STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2047

William M. Dunkley, et al.,
Appellants,

vs.

Greg W. Hueler, et al.,
Respondents.

Filed September 14, 2020
Reversed and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-18-5347

Eric A.O. Ruzicka, Andrew Brantingham, Christopher DeLong, Dorsey & Whitney LLP, Minneapolis, Minnesota (for appellants)

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Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Bryan, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

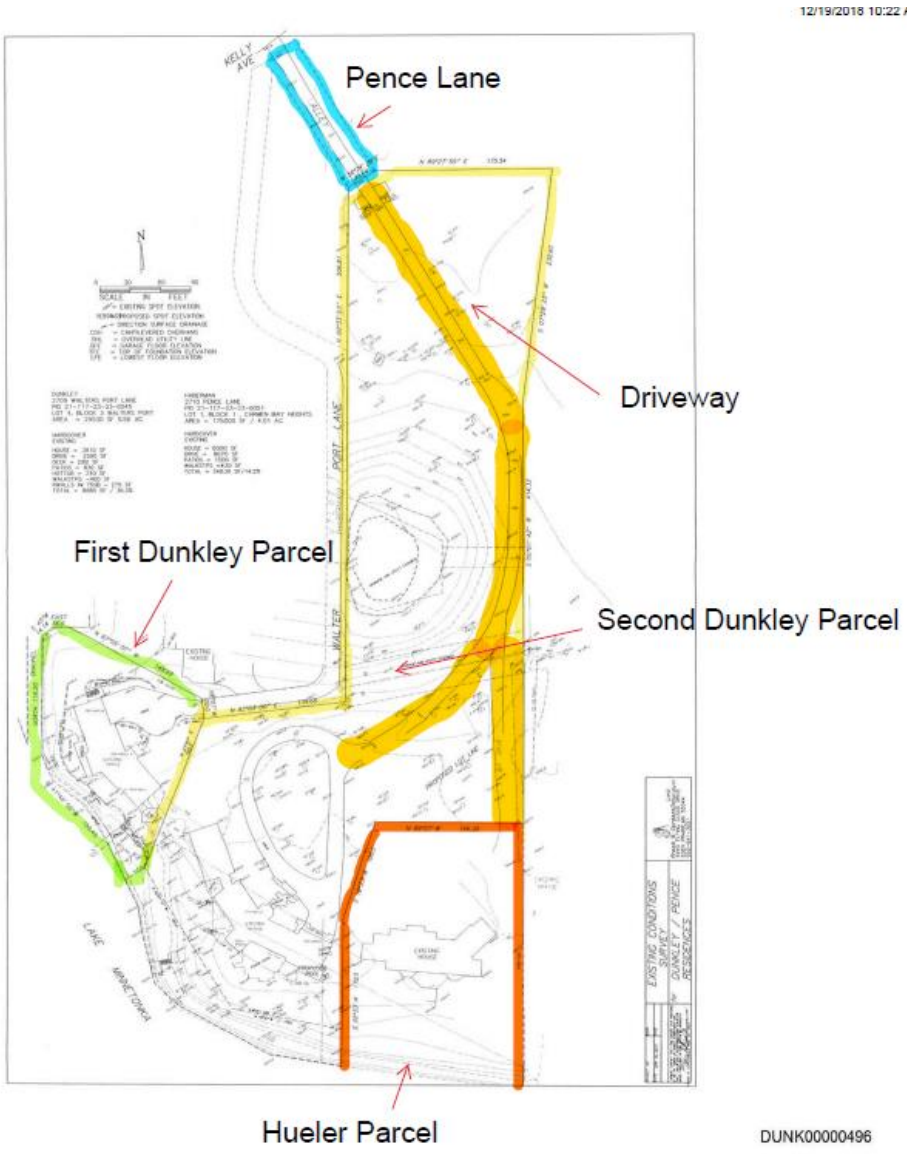
In this lakeshore property dispute, appellant property owners challenge summary judgment determining that two easement agreements prohibit them from using a driveway and private road to access their home. Because the easement agreements do not restrict

appellants' proposed modification and use of the driveway and road, we reverse and remand.

FACTS

This case involves property located on Lake Minnetonka in Orono. It is undisputed that appellants William and Susan Dunkley own and reside at 2709 Walters Port Lane (the Walters Port Property). Respondents Greg and Kelli Hueler own and reside at 2715 Pence Lane. In between these two properties is 2710 Pence Lane, which the Dunkleys purchased in 2017. The Walters Port Property is accessible by Walters Port Lane, a private road that the Dunkleys own. The other two properties are accessible by a driveway that connects to Pence Lane, a private road. The driveway is located on 2710 Pence. The following map shows the properties as they existed in 2017:[1]

[1] The Dunkleys produced this color-coded map during discovery, and the highlighting and text is theirs. "First Dunkley Parcel" refers to the Walters Port Property, "Second Dunkley Parcel" refers to 2710 Pence, and "Hueler Parcel" refers to 2715 Pence.



At issue in this case are two easement agreements dating back to the 1980s. In 1982, the Huelers' predecessors in interest owned 2715 Pence and the portion of 2710 Pence that contained the driveway connecting the two properties to Pence Lane. The Huelers' predecessors in interest sold this portion of 2710 Pence to the Dunkleys' predecessors in interest. In connection with the sale, the parties executed a Driveway Easement Agreement (the driveway agreement), which provides:

> [The Huelers' predecessors in interest], their successors and assigns, shall have a perpetual, nonexclusive easement for driveway purposes over the driveway herein described for ingress to and egress from [2715 Pence], subject to the right of [the Dunkleys' predecessors in interest], [their] successors and assigns, to use part or all of said driveway for ingress and egress.

The driveway agreement also stated that the Dunkleys' predecessors in interest had "the right to relocate the driveway, except for its point of commencement and its point of termination."

At the time the driveway agreement was executed, Pence Lane was a public road. But in May 1984, the City of Orono vacated Pence Lane. The Dunkleys' and Huelers' predecessors in interest, and a third neighbor, succeeded to ownership of Pence Lane as tenants in common. In June 1984, the three parties executed a Road and Utility Easement Agreement (the road agreement).[2] The road agreement provides:

> That each of the parties hereto, their successors and assigns, be and hereby are granted a perpetual non-exclusive easement for roadway purposes over and across [Pence Lane], for ingress to and egress from:
>
> a. [The third neighbor's property];
> b. [2710 Pence], owned by [the Dunkleys' predecessors in interest];
> c. [2715 Pence], owned by [the Huelers' predecessors in interest].

[2] On September 26, 1994, the three parties executed a Corrective Road and Utility Easement Agreement to correct a defective legal description. The corrective agreement did not make any substantive changes and does not affect our analysis.

The owners of the Walters Port Property were not parties to either the driveway agreement or the road agreement. As part of the 2017 purchase of 2710 Pence, the Dunkleys acquired an undivided one-third interest in Pence Lane as tenants in common.

After the purchase, the Dunkleys reconfigured the boundary line between the Walters Port Property and 2710 Pence. They first combined the two parcels, demolished the house located on 2710 Pence, and expanded the Walters Port Property house. They then subdivided the combined parcel to increase the size of the Walters Port Property and decrease the size of 2710 Pence, which they intended to sell. The Dunkleys planned to retain the Walters Port Property and a small portion of 2710 Pence where the driveway connects to Pence Lane. And they intended to modify the driveway so it could be used to access the Walters Port Property. The Huelers objected to the Dunkleys' proposed use of Pence Lane and the driveway to access the Walters Port Property.

In March 2018, the Dunkleys commenced this action, seeking to quiet title and to obtain a declaration that (1) the driveway agreement and the road agreement do not prohibit them from accessing the Walters Port Property using Pence Lane; and (2) as owners of 2710 Pence and tenants in common of Pence Lane, they have the right to use Pence Lane and modify and use 2710 Pence to access the Walters Port Property. The Huelers asserted a counterclaim, seeking, among other relief, a declaration that the Dunkleys may not use Pence Lane or the driveway to access the Walters Port Property. After discovery was complete, the parties filed cross-motions for summary judgment.

The district court granted the Huelers' motion, concluding that the driveway agreement and the road agreement prohibit the Dunkleys from using Pence Lane and the

driveway to access the Walters Port Property. The court reasoned that because the driveway agreement refers only to 2710 Pence and 2715 Pence, it only permits the parties to use the driveway for "ingress to and egress from" those two properties. And the court concluded that the road agreement's reference to only three properties—2710 Pence, 2715 Pence, and the neighbor's property—means that Pence Lane may not be used to access any other property.[3] The Dunkleys appeal.

D E C I S I O N

I. The Dunkleys have standing to bring this appeal because they continue to own Pence Lane and a portion of the land under the driveway.

As a preliminary matter, the Huelers contend that the Dunkleys lack standing because their ownership status has changed since this case began. "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). A party has standing on appeal if her personal rights are "injuriously affected by the underlying adjudication." *Glaze v. State*, 909 N.W.2d 322, 325-26 (Minn. 2018) (quotation omitted).

The Huelers assert that the Dunkleys sold most of 2710 Pence, retaining only "a small portion of the Driveway" at its point of commencement at Pence Lane. The Dunkleys

[3] The Huelers also asserted a counterclaim for breach of contract, alleging the Dunkleys' construction projects damaged the driveway. Pursuant to the driveway agreement, the district court ordered the parties to arbitrate that claim and certified the summary judgment on the declaratory-judgment claim as final. *See* Minn. R. Civ. P. 54.02 (providing that a district court may enter final judgment on fewer than all of the claims involved in an action).

acknowledged in the district court and on appeal that they sold most of 2710 Pence. But they contend that they retained an interest in Pence Lane as tenants in common and retained a portion of the land under the driveway with "an exclusive option to replat" 2710 Pence in order to use the driveway to access the Walters Port Property.[4] The Dunkleys argue that the summary judgment injuriously affects their remaining property rights.

We are persuaded that the Dunkleys have a sufficient stake in the controversy to pursue this appeal. Their ownership interests in Pence Lane and a portion of the driveway and their option to extend the driveway to access the Walters Port Property are adversely affected by the judgment. Accordingly, they have standing to bring this appeal.

II. The driveway agreement and the road agreement do not preclude the Dunkleys from using Pence Lane and the driveway to access the Walters Port Property.

Summary judgment is proper if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A party opposing summary judgment must produce competent, admissible evidence that creates a genuine issue for trial. *Twin Cities Metro-Certified Dev. Co. v. Stewart Title Guar. Co.*, 868 N.W.2d 713, 720 (Minn. App. 2015). We review a grant of summary judgment de novo to determine whether genuine issues of material fact exist and whether the district court properly applied the law. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017).

[4] There is no evidence in the record of the Dunkleys' transactions, but the parties generally agree on these facts.

A. The driveway agreement does not prohibit the Dunkleys from using the driveway to access the Walters Port Property because they own the land under the driveway.

An easement is "an interest in land in the possession of another which entitles the owner of such interest to a limited use or enjoyment of the land in which the interest exists." *Minneapolis Athletic Club v. Cohler*, 177 N.W.2d 786, 789 (Minn. 1970). The express grant of an easement is a contract. *Lindberg v. Fasching*, 667 N.W.2d 481, 487 (Minn. App. 2003), *review denied* (Minn. Nov. 18, 2003). The scope of an express easement "depends entirely upon the construction of the terms of the grant." *Bergh & Mission Farms, Inc. v. Great Lakes Transmission, Inc.*, 565 N.W.2d 23, 26 (Minn. 1997) (quotation omitted). "[T]he extent of an easement should not be enlarged by legal construction beyond the objects originally contemplated or expressly agreed upon by the parties." *Minneapolis Athletic Club*, 177 N.W.2d at 789-90.

