[Cite as *Ramunno v. Murphy*, 2017-Ohio-998.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

ROBERT L. RAMUNNO, II, ET AL.,	)	
	)	
PLAINTIFFS-APPELLEES,	)	
	)	CASE NO. 15 MA 0203
V.	)	
	)	OPINION
NEWTON V. MURPHY, ET AL.,	)	
PHYLLIS H. WILLISON,	)	
	)	
DEFENDANTS-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 2013 CV 555, 2013 CV 989
JUDGMENT:	Affirmed in part Reversed in part
APPEARANCES: For Plaintiffs-Appellees	Attorney Stuart Strasfeld Attorney Louis Alexander 100 East Federal Street, Suite 600 Youngstown, Ohio 44503-1893
For Defendant-Appellant	Attorney Richard Schwartz UAW-GM Legal Services Plan 1570 South Canfield-Niles Rd. Building B, Suite 101 Austintown, Ohio 44515

JUDGES:

Hon. Gene Donofrio
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: March 14, 2017

[Cite as *Ramunno v. Murphy*, 2017-Ohio-998.]
DONOFRIO, J.

{¶1} Defendant-appellant, Phyllis Willison, appeals from a Mahoning County Common Pleas Court judgment in favor of plaintiffs-appellees, Robert and Amanda Ramunno, granting the Ramunnos an easement for the shared use of a water well and a driveway located on Willison's property.

{¶2} The Ramunnos reside on a parcel of property on Western Reserve Road in Ellsworth (the Ramunno property). Willison resides on the adjacent property (the Willison property).

{¶3} The Ramunnos purchased their property from Willison's nephew and his wife, defendants Newton and Kyra Murphy, by deed dated June 28, 2012. The Murphys had acquired title to the Ramunno property by way of a quit-claim deed from Willison and her late husband, Delbert Willison, recorded March 16, 1994. Prior to the Murphys taking title to the Ramunno property in 1994, Newton Murphy had resided on the Ramunno property in a trailer since approximately October 1, 1979.

{¶4} Willison and her late husband took title to the Willison property by way of a deed from Clara Murphy, recorded on January 14, 1980. Clara Murphy, now deceased, was Newton Murphy's grandmother.

{¶5} Prior to February 15, 1994, the Ramunno property and the Willison property constituted a single parcel of land of approximately 9.8 acres, which Willison owned. By deed recorded February 15, 1994, this property was re-platted into three separate parcels of property. The Ramunno property was made into Lot Number 2. And the Willison property was made into Lots Number 1 and 3.

{¶6} This case involves two areas of contention between the parties

The Well

{¶7} A water well currently sits mostly on the Willison property but also partially on the Ramunno property (the Well). The Well was installed long before the re-plat. When the property was re-platted, the property lines were drawn to run through the Well. The new property lines were drawn by Willison's late husband. The Well currently provides water to both the Ramunno property and the Willison property.

{¶8} When Newton Murphy lived on what is now the Ramunno property, he

performed some of the maintenance and repairs on the Well. Willison never threatened to terminate the Murphys' access to the Well. Before the Murphys sold the Ramunno property to the Ramunnos, they disclosed that there was a shared water well. Newton Murphy represented to the Ramunnos that the owner of the Ramunno property would enjoy access to the Well.

{¶9} On July 27, 2012, Willison sent a letter to the Ramunnos threatening to disconnect their access to the Well if they did not dig their own well within 30 days. Willison did not follow through and the Ramunnos continued to use the Well. On March 25, 2013, Willison notified the Ramunnos that she intended to cut off their access to the Well on April 1, 2013.

The Driveway

{¶10} The Ramunnos' sole means of access to their property is by way of a shared gravel driveway (the Driveway) that begins at Western Reserve Road and crosses the Willison property to reach the Ramunno property and home. The Driveway was installed before the re-plat that divided what was once one large parcel of property into three separate parcels. The Ramunnos, and before them the Newtons, have used the Driveway to access the Ramunno property since approximately October 1, 1979. When Newton Murphy resided on the Ramunno property, he helped to maintain the Driveway and provided additional gravel for it. Willison never objected to Newton Murphy's use of the Driveway.

{¶11} On May 29, 2012, after the Ramunnos entered into a contract to purchase the Ramunno property but before closing on the sale, Newton Murphy and Willison agreed to a driveway easement (the Driveway Easement). Willison signed the Driveway Easement as the grantor and the easement was recorded. The Driveway Easement provided for Newton Murphy's shared use of the Driveway for ingress and egress to and from the Ramunno property from Western Reserve Road. The Driveway Easement was prepared at the insistence of the Ramunnos' lender before approving financing for their purchase of the Ramunno property.

{¶12} The Driveway Easement provides in part:

> Grantor hereby grants and conveys to Grantee, a limited reasonable time to share with Grantor the use of the said gravel driveway over Grantor's property. The parties acknowledge that the burdens and benefits of this easement shall run with the land and be binding upon all subsequent owners or occupiers of the real property the subject of this agreement.
>
> The parties agree that neither of the parties will unreasonably interfere with the other party's use and enjoyment of the driveway, with the exception the Grantor has the right to enforce speed limit laws, also loud noises such as motor cycles, go carts, etc. in driveway by houses.

{¶13} Sometime after the Ramunnos purchased the Ramunno property, Willison put up a gate on the side of the Driveway. She has threatened to lock the gate to prevent the Ramunnos from accessing the Driveway.

The Lawsuit

{¶14} The Ramunnos filed a complaint on April 11, 2013, asserting they had an easement allowing them to use the Well. They sought an injunction enjoining Willison from taking any action that would interfere with their use of the Well. Willison filed a counterclaim asserting the Ramunnos have been trespassing on the Driveway. She sought a permanent injunction enjoining the Ramunnos from using the Driveway and the Well. The Ramunnos then filed an amended complaint adding a claim that Willison violated the Driveway Easement and seeking an injunction enjoining Willison from interfering with their use of the Driveway.

{¶15} The Ramunnos also filed a complaint against the Murphys.[1] On the Ramunnos' motion, the trial court consolidated the two cases.

{¶16} Willison filed a motion for summary judgment on June 2, 2015. She asserted the Ramunnos had not met the elements to establish an easement for the

[1] Newton Murphy then filed a cross claim against First Title Escrow and Land Title Agency (First Title) and Remax Valley Real Estate asserting they were obligated to provide him a defense to the lawsuit by the Ramunnos. He also filed a cross claim against Kyra Murphy, who is now his ex-wife, for contribution and/or indemnification. Newton eventually dismissed the cross claim against Remax. And the trial court granted First Title's motion for summary judgment.

use of the Well or the Driveway.

{¶17} The Ramunnos filed a response in opposition to Willison's motion for summary judgment and a cross-motion for summary judgment. The Ramunnos asserted there were no genuine issues of material fact that they have an implied right-of-way easement for the use of the Well and the Driveway, that they have a prescriptive right-of-way easement for the use of the Well and the Driveway, and that Willison has violated the terms of the Driveway Easement.

{¶18} The trial court granted the Ramunnos' motion for summary judgment and denied Willison's motion for summary judgment.

{¶19} As to the Well, the court found the rights of the Ramunnos' predecessors in interest to use and enjoy the Well passed to the Ramunnos as part of the property. It further found that the Well was reasonably necessary to the Ramunnos' enjoyment of their property. And it found that Newton Murphy openly and notoriously used the Well in a manner adverse to Willison for all of his water needs from at least October 1, 1979, until June 28, 2012. Finally, it found the Ramunnos' and their predecessors' use of the Well has been open, notorious, consistent, and adverse to Willison's property rights for at least 21 years. Therefore, the court found (1) the Ramunnos have an implied right-of-way and easement for the use and enjoyment of the Well and (2) the Ramunnos have a prescriptive right-of-way and easement for the use and enjoyment of the Well.

