

STATE OF MICHIGAN
COURT OF APPEALS

JAMES PELHAM,

Plaintiff-Appellee,

v

BRIAN LYNN BATES,

Defendant-Appellant.

UNPUBLISHED

November 18, 2021

No. 355638

Lenawee Circuit Court

LC No. 16-005507-CH

Before: BORRELLO, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right the November 12, 2020 trial court order describing the size and scope of the easement by necessity previously granted to plaintiff over defendant's property in this quiet title action. We affirm.

Plaintiff owns three parcels of property in Lenawee County. Parcels 1 and 2 are next to each other, and Parcels 2 and 3 are separated by land owned by defendant that was previously a railroad right-of-way. Parcel 3 is north of Parcel 2, and the railroad right-of-way runs approximately east to west. The area at issue consists of wetlands and marshland.

Defendant previously appealed as of right the trial court's November 8, 2017 order denying defendant's motion for summary disposition and granting plaintiff's motion for summary disposition under MCR 2.116(C)(10). On February 19, 2019, this Court reversed the trial court order denying defendant's motion for summary disposition and granting plaintiff's motion for summary disposition, and remanded for further proceedings. *Pelham v Bates*, unpublished per curiam opinion of the Court of Appeals, issued February 19, 2019 (Docket No. 341231), pp 4-8 (*Pelham I*). This Court concluded that the trial court erred by determining that an easement by prescription had been established as a matter of law. *Id.* at 7. On remand, the parties and the trial court would address the precise location of the claimed easement over the former railroad right-of-way as necessary. *Id.* This Court noted that plaintiff did not argue that the trial court erred by denying plaintiff's earlier partial motion for summary disposition that was premised on his implied easement of necessity claim, thereby holding that plaintiff had abandoned this argument. *Id.* at 8. This Court held that it was appropriate for the trial court "to actually address and rule in the first

instance on these various additional arguments raised by the parties, many of which were not addressed by the trial court in its ruling denying plaintiff's partial motion for summary disposition that was premised on the claim of an implied easement by necessity." *Id.*

On remand, plaintiff filed a brief in support of his motion for summary disposition, and defendant filed a brief in opposition and in support of his cross-motion for summary disposition. The trial court granted plaintiff's motion for summary disposition, but reserved the issue of the scope of the easement, its precise location, and whether its use should be limited to foot traffic following supplemental briefing.

Defendant filed a supplemental brief, in which he argued that plaintiff should have been limited to two 10-foot-wide sections because any more access would not be reasonably necessary. Specifically, defendant stated that "[t]hese positions allow for pedestrian access to both sections of the landlocked property, while minimizing erosion to the banks of the railroad right-of-way." Defendant also requested that plaintiff be held responsible for any upkeep and maintenance of the exclusive ingress and egress easement, and apply for any permits required by the state.

In his response to defendant's supplemental brief, plaintiff argued that defendant had failed to establish any genuine issue of material fact that the easement covering the full-length of defendant's property would impose any greater burden on defendant or on his property than the two 10-foot-wide easements he proposed, with maintenance and upkeep required. In addition, based on the established use of the easement by necessity since it was created in 1964 without a limited specific area, plaintiff argued that it should be continued as such. Finally, plaintiff argued that the two easements proposed by defendant limited to 10 feet in width would not permit him to utilize the easement for ingress and egress, including removal of deer shot on his landlocked property, which could require more than one person to remove.

After reviewing the parties' supplemental briefs, visiting the property, and observing the conditions of the land, the trial court determined that it was reasonable to grant plaintiff an easement by necessity to the entire length of the former railroad right-of-way that is owned by defendant and abuts plaintiff's landlocked parcel. The trial court stated:

In this case, there is no dispute that the scope of the easement should be limited to pedestrian access. The only remaining issue is the location and amount of physical access that is "reasonably necessary."

Plaintiff requests access to the full-length of the Defendant's property which abuts Plaintiff's landlocked property. The basis of this request is the difficult terrain of the wetlands, and the history of access to the entirety of Defendant's former railroad right-of-way by Plaintiff's predecessors in title. Plaintiff indicates that he intends to maintain his landlocked property for hunting and needs to be able to remove any spoils from the property. Defendant argues that Plaintiff should be limited to two [10-foot-wide] sections as depicted in Exhibit I of Defendant's Supplemental Brief, because further access is not reasonably necessary.