The grant of an easement limits the parties' right to use the property, so that both the grantor (i.e., the owner of the land on which the easement is located) and the easement holder can reasonably enjoy the property. *Giles v. Luker*, 9 N.W.2d 716, 718 (Minn. 1943). "Generally, the grant of an easement over land does not preclude the grantor from using the land in a manner not unreasonably interfering with the special use for which the easement was acquired." *Minneapolis Athletic Club*, 177 N.W.2d at 789; *see also* Restatement (Third) of Property: Servitudes § 4.9 cmt. c (2000) ("The person who holds the land burdened by a[n] [easement] is entitled to make all uses of the land that are not prohibited by the [easement] and that do not interfere unreasonably with the uses authorized by the easement . . . ."); 28A C.J.S. *Easements* § 223 (2020) (providing that the

easement holder "can claim no other limitation on the rights of the grantor than those expressed in the grant or necessarily implied in the right of reasonable enjoyment").

Here, the parties dispute the extent to which the Dunkleys, the grantors, can use the driveway. The Dunkleys contend that they can use the driveway in any manner they want—including to access the Walters Port Property—as long as their use does not unreasonably interfere with the Huelers' right to use the easement. The Dunkleys argue that their right to use the driveway flows from their status as fee owners of 2710 Pence (the land underlying the driveway), and not from the driveway agreement; it is the Huelers whose right to use the driveway depends entirely on the easement grant. In contrast, the Huelers contend that the terms of the driveway agreement control and that its plain language only permits the Dunkleys to use the driveway to access 2710 Pence because the agreement does not specifically identify the Walters Port Property. The Dunkleys have the better argument.

Both parties cite the general rules that the scope of an easement "depends entirely upon the construction of the terms of the grant," *Bergh*, 565 N.W.2d at 26 (quotation omitted), and "should not be enlarged by legal construction beyond the objects originally contemplated or expressly agreed upon by the parties," *Minneapolis Athletic Club*, 177 N.W.2d at 789-90. The caselaw they cite is instructive. In *Minneapolis Athletic Club*, the grantor intended to build a skyway 16 feet above an alley—the easement at issue. 177 N.W.2d at 788. The supreme court reasoned that the express grant of the easement did not limit the grantor's right to use the air above the alley or give the easement holders the right to have the alley kept open to the sky. *Id.* at 789-90. And the court concluded that the

grantor's construction of a skyway did not unreasonably interfere with the easement holders' use of the alley as a right-of-way, the purpose for which the easement was created. *Id.* at 790. In *Bergh*, the supreme court likewise focused on the express terms of the easement, concluding that it unambiguously permitted the easement holder's use and refusing to read in additional limitations on the easement holder's rights. 565 N.W.2d at 26-27.

These rules establish that the rights of the *easement holder*, not the rights of the grantor, depend entirely on the grant. Only the Huelers' right to use the driveway depends on the driveway agreement; the Dunkleys' right to use the driveway derives from their ownership of 2710 Pence. *See* Restatement (Third) of Property: Servitudes § 4.9 cmt. c (providing that an easement "carves out specific uses" for the holder and that "[a]ll residual use rights remain" in the grantor); *see also* 28A C.J.S. *Easements* § 224 (2020) (stating that "without expressly reserving the right, the [grantor] may herself use the [easement], or permit others to do so"). As owners, the Dunkleys' ability to modify and use the driveway to access the Walters Port Property is limited only by the terms of the driveway agreement and the common-law prohibition on unreasonable interference with an easement holder's use of the easement.

