STATE OF MICHIGAN

COURT OF APPEALS

THOMAS M. WILSON and CATHY S. WILSON, Plaintiffs-Appellees, v THOMAS B. DAVIS and SARA DAVIS, Defendants-Appellants.	UNPUBLISHED September 22, 2011 No. 299187 Lenawee Circuit Court LC No. 09-093400-CZ

Before: MURPHY, C.J., and FITZGERALD and TALBOT, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment entered by the trial court pursuant to a settlement agreement that the parties placed on the record in open court in this property dispute between owners of adjoining properties. Defendants contend that the judgment does not comport with the parties' settlement agreement because the judgment awards an "easement," whereas the parties' settlement agreement referred only to a "license." Because the trial court's judgment substantively comports with the terms of the parties' settlement agreement, we affirm.

A survey showed that plaintiff's house encroaches on defendants' property by approximately three feet. After the trial judge visited the area and the parties filed their trial briefs, the parties appeared before the court and announced that they had resolved their differences and were ready to place a settlement agreement on the record.[1] Plaintiffs' counsel explained that plaintiffs would receive exclusive "rights of possession and occupancy" to specified property, which included a strip of land that extended six feet from the foundation of plaintiff's house.[2] Although plaintiffs' counsel repeatedly referred to the interest received by plaintiffs as a "license," he also indicated that it would run with the land, would both burden and benefit the parties' respective properties, and would be binding on any future owners. He also referred to "basically an easement that is mutual." Defendants expressed their agreement with these terms, and the trial court asked counsel to prepare an order.

[1] The encroachment by the house was resolved by an agreement to convey the area in question to plaintiffs in fee simple. That aspect of the settlement agreement is not at issue in this appeal.

[2] The property at issue included four feet for shrubbery and two feet for mowing.

Defendants objected to plaintiff's proposed judgment on the ground that "the parties had agreed to a permanent license not an easement." At a hearing on the motion to enter judgment, the court noted that the settlement agreement placed on the record referred to the license running with the land and that "[a] license that runs with the land is an easement." The court entered a final judgment stating that plaintiffs "shall have a permanent easement . . . [that] shall run with the land."

"An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). This Court reviews de novo as a question of law the existence and proper interpretation of a contract, including a trial court's determination whether contract language is ambiguous. *Id.*; *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

A valid and enforceable settlement agreement requires a meeting of the minds regarding material terms. *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989). "A court cannot force settlements upon parties or enter an order pursuant to the consent of the parties which deviates in any material respect from the agreement of the parties." *Kloian*, 273 Mich App at 461 (citations and internal quotation marks omitted). However, "[a] party cannot, after agreeing in open court, refuse to sign a proposed judgment which accurately incorporates the agreement unless there was a mistake, fraud, or unconscionable advantage which would justify setting aside the settlement agreement." *Mich Bell Tel Co v Sfat*, 177 Mich App 506, 515; 442 NW2d 720 (1989).

"[A] license is a permission to do some act or series of acts on the land of the licensor without having any permanent interest in it. In general, a license is revocable at will and is automatically revoked upon transfer of title by either the licensor or licensee." *Kitchen v Kitchen*, 465 Mich 654, 658-659; 641 NW2d 245 (2002). An easement also involves the ability to use the land of another for a specific purpose. *Mumaugh v Diamond Lake Area Cable TV Co*, 183 Mich App 597, 606-607; 456 NW2d 425 (1990). "An easement does not displace the general possession of the land by its owner, but merely grants the holder of the easement qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement." *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). Unlike a license, an easement constitutes an interest in land. *Mumaugh*, 183 Mich App at 606; *Forge v Smith*, 458 Mich 198, 210; 580 NW2d 876 (1998). An appurtenant easement runs with the land, i.e., the right or obligation passes automatically as an incident of a conveyance of the land or the interest in land. See *Myers v Spencer*, 318 Mich 155, 163-167; 27 NW2d 672 (1947). "Once granted, an easement cannot be modified by either party unilaterally." *Schadewald*, 225 Mich App at 36.

In this case, the parties referred to the interest that plaintiffs were to receive under the parties' agreement as a "license," but described the nature of interest in terms that were incompatible with a license. The parties agreed that the "license" "will run with the land and will burden and benefit both of these properties, as it's running to the land as to both future owners thereof." Because a license is automatically revoked upon transfer of title, *Kitchen*, 465 Mich at 658-659, a license does not run with the land and does not obligate future owners. When the discrepancy was brought to the trial court's attention, the court determined that "[a] license

that runs with the land is an easement" and, accordingly, it was "going to designate it as an easement. . . . [t]hat's exactly what it means." The trial court did not err in determining that the parties' agreement, although referring to a license, substantively described as easement.

Defendants acknowledge that the parties intended the privilege to be permanent, i.e., irrevocable. An irrevocable "license" is the same as an easement. As explained in 1 Restatement of Property Third, § 1.2, comment g, p 16:

> The difference between a license to enter and use land and an easement to make the same use is that the license is revocable at will by the owner of the burdened land. If the license becomes irrevocable, or revocable only on the occurrence of a condition, it is indistinguishable from an easement.

See also *Kitchen*, 465 Mich at 661 (conveyance of an "irrevocable license" is in effect conveyance of an easement). Defendants have not shown that the trial court's decision to award an "easement" conflicted with the parties' expression of their intended settlement of their dispute.

Defendants argue that a "license coupled with an interest," which is not revocable at will, better describes the parties' agreement than does an "easement." We disagree. "While licenses are generally revocable at will, a license coupled with an interest is not." *Forge*, 458 Mich at 210. A "license coupled with an interest" refers to a privilege that is "'incidental to the ownership of an interest in a chattel personal located on the land with respect to which the license exists.'" *Id.*, quoting 5 Restatement Property, § 513, p 3121 (emphasis omitted). For example, a property owner may sell a car of coal that is located on his property. The buyer's privilege to enter the seller's property to remove the coal is a "license coupled with an interest." See Restatement, § 513, comment b, illustration 3, pp 3122-3123. Defendants contend that the parties' dispute concerned encroaching bushes and the foundation of plaintiffs' home. However, the privilege described in the settlement agreement was not related to entry for purposes of accessing a chattel on defendants' property, and the area of the "license" was from the front to the back of the property. The description of the agreed privilege is not compatible with a license coupled with an interest.

Defendants lastly contend that "the grant of an easement . . . constitutes a clear violation of the statute of frauds."

MCL 566.106 states:

> No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

A license, because of its revocability, does not create an interest in land, and the statute of frauds is inapplicable. *Kitchen*, 465 Mich at 659. In contrast, an easement is subject to the statute of frauds. *Forge*, 458 Mich at 205.

In *Siegel v Spinney*, 141 Mich App 346; 367 NW2d 860 (1985), this Court held that a settlement agreement made in open court that affected interests in land was binding on the parties even though the parties disagreed about the terms that should be included in the subsequent consent judgment. Although the decision does not address the statute of frauds, it illustrates that a settlement agreement made in open court in compliance with MCR 2.507(G) is binding despite the absence of a writing. In this circumstance, the grant of the easement occurred "by act or operation of law" and did not violate the statute of frauds. MCL 566.106.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot