit against Leitner, Regency, Kwest, Five Star, Wexford, and Hartford Insurance Company (which had supplied the construction bonds).[1] Fox alleged, "The development contemplated sale and conveyance by FOX of land divisions approved by Blackman Charter Township for use after title to the completed roadway was conveyed to the Jackson County Road Commission." Although the roadway was complete, Fox asserted that neither Regency nor Kwest Construction "installed an appropriate sanitary lift station to render the waste facilities infrastructure KWEST installed functional or usable as the agreement contemplates." Accordingly, Regency did not transfer ownership of the road to the county before it transferred its interest to Five Star. Throughout the complaint, Fox sought the completion of the waste management system and transfer of the road to the county.

We do not know the entirety of the circuit court's rulings. Relevant to this appeal, however, on June 5, 2009, the Jackson Circuit Court entered a default decree specifically regarding Regency Parkway:

> 1. This decree relates specifically to the real property and premises commonly known as described as [sic]:
>
> **Land in the Township of Blackman, County of Jackson and State of Michigan:**
>
> **See attached Exhibit "A" [legal description of the metes and bounds of the property]**
>
> a parcel of land approximately 2.05 acres now constituting what has become commonly, if not legally, known as "Regency Parkway" connecting [Parcel Y] with Springport Road and *which abuts and adjoins lands owned in fee by [Fox], and in common with others, to whom guarantees of public access over and across Regency Parkway to and from their respective commercially zoned lands and Springport Road in said township in the form of a publicly dedicated right of way had been assured at risk of being otherwise made landlocked.*
>
> 2. The Court finds the foregoing described land *was sufficiently burdened with commonly held rights of common passage in others*, whether by necessity or by implication, prior to the mortgage interest acquired by WEXFORD which it later foreclosed to acquire title in fee, such that *it would be inequitable to deny such common owners, including [Fox], their right of use and passage over and across an easement appurtenant to their respective lands* from Springport Road in said township which this Court now DECLARES, DECREES AND IMPOSES, *which easement is expressly held subject to the rights of the public whose use of which*

[1] Marilyn Fox passed away before suit was filed.

> *may not be barred* other than temporarily for maintenance or improvement until such lands may formally become dedicated to the public. [Italics added.]

Five years after the lawsuit resolved, Wexford sold lot Y and Regency Parkway to Timothy Coleman "[s]ubject to the rights of others over and across easement for ingress and egress" on Regency Parkway as outlined in the Foxes' deed to Springport 8 and the 2009 court order. At some point, Coleman transferred his interest to Alex Perlos II, and in 2017, Perlos transferred his interest to the current owner of lot Y, Glenn Kunselman, "[s]ubject to all existing restrictions, easements, rights-of-way and zoning laws affecting the use of the property." The deed described that "ingress and egress to" lot Y "is by way of a private drive which is subject to the rights of other property owners to use said drive and which is not required to be maintained by the County of Jackson" and subject to "the rights of others over and across easement for ingress and egress as evidenced" by the 2009 court order, the Foxes' deed to Springport 8, and Springport 8's deed transferring its interest in lots A, B, and C.

Springport 8 kept lots A, B, and C for several years without developing them. In 2015, Springport 8 transferred its interest to Grand Meadows Real Estate. Rider A to the warranty deed described that lots B and C came "[t]ogether with a non exclusive easement for ingress and egress over" Kingsbrooke Drive, and lot A came "[t]ogether with a non exclusive easement for ingress and egress" over Regency Parkway. In 2019, Grand Meadows sold lots A, B, and C to its current owner, Blackman Place Apartments, LLC, along with the same easements.

Following Blackman Place's purchase of its lots, Kunselman placed a padlocked chain across the entrance to Regency Drive and installed private property and no trespassing signs. Blackman Place sought to quiet title and a declaration that it and its successors in interest had easement rights over the road for all three lots. In doing so, Blackman Place cited Kunselman's warranty deed, which specifically identified that others held an easement over Regency Parkway. Blackman Place also cited the 2009 judgment in Fox's earlier lawsuit, which granted access "to all owners of land who adjoin Regency Drive as well as members of the public." "The Blackman Property adjoins Regency Drive," and therefore was benefitted by the easement, Blackman Place asserted.