We turn first to the driveway agreement, which states, in relevant part:

> [The Huelers' predecessors in interest], their successors and assigns, shall have a perpetual, nonexclusive easement for driveway purposes over the driveway herein described for ingress to and egress from [2715 Pence], subject to the right of [the Dunkleys' predecessors in interest], his successors and assigns, to use part or all of said driveway for ingress and egress.

The driveway agreement provides that the Dunkleys have the right to use the driveway "for ingress and egress." But it is silent as to what properties the Dunkleys can access using the driveway. And it states that the easement is "nonexclusive." This is significant. An exclusive easement may restrict the grantor's ability to use the easement beyond the common-law prohibition on unreasonably interfering with the easement holder's use. *See Apitz v. Hopkins*, 863 N.W.2d 437, 440-41 (Minn. App. 2015) (explaining how terms and circumstances govern effect of an "exclusive" easement). In short, nothing in the terms of the easement grant prohibits the Dunkleys' proposed modification and use of the driveway.

The Huelers point to the language prohibiting both parties from altering the driveway's termination point. We are not persuaded. As the map demonstrates, the driveway begins at Pence Lane and splits into two paths before it terminates. One path continues south to 2715 Pence, and the other path curves toward the house on 2710 Pence. The Dunkleys' proposed use of the driveway impacts only the latter path. For the path that reaches 2715 Pence—the path that the Huelers use—the driveway's termination point remains the same. The Dunkleys' proposed use of the driveway does not modify the termination point in which the Huelers have an interest.

B. The road agreement does not prohibit the Dunkleys from using Pence Lane to access the Walters Port Property because they own Pence Lane as tenants in common.

The relevant portion of the road agreement provides:

> That each of the parties hereto, their successors and assigns, be and hereby are granted a perpetual non-exclusive easement for roadway purposes over and across [Pence Lane], for ingress to and egress from:

a. [The third neighbor's property];
b. [2710 Pence], owned by [the Dunkleys' predecessors in interest];
c. [2715 Pence], owned by [the Huelers' predecessors in interest].

While the road agreement specifically lists three properties, it does not expressly provide that the parties may only use Pence Lane to access those three properties. And it does not otherwise effectuate such a restriction because the parties' rights in Pence Lane do not derive entirely from the road agreement. Rather, the parties have the right to use Pence Lane because they own it as tenants in common.

When parties own property jointly, "each cotenant has at all times the right to enter upon and enjoy every part of the common estate." *Petraborg v. Zontelli*, 15 N.W.2d 174, 177 (Minn. 1944). A cotenant may use the common estate "in the same manner as if he or she were the sole owner," but cannot exclude the other cotenants. 20 Am. Jur. 2d *Cotenancy and Joint Ownership* § 41 (2020). Cotenants cannot interfere with each other's right of possession of the property, but the right of possession may be restricted by agreement between the cotenants. 20 Am. Jur. 2d *Cotenancy and Joint Ownership* § 40 (2020).

We begin by noting the limited purpose of the road agreement. It grants the City of Orono an easement for the installation and maintenance of utilities following its vacation of Pence Lane. For the three property owners (and their successors and assigns) the road agreement creates property rights and responsibilities that run with the land. For example, the road agreement would permit a future purchaser of part or all of a listed property to use Pence Lane even if that purchaser did not also obtain an interest in Pence Lane as a tenant

in common. In other words, the road agreement affirmatively establishes rights that run with the land. But it does not alter the rights of the Dunkleys and the other tenants in common to use Pence Lane to access any property.