{¶20} As to the Driveway, the court found the rights of the Ramunnos' predecessors in interest to use and enjoy the Driveway passed to the Ramunnos as part of the property. It also found the Driveway is reasonably necessary to the Ramunnos' use of their property. The court went on to find that Newton Murphy openly and notoriously and in a manner adverse to Willison, used the Driveway as his sole means of ingress and egress to and from the Ramunno property from at least October 1, 1979 until June 28, 2012. It found the Ramunnos' and their predecessors' use of the Driveway has been open, notorious, consistent, and adverse to Willison's property rights for at least 21 years. Additionally, the court found the Driveway Easement runs with the land and is a binding agreement on all

parties to share the use of the Driveway and not to interfere with the other parties' use of the Driveway. It also found the Driveway Easement has not expired. By building a gate on the Driveway and threatening to lock it, the court found, Willison breached the terms of the Driveway Easement. Therefore, the court found (1) the Ramunnos have a an implied right-of-way easement for the use and enjoyment of the Driveway, (2) the Ramunnos have a prescriptive right-of-way and easement for the use and enjoyment of the Driveway, and (3) Willison has violated the terms and the Driveway Easement by unreasonably interfering with the Ramunnos' use of the Driveway.

{¶21} Willison filed a timely notice of appeal on November 10, 2015.

{¶22} On April 13, 2016, on Willison's motion, the trial court entered a nunc pro tunc judgment stating that its October 13, 2015 judgment entry granting summary judgment to the Ramunnos on their claims against Willison is a final, appealable order and there is no just reason for delay.

{¶23} Willison now raises three assignments of error. The assignments of error all share the same standard of review for summary judgment cases.

{¶24} An appellate court reviews the granting of summary judgment de novo. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8. Thus, we shall apply the same test as the trial court in determining whether summary judgment was proper.

{¶25} A court may grant summary judgment only when (1) no genuine issue of material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence can only produce a finding that is contrary to the non-moving party. *Mercer v. Halmbacher*, 9th Dist. No. 27799, 2015-Ohio-4167, ¶ 8; Civ.R. 56(C). The initial burden is on the party moving for summary judgment to demonstrate the absence of a genuine issue of material fact as to the essential elements of the case with evidence of the type listed in Civ.R. 56(C). *Dresher v. Burt*, 75 Ohio St .3d 280, 292, 662 N.E.2d 264 (1996). If the moving party meets its burden, the burden shifts to the non-moving party to set forth specific facts to show that there is a genuine issue of material fact. *Id*.; Civ.R. 56(E). "Trial courts should

award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party." *Welco Industries, Inc. v. Applied Cos*., 67 Ohio St. 3d 344, 346, 1993-Ohio-191, 617 N.E.2d 1129.

{¶26} With this standard of review in mind, we turn now to Willison's assignments of error.

{¶27} Willison's first assignment of error states:

> THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE RAMUNNOS FINDING AN IMPLIED EASEMENT, AND FINDING A PRESCRIPTIVE EASEMENT FOR THE USE AND ENJOYMENT OF A SHARED DRIVEWAY AND FINDING THAT WILLISON VIOLATED THE TERMS OF A DRIVEWAY EASEMENT.

{¶28} Willison raises three separate issues under this assignment of error.

{¶29} First, Willison asserts the trial court misapplied the law dealing with easements and erred in finding that the Ramunnos had an implied easement. She acknowledges there is an express easement agreement in this case regarding the use of the Driveway. Therefore, Willison argues the trial court erred when it found:

> 80. Plaintiffs enjoy an implied right of way and easement to use and enjoy the shared driveway.
>
> 81. The shared driveway is reasonably necessary to Plaintiff's [sic] enjoyment of the Plaintiffs' Property.

(October 13, 2015 Judgment Entry).

{¶30} Willison contends there cannot be both an express easement and an implied easement. She asserts the Ramunnos were bound by the express easement, which limits the duration of the Driveway Easement. Therefore, she claims they cannot have an implied easement. Moreover, Willison argues, the Ramunnos do not have a reasonable necessity for using the Driveway because they can install their own driveway that would lead out to Western Reserve Road.

{¶31} The trial court found that the Ramunnos have an implied right-of-way easement for the use of the Driveway. The trial court also found the Ramunnos have a prescriptive easement for the use of the Driveway. And the court found that the parties entered into a Driveway Easement.