Kunselman conceded that Blackman Place's lot A abutted Regency Parkway and that he was required to grant rights of ingress and egress in relation to that lot. Kunselman contended that lots B and C had to be treated separately and do not abut or adjoin Regency Parkway. Accordingly, the easement did not extend to those lots. In his counterclaim, Kunselman noted that according to Blackman Place's site plan for its apartment development, "nearly the entire development" would be located on lots B and C. The Blackman Charter Township Planning Commission had approved Blackman Place's site plan on the condition that Blackman Place use Kingsbrooke Drive for public access from Springport Road to the apartment complex, not Regency Parkway. Even so, Blackman Place continued to pursue a plan to construct the "primary access point for the entire apartment complex" off Regency Drive. Kunselman sought to stop Blackman Place's over-use of the easement.

Shortly thereafter, Blackman Place sought summary disposition in its favor. Blackman Place conceded that lots B and C were not landlocked and could be accessed from Kingsbrooke Drive. Blackman Place described the prior land transactions and the 2009 court order before

asserting that its entire 75 acres had originally belonged to Springport 8 and collectively "was one of those parcels of land adjacent to Regency Parkway for whom 'guarantees of public access over and across Regency Parkway' had been made." Blackman Place argued:

> [I]t is clear from the record that the Foxes never intended that the use of Regency Parkway be limited in any way. Their intent that it be used for the benefit of all of the development in that area was clear in 2004 when they gave an easement to the then-owner of Parcels B and C, who later contributed a portion of the cul-de-sac for the road. Their intent was again made clear in 2005 when the Foxes conveyed 22 acres of land primarily in exchange for the construction of Regency Parkway as a public road. The Foxes' intent was again made clear when Robert Fox filed a lawsuit in 2008 seeking not only to preserve his own rights but also to honor the commitment that he and his wife had made to developers in the area, including Springport 8 - i.e., that there would be public access over and across Regency Parkway to and from their respective commercially zoned lands . . . .

Blackman Place challenged Kunselman's argument that the easement only benefited lot A. Blackman Place contended that Kunselman "ignored" the "critical fact" that lots B and C were not "after-acquired property." Springport 8 already owned these lots when the Foxes extended the easement in 2004. Citing *Wiggins v City of Burton*, 29l Mich App 532, 550; 805 NW2d 5L7 (2011), Blackman Place argued that in determining the scope of an easement, a court must "determine the true intent of the parties at the time the easement was created." Stated differently, citing *Schadewald v Brule*, 225 Mich App 26, 37; 570 NW2d 788 (1997), Blackman Place argued, "[t]he scope of an easement encompasses only those burdens on the servient estate that were contemplated by the parties at the time the easement was created."

Blackman Place noted that lots A, B, and C were assigned three different tax numbers, but contended that this fact was irrelevant. The 2009 court order provided that the easement covered all commercial land that abuts and adjoins the parkway. At the time the order entered, Springport 8 owned a single 75-acre parcel that abutted the parkway. Blackman Place continued:

> Tax parcel numbers have no significance other than for tax assessment purposes. The rights of an owner to use property depends on the total area owned without regard to tax parcel numbers. Nor is it the case that the Foxes envisioned that Regency Parkway would be used only by small lots lying along Regency Parkway. At the time the Court Decree was entered, the majority of the fee title holders of land that abutted and adjoined Regency Parkway held significant acreage.[2]

Blackman Place further noted that during discovery Kunselman had presented minutes from a Blackman Township Planning Board meeting indicating that the main point of entry for the Blackman Place apartment complex must be from Kingsbrooke Drive. The minutes provided, "Grabert to approve the Site Plan as submitted with conditions: Kingsbrook[e] Drive connection

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[2] In its appellate brief, Blackman asserts that the circuit court focused only on the "tax parcels" that abut Regency Parkway. This is a mischaracterization of the court's ruling. The court never mentioned that lots A, B, and C had different tax identification numbers.