III. The Dunkleys' proposed use of the driveway will not unreasonably interfere with the Huelers' use of the easement.

Because the easement agreements do not expressly prohibit the Dunkleys' proposed use of Pence Lane and the driveway, the only constraint is the common-law rule that a grantor cannot unreasonably interfere with an easement holder's special use of the easement.[5] In their cross-motions for summary judgment, the parties disputed whether the Dunkleys' proposed modification and use of the driveway would unreasonably interfere with the Huelers' use of the driveway. The district court did not decide the issue, as it concluded that the two agreements prohibit the Dunkleys' proposed use of the driveway. Because the parties do not contend that the relevant facts are in dispute and our review of summary judgment is de novo, we consider whether the Dunkleys' proposed use unreasonably interferes with the Huelers' use of the driveway to access their property. *See McGuire v. Bowlin*, 932 N.W.2d 819, 828 (Minn. 2019) (reviewing an issue on appeal from summary judgment that the parties litigated but the district court did not decide).

A grantor's use of an easement unreasonably interferes with the easement holder's special use when it "leads to a material increase in the cost or inconvenience to the

[5] The Huelers also contend that the Dunkleys may not use the driveway to access the Walters Port Property because the Orono Code of Ordinances allows only two residential lots to be served by a private driveway. We do not decide this issue because the City of Orono is not a party and its ordinances are not at issue in this case.

easement holder's exercise of its rights." 28A C.J.S. *Easements* § 223. Our supreme court concluded this high threshold was not met with respect to a non-exclusive, right-of-way easement where the grantor "leaves a space of sufficient width and height and with sufficient light to allow its convenient use for the purpose for which it was created." *Minneapolis Athletic Club*, 177 N.W.2d at 790. And easement holders have not demonstrated unreasonable interference when they cannot show that construction and maintenance of a road easement has "unnecessarily injured" their use of the easement as a right-of-way. *Cf. Bruns v. Willems*, 172 N.W. 772, 772, 774-75 (Minn. 1919) (analyzing whether easement holder's use of the easement interfered with the grantor's rights).

As the party alleging a violation of the easement agreements, the Huelers have the burden to show unreasonable interference. The Dunkleys argue that this court should instruct the district court to grant summary judgment in their favor because the Huelers did not meet this burden and there is no record evidence that their proposed use of Pence Lane and the driveway to access the Walters Port Property would unreasonably interfere with the Huelers' use of the driveway to access 2715 Pence. This argument has merit.

To support their claim of unreasonable interference, the Huelers point to the prospect of increased traffic if the Dunkleys are permitted to use the driveway to access the Walters Port Property. And they contend that, when the Dunkleys began to modify the driveway, construction vehicles often blocked it, interfering with the Huelers' ability to enter and exit their property.

The Dunkleys maintain that this purported evidence does not defeat summary judgment because it recites conclusory allegations that lack record support. We agree. To

prevent a grantor's use of land over which an easement runs, the easement holder must not only show interference but that the interference is unreasonable. The summary-judgment record does not support a conclusion that the Dunkleys' use of the driveway to access one additional home will interfere with the Huelers' ability to access their home to any meaningful extent. Nor does the record convince us that further construction activities will unreasonably impact the Huelers' use of the driveway. Indeed, we previously rejected such an argument in a case with similar facts, holding: "Although an occasional inability for cars to pass each other on [a] common driveway and occasional blocking of the driveway by delivery and service trucks is certainly inconvenient, it is difficult to conclude that those harms constitute a great and irreparable injury justifying an injunction." *Athanasakoupolous v. Bogart*, No. A18-0045, 2018 WL 6729752, at *5 (Minn. App. Dec. 24, 2018), *review denied* (Minn. Mar. 19, 2019). While *Athanasakoupolous* is not precedential, its reasoning is persuasive. At most, an occasional increase in traffic on the driveway or blocking by construction vehicles may be a minor inconvenience. It does not rise to the level of unreasonable interference with a non-exclusive easement.

Because the undisputed evidence shows that the Dunkleys' proposed use of Pence Lane and the driveway will not unreasonably interfere with the Huelers' use of the easement, the Dunkleys are entitled to summary judgment. Accordingly, we reverse summary judgment in favor of the Huelers and remand for the district court to enter judgment in favor of the Dunkleys.

Reversed and remanded.