After visiting the property and observing the conditions of the land, it is clear that the limited access order requested by Defendant is unreasonable. This is

due to the marshy conditions rendering it impossible to determine a [10-foot-wide] section that would be consistently passable sufficient to ensure Plaintiff has access to his landlocked property. As a result, it is reasonable to grant Plaintiff an easement by necessity to the entire length of the former railroad right-of-way owned by Defendant[,] which abuts Plaintiff's landlocked parcel. Plaintiff may traverse the easement solely for purposes of ingress and egress. Plaintiff may use a deer cart or similar device to retrieve game hunted on the landlocked parcel, but may not use any device with an engine on the easement.

On appeal, defendant argues that the trial court clearly erred in establishing the location and amount of physical access to the easement by necessity to cover the entire length of the former railroad right-of-way owned by defendant. We disagree.

This Court reviews de novo a trial court's determination of equitable issues. *Dep't of Environmental Quality v Gomez*, 318 Mich App 1, 33 n 12; 896 NW2d 39 (2016). However, a trial court's factual findings are reviewed for clear error. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 130; 737 NW2d 782 (2007). A trial court's finding is clearly erroneous when there is evidence to support the finding, but this Court is nevertheless left with the definite and firm conclusion that a mistake has been made. *Morse v Colitti*, 317 Mich App 526, 534; 896 NW2d 15 (2016). The extent of a party's right under an easement is a question of fact. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005).

An easement is a limited property interest; it is the right to use the land burdened by the easement for a specific purpose. *Mich 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. *D'Andrea v AT&T Mich*, 289 Mich App 70, 73 n 2; 795 NW2d 620 (2010).

Here, defendant does not challenge the holding of the trial court granting plaintiff an easement by necessity. See *Charles A Murray Trust v Futrell*, 303 Mich App 28, 41; 840 NW2d 775 (2013) ("An easement by necessity may be implied by law where an owner of land splits his property so that one of the resulting parcels is landlocked except for access across the other parcel.") (quotation marks and citation omitted). "[T]he party asserting the right to the easement need only show that the easement is reasonably necessary, not strictly necessary, to the enjoyment of the benefited property." *Chapdelaine v Sochocki*, 247 Mich App 167, 173; 635 NW2d 339 (2001). Defendant challenges the trial court's finding that plaintiff established an easement by necessity over the entire stretch of defendant's servient estate. Defendant argues that the easement should only create two 10-foot-wide easements to allow access to plaintiff's otherwise landlocked property, and disputes whether plaintiff's easement should altogether cover the full-length of defendant's property, which abuts plaintiff's landlocked property.

The trial court did not clearly err in establishing the scope of the easement because plaintiff established an easement by necessity for access to the entire length of the former railroad right-of-way owned by defendant, which abuts plaintiff's landlocked parcel. Prior owners of the former railroad right-of-way allowed plaintiff's predecessors in title to use the abandoned railroad property to access Parcel 3. Moreover, from its visit to the property, the trial court observed that the marshy conditions of the land deemed it unreasonable to limit plaintiff's access to two 10-foot-

wide sections as requested by defendant. The trial court noted that the marshy conditions of the land rendered it impossible to determine a specific 10-foot-wide section that would be consistently passable by plaintiff and ensure that he has access to his landlocked property. An easement by necessity for access to the entire length of defendant's land would allow plaintiff reasonable and proper access to his land because, as noted by the trial court, the marshy conditions of the land may not always allow plaintiff to pass through, and the easement is in line with the customary use of defendant's land in the past.

In order for plaintiff to reasonably enjoy the benefited property, he must have the right to access the entire length of the former railroad right-of-way owned by defendant, but such access must place "as little burden as possible [on] the fee owner of the land." *Blackhawk*, 473 Mich at 42 (quotation marks and citation omitted). Plaintiff only requested, and the trial court only granted, an easement to the entire length of the former railroad right-of-way owned by defendant *limited to pedestrian access*; plaintiff noted that it was reasonably necessary to access the entire length of the former railroad right-of-way owned by defendant to hunt and to be able to remove any spoils from the property because no other access point exists. Defendant failed to explain how allowing plaintiff a right of access to the full-length of defendant's property will materially increase the burden to his land. *Id.* Therefore, the trial court properly concluded that plaintiff was entitled to an easement by necessity over the entire length of the former railroad right-of-way owned by defendant. See *Chapdelaine*, 247 Mich App at 173.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Mark T. Boonstra