for public access per ordinance section 5.13A, Regency Drive does not comply with ordinance section 5.13A and shall not be used as public road access[.]" The referenced zoning ordinance provided, "In any residential district, commercial district, and industrial district, every use, building, or structure established after the effective date of this Ordinance shall be on a lot or parcel which adjoins a public street." The ordinance required "that improvements be located on land which adjoins a public street." The township's reference "simply means that it was relying on Kingsbrook[e] Drive, not Regency Parkway, as 'the' public street necessary to satisfy" the zoning ordinance, Blackman Place contended. Regency Parkway could still serve as an access point, "just not 'the' access required by" the ordinance.

Kunselman sought summary disposition in his favor pursuant to MCR 2.116(I)(2). Kunselman described that the Foxes began dividing their property and selling off pieces in 1998. The first parcels sold had frontage on Springport Road. When the Foxes began selling the interior lots, they developed a plan to create Regency Parkway for access. This occurred in 2003, Kunselman contended. The easement along Regency Parkway was meant to benefit only the lots owned by the Foxes that abutted the parkway. This included lot A, but not lots B and C. Kunselman contended that the easement was an easement appurtenant that benefitted lot A, not Springport 8, so the easement did not attach to Springport 8's other lots. And the Foxes' deed transferring lot A to Springport 8 came "[t]ogether with a 66-foot easement for ingress, egress and public utilities." Kunselman argued that the Foxes' deed to Springport 8 thereby unambiguously extended an easement only to lot A, not lots B and C.

Kunselman emphasized that the Blackman Township Planning Commission had approved Blackman's apartment development plan on the condition that Regency Parkway "shall not be used as public access," only Kingsbrooke Drive would. In this regard, Kunselman noted that none of the apartments to be constructed were located on lot A, and only the complex office was located on that two-acre lot.

Kunselman relied on *Soergel v Preston*, 141 Mich App 585; 367 NW2d 366 (1985), to support his claim that Springport 8's common ownership of lots A, B, and C was irrelevant. In *Soergel*, the plaintiff owned parcel A, a parcel burdened by an easement for the benefit of parcel B, which was owned by the defendant. The defendant's house was located on parcel C, which the defendant also owned. But parcel C was not mentioned in the easement across parcel A. The defendant purchased parcels B and C from two different owners; they had not been a single unified property before. This Court held that the defendant did not have the right to run utilities across the easement to his house on parcel C. "Although defendants presently own both parcel B and parcel C, this could change in the future." They were not a definite unified whole and the document creating the easement expressly applied to parcel B with no mention of parcel C. These same facts existed in this case, Kunselman argued.

Despite that Kunselman himself cited evidence outside the contract—the planning commission minutes—he contended that Blackman Place could not rely on evidence outside the Fox-Springport 8 deed to interpret the parties' intents. Parol evidence was inadmissible, Kunselman contended, because the deed was unambiguous and because he was a bona fide purchaser without notice of any easement to benefit lots B and C. Michigan is a race-notice state and the recorded document revealed only an easement across Regency Parkway to benefit lot A.

That easement could not be expanded with evidence of documents outside Kunselman's chain of title.

Kunselman further argued that the 2009 order in Fox's lawsuit after his predecessor-in-interest's foreclosure did not expand the easement beyond its original grant.

> First, it is important to note that the Court Order was taken by default. The lender, Wexford, did not appear in the case. Presumably, Fox could have included any language he wanted in the Court Order, and the circuit court would have granted it by default. The fact that Fox did not extend the Easement to include Parcels B and C is quite telling – he could have easily so stated if he was in fact arguing on behalf of others, as [Blackman Place] alleges.
>
> Of course, Fox filed the lawsuit on his own behalf, not on behalf of others. There is no indication or admissible evidence in this record that supports [Blackman Place's] argument that Fox filed the lawsuit "to honor the commitment that he and his wife had made [to] developers in the area." . . . Representations and arguments of counsel in their briefs do not constitute record evidence.

