

STATE OF MICHIGAN  
COURT OF APPEALS

---

CASCADE CHARTER TOWNSHIP,

Plaintiff/Counter-Defendant-  
Appellee,

v

KRYSTYNA W. COTTER,

Defendant/Counter-Plaintiff-  
Appellant.

UNPUBLISHED  
November 15, 2011

No. 299404  
Kent Circuit Court  
LC No. 09-011637-CZ

---

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

In this case involving a property dispute over the use of a driveway easement, defendant Krystyna W. Cotter appeals as of right the trial court's order granting summary disposition to plaintiff Cascade Charter Township pursuant to MCR 2.116(C)(10). We reverse and remand.

Defendant argues that the trial court erred in granting summary disposition because there were genuine issues of fact concerning whether plaintiff's proposed use of the easement was within the scope of the easement and whether it would overburden defendant's property. "The scope and extent of an easement is generally a question of fact that is reviewed for clear error on appeal[.]" and "whether the scope of an easement has been exceeded is generally a question of fact." *Wiggins v Burton*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (Docket No. 293023, issued February 8, 2011), slip op 9. "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." *Id.* We review a trial court's decision regarding a motion for summary disposition in a declaratory judgment action de novo. *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002); *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Summary disposition is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Parties opposing a motion for summary disposition must present more than mere conjecture and speculation. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

An easement is the limited right to use the land of another “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). See also *Mich Dep’t of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378-379; 699 NW2d 272 (2005). After an easement is created, it “cannot be modified by either party unilaterally.” *Schadewald*, 225 Mich App at 36. “The use exercised by the holders of the 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.” *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 42; 700 NW2d 364 (2005). “The owner of an easement cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden.” *Schadewald*, 225 Mich App at 36. Whether the use of an easement imposes an impermissible burden is determined by the intended use of the easement contemplated at the time it was created. *Id.* at 36-37.

“The language of an express easement is interpreted according to rules similar to those used for the interpretation of contracts.” *Wiggins*, slip op at 10. In determining whether an easement contemplates a particular use, this Court should first look to the text of the easement. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003) (*Little II*); *Blackhawk Dev Corp*, 473 Mich at 42. “Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted.” *Id.* Only where the text of the easement is ambiguous, may the trial court consider extrinsic evidence to determine the scope of the easement. *Id.*

The text of the easement that benefited plaintiff’s property stated that it was for “ingress, egress and utilities.” Defendant argues that the easement was only intended for residential use. Plaintiff argues that the easement language is unambiguous, and no further inquiry may be undertaken. However, accepting plaintiff’s position would allow *any* amount of use by plaintiff, so long as the use consisted only of ingress, egress, and utilities. Plaintiff could drive heavy equipment past defendant’s house in the middle of the night, as long as the equipment continued onto plaintiff’s parcel. Such use would clearly overburden the easement. Thus, the manner of ingress and egress contemplated by the easement is critical. The text of the easement in the present case provides no guidance on this point.

In addition, the record before us contains no evidence of what the former owner of plaintiff’s parcel was doing or planned to do with the parcel at the time the easement was created. Therefore, we cannot say whether the use of the property as a park materially increases the burden on the easement. The trial court stated that it was premature to address this issue, but caselaw clearly allows courts to judge ahead of time whether a proposed use will overburden an easement. See, e.g., *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005) (considering whether a proposed development would fall within the scope of an easement). Moreover, it appears that the park has opened since the trial court proceedings, as defendant complains on appeal that park visitors have been trespassing close to her house, unaware of the border of the park.

Remand is necessary to answer the factual questions of the manner of ingress and egress contemplated by the easement, and whether plaintiff’s use of the easement does or will overburden the easement. It may well be that plaintiff’s park will not overburden the easement,

but it was premature for the trial court to grant summary disposition without making this factual determination.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Douglas B. Shapiro