Kunselman noted that he had been unable to access the complaint in the earlier litigation, and Blackman Place had not attached it to its summary disposition motion. But the case caption included five defendants. "There was certainly more to the litigation than easement rights." And looking at the order's language, Kunselman argued that it confirmed the "Foxes' right to use Regency Parkway under an easement appurtenant until the land could be formally dedicated to the public." Specifically, the order "focus[ed] on land that abuts and adjoins Regency Parkway" and expressly mentioned the "easement appurtenant"—a type of easement that can only be created in a written document. The easement appurtenant as to Blackman Place's property was only granted in the deed transferring lot A. The mention of "the rights of the public" was only to grant the right of use to members of the public to traverse Regency Parkway from Springport Road to reach businesses on the lots specifically benefitting from the easement.

The court granted summary disposition in Kunselman's favor, ruling:

> After reviewing this matter it appears that [the] Fox[es] originally owned the Parkway and the property, including [Blackman Place's] parcel A. I could not find anything in either of your records indicating that [the] Fox[es] ever owned parcels B and C.
>
> I noted that [] Regency Parkway was connected [sic] in about September of 2003. The Fox[es] were developing property along the Parkway long before [Blackman Place] acquired their property. However, in 2004 it appears [the] Fox[es] conveyed parcel A to [] Springport 8 with an easement for the Parkway only as to parcel A.
>
> Then we get down to where [Blackman Place] has not acquired all three parcels, A, B and C. I'm also mindful of the fact that [Kunselman] in this matter still has approximately 22 acres at the end of that Regency Parkway.

> And I went back and reviewed Judge Schmucker's opinion [in Fox's earlier lawsuit]. The court finds that what Judge Schmucker, in interpreting his decision, that the pertinent easement granted to Parcel A was - - stood, however, there was nothing that would suggest that it was enlarged.
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> Now, in this particular matter [Blackman Place does] have the servient [sic dominant][3] estate as to parcel A, and at the time that easement was granted to parcel A I think the terms were pretty plain and unambiguous, the easement is for parcel A only. The foreclosure or other actions that occurred do not grant additional rights or enlargement of the easement granted to parcel A, therefore, I'm denying [Blackman Place's] motion for summary judgment [sic] and granted [Kunselman's] summary judgment [sic].

The court ordered Kunselman to remove his no trespassing signs.

Blackman Place sought reconsideration of the court's order, but the motion was denied. The court indicated that revisiting the law and materials, it found nothing to change its mind. "The easement is appurtenant and is attached to parcel A, that's the only parcel that'll be burdened [sic, benefited] by it." The court declined to clarify its earlier order, but stated that the easement along Regency Parkway only "pertains to abutting property owners that go down that road to the cul de sac" and Kunselman could not be burdened by "another property beyond those attached to the Parkway."

Blackman Place appeals.

II. LEGAL PRINCIPLES

We review de novo a trial court's resolution of a summary disposition motion. *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013). Summary disposition is warranted under MCR 2.116(C)(10) if, viewing the evidence in the light most favorable to the nonmoving party, "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. at 139-140 (cleaned up). "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2).

We review de novo a trial court's equitable and legal rulings in a quiet title action. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008). This case also involves the interpretation of a prior court order. We review de novo a judgment entered by a court without the consent of the parties. See *Neville v Neville*, 295 Mich App 460, 466; 812 NW2d 816 (2012).

> As a general rule, judgments are to be construed like other written instruments, and the legal effect of a judgment must be declared in light of the literal

[3] "The land served or benefited by an appurtenant easement is called the dominant tenement. The land burdened by an appurtenant easement is called the servient tenement." *Schadewald v Brule*, 225 Mich App 26, 36; 37 NW2d 788 (1997).

> meaning of the language used. The unambiguous terms of a judgment, like the terms in a written contract, are to be given their usual and ordinary meaning. The determinative factor in interpreting a judgment is the intention of the court, as gathered, not from an isolated part thereof but from all parts of the judgment itself. When construing written judgments, courts consider the circumstances present at the time of entry and do not consider the meaning of particular provisions of the judgment in isolation but in the context of the whole judgment . . . . [46 Am Jur 2d, Judgments, § 74.]

In reviewing the court's interpretation of the deeds creating the easement, there are several principles to keep in mind.

> The scope and extent of an easement is generally a question of fact that is reviewed for clear error on appeal. Similarly, whether the scope of an easement has been exceeded is generally a question of fact. However, when reasonable minds could not disagree concerning these issues, they should be decided by the court on summary disposition as a matter of law. [*Wiggins*, 291 Mich App at 550 (cleaned up).]

Further,

> The language of an express easement is interpreted according to rules similar to those used for the interpretation of contracts. Accordingly, in ascertaining the scope and extent of an easement, it is necessary to determine the true intent of the parties at the time the easement was created. Courts should begin by examining the plain language of the easement, itself. If the language of the easement is clear, it is to be enforced as written and no further inquiry is permitted. A party's use of the servient estate must be confined strictly to the purposes for which the easement was granted or reserved, and must be confined to the plain and unambiguous terms of the easement. The scope of an easement encompasses only those burdens on the servient estate that were contemplated by the parties at the time the easement was created. [*Id*. at 551-552 (cleaned up).]

III. ANALYSIS

We do not enter this case with a clean slate. As noted, in 2009, the Jackson Circuit Court entered a judgment describing the obligation of Kunselman's predecessor-in-interest to permit others to use Regency Parkway. The order described that Regency Parkway "abuts and adjoins lands owned in fee by [Fox], and in common with others, to whom guarantees of public access over and across Regency Parkway . . . had been assured at risk of being otherwise made landlocked." The court declared that Kunselman's predecessor-in-interest could not block access to those parties. Unfortunately, the 2009 court order does not specifically name the parties or give the address or boundaries of the lands benefitted by the easement.

One party to whom a guarantee had been made was Springport 8. Springport 8 made two purchases in 2004. It purchased lots B and C from the Nelson Trust and it purchased lot A directly abutting Regency Parkway from the Foxes. The Foxes transferred their interest to the landlocked

lot A "[t]ogether with a 66 foot easement for ingress, egress and public utilities." The Nelson Trust also extended a "non exclusive easement for ingress and egress" to lots B and C, but over a differently described piece of land. It appears from the record that the easement for access to lots B and C is Kingsbrooke Drive.

It is plain and clear from the deeds in both parties' chains of title that Blackman Place's lot A is benefitted by an easement across Regency Parkway. But do lots B and C share that benefit? All the deeds in Blackman Place's chain of title describe lot A being benefitted by a Regency Parkway easement and lots B and C being benefitted by a Kingsbrooke Drive Easement. And the 2009 court judgment only applies to "lands" "which abut[] and adjoin[]" Regency Parkway. The easement only benefits lots B and C if lots A, B, and C are treated as a single parcel or if the easement benefits the landowner, not particularly the land. But extending the lot A easement to lots B and C goes against the plain language of the deeds.

The circuit court in this case did not analyze these questions in any depth, ruling without real explanation that lots B and C do not abut Regency Parkway and therefore are not entitled to use the easement across Regency Parkway. However, we agree with the result reached.

As argued by Kunselman, *Soergel v Preston*, 141 Mich App 585; 367 NW2d 366 (1985), is informative. In *Soergel*, 141 Mich App at 587, the Soergels owned parcel A and the Prestons owned the westerly neighboring parcel B. The Prestons also owned parcel C, lying directly west of parcel B. The Prestons purchased parcels B and C from two different owners. The Prestons' home was on parcel C, but parcel B was undeveloped. The owner of parcel A granted the prior owner of parcel B "a 10-foot right-of-way for the installation of water and sewer lines," but parcel B's prior owner never used the easement. *Id*. The document granting the easement naturally did not mention parcel C as neither party to the transaction owned it. The Soergels filed suit when the Prestons attempted to run a sewer line across the easement on parcel A to service the house on parcel C. *Id*.

Both the trial court and this Court held that parcel C was not benefitted by the easement. This Court described the easement as an easement appurtenant, which "attaches to the land and is incapable of existence separate and apart from the particular land to which it is annexed." *Id*. at 588. This Court further noted that "[t]he owner of an easement cannot materially increase the burden upon the servient estate or impose thereon a new and additional burden." *Id*.

This Court held:

> The easement agreement in this case describes parcel B and grants to that parcel a right-of-way across the south 10 feet of the property belonging to [the Soergels] for the installation of water and sewer lines, noting that the parcel would have no access to these lines except over parcel A. The easement agreement makes no mention of parcel C. The fact that parcel C also has no access to water and sewer lines except over parcel A does not alter the easement agreement which grants an easement only to parcel B. [*Id*.]

Accordingly, the Prestons had no right to install the sewer lines across parcel A.

In this case, Springport 8 purchased lot A from the Foxes, but purchased lots B and C from the Nelson Trust. The deed for lot A included an easement across other property then owned by the Foxes that would later become Regency Parkway. The deed for lots B and C included an easement across Kingsbrooke Drive. Neither deed mentioned the lot or lots included in the other deed. Indeed, the case for denying an easement across Regency Parkway for lots B and C is even more compelling in this case because lots B and C came with an easement of their own and were not otherwise landlocked.

In *Soergel*, the Court did not consider whether the new use over-burdened the servient estate. In *Schadewald v Brule*, 225 Mich App 26, 36; 570 NW2d 788 (1997), this Court described that the owner of the dominant estate "cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden." In that case, Brule's property enjoyed an access easement across Schadewald's property. Both properties supported a single-family residence. Unable to build a garage on his parcel, Brule purchased a neighboring parcel for this construction. Schadewald objected to Brule increasing the scope of the easement across his property to reach this new parcel. *Id*. at 28-31. This Court held that the existing easement clearly did not benefit Schadewald's new parcel as he did not own that parcel when the easement was created. *Id*. at 38. However, the use of the easement remained the same—Brule used the easement to access his original parcel and then veered off to access his garage, which was built on the new parcel. The same number of cars owned by the same person would use the easement for the same purpose both before and after the change. Accordingly, Brule's use could not be limited. *Id*. at 39.

Blackman Place's proposed use of the easement across Regency Parkway would greatly increase the burden on the easement. The deed granting the easement applied only to lot A, a two-acre commercially zoned parcel. But Blackman Place intended to use the easement for hundreds of residents to access their apartments on lots B and C.

However, Blackman Place argues that these cases are inapplicable because the owners of the dominant estates in those matters purchased the property to which they wished to extend the easement *after* the easement was granted. In this case, Springport 8 already owned lots A, B, and C when the Foxes sold lot Y, which included the duty to build Regency Parkway and hold it open as a public road. Accordingly, Blackman Place contends that all three lots it eventually took title to were benefitted by the Regency Parkway easement. And as all lots were owned by a single party when the easement was granted, Blackman Place contends that it is irrelevant whether the intended use for its property would increase the burden on the easement. The fact that its predecessor-in-interest owed all three parcels when the Foxes extended the easement is evidence that the Foxes intended the easement to be used for entry on all three parcels, Blackman Place insists. This Court must look to the parties' intents when the easement was created, Blackman Place contends.

Springport 8 took title to lot A from the Foxes a week after it took title to lots B and C from the Nelson Trust. Had the parties intended to grant an easement across Regency Parkway to lots B and C, they could have included language to that effect in the lot A deed. They did not. Instead, Springport 8 made two purchases that came with two separate easements. It was another year before the Foxes entered agreements with Kribec and Regency for the development of Regency Parkway. The Foxes, Kribec, and Regency did intend at that time for Regency Parkway to be

developed into a public roadway, but that did not happen. And the circuit court in Robert Fox's earlier lawsuit did not order any party to dedicate the parkway to the county for public road status. Had Regency Parkway become a public road, things may have resolved differently. But as it stands, Blackman Place's proposed use of Regency Parkway as the main access point to the apartment complex would significantly over-burden the easement. Ultimately, there is no legal ground to hold that Blackman Place's lot B and C adjoin or abut Regency Parkway such that the 2009 court order would extend an easement to those lots.

We affirm.

/s/ Karen M. Fort Hood
/s/ Jane E. Markey
/s/ Elizabeth L. Gleicher