{¶32} An implied easement can be one of two types: an easement implied by prior use or an easement implied by necessity. *Kiko v. King Mountain, L.L.C.*, 7th Dist. No. 14 MO 9, 2015-Ohio-2688, ¶ 15. An easement implied by prior use requires four elements: (1) a severance of the unity of ownership in an estate; (2) before the separation takes place, the use giving rise to the easement must have been so long continued and obvious or manifest as to show it was meant to be permanent; (3) the easement is reasonably necessary to the beneficial enjoyment of the land granted or retained; and (4) the servitude is continuous as distinguished from temporary or occasional use. *Yowonski v. MDB Constr. Co.*, 7th Dist. No. 09 BE 10, 2010-Ohio-4185, ¶ 19, citing *Ciski v. Wentworth*, 122 Ohio St. 487, 172 N.E. 276 (1930), at the syllabus. An easement implied by necessity, however, requires proof that there is no other means of ingress and egress to and from the property involved, even though such other way is less convenient and would necessitate the expenditure of an appreciable amount of labor and money to render it usable. *Kiko*, at ¶ 15, citing *Trattar v. Rausch*, 154 Ohio St. 286, 95 N.E.2d 685 (1950), paragraph five of the syllabus.

{¶33} In this case, the trial court found an easement implied by prior use.

{¶34} The trial court also found a prescriptive easement. A prescriptive easement requires that the use of the disputed property was: (1) open; (2) notorious; (3) adverse; and (4) continuous for twenty-one years. *Smith v. Sebastiani*, 7th Dist. No. 05 MA 57, 2006-Ohio-2189, ¶ 9.

{¶35} Finally, the court found that the parties entered into the Driveway Easement. The Driveway Easement is an express easement.

{¶36} The trial court's findings are contradictory to each other given that:

> [t]he basis of the creation of an easement is a grant or reservation,

> either express, implied or presumed. If it is an express grant, its extent and limitation is ascertained by the language of the grant and the circumstances surrounding the transaction; if it is an implied grant, it is limited to that which is found to be clearly intended or fairly presumed to be intended.

Henson v. Stine, 74 Ohio App. 221, 57 N.E.2d 785 (9th Dist. 1943).

{¶37} In addressing an argument that a trial court could not find both an implied easement and an express easement, this court stated:

> The trial court did not find an express easement existed, here. Furthermore, *if the trial court had declared both an express and an implied easement, this would have amounted to an error, since they are mutually exclusive*. "[B]ecause easements of necessity are implied by law to provide a right of way over land which could have been effectuated by an express grant but was not, one may not simultaneously have an easement over another's land both by express grant and an easement implied of necessity."

(Emphasis added); *Yowonski v. MDB Constr. Co*., 7th Dist. No. 09 BE 10, 2010-Ohio-4185, ¶ 21, quoting *Tiller v. Hinton*, 19 Ohio St.3d 66, 69, 482 N.E.2d 946 (1985). See also *Brenneman v. Kurtz*, 5th Dist. No. CA-7911, 1990 WL 15745, *3 (Feb. 12, 1990) ("Because easements of necessity are implied in law to provide a right-of-way over land which could have been accomplished by express grant but was not so accomplished, one cannot simultaneously have both an express grant and an implied grant.")

{¶38} Likewise, a use is not adverse, and therefore a prescriptive easement cannot exist, if the landowner gave permission to use the property in question. *Gulas v. Tirone*, 184 Ohio App.3d 143, 2009-Ohio-5076, 919 N.E.2d 833, ¶ 25 (7th Dist.). The use of an asserted prescriptive easement is "adverse" when it is without the property owner's permission. *Harris v. Dayton Power & Light Co*., 2d Dist. No.

26796, 2016-Ohio-517, ¶ 20.

{¶39} The facts are undisputed that the parties (or their predecessors in interest) entered into the Driveway Easement. Thus, the trial court's findings that the Ramunnos have an implied easement and a prescriptive easement are contrary to its finding that the parties entered into the Driveway Easement. As stated by this court previously, express easements and implied easements are mutually exclusive. And a party cannot have a prescriptive easement, which requires an adverse use of the property, when the property owner has expressly granted permission to use her property.

{¶40} Therefore, the trial court's judgment was in error insofar as it found an implied easement and a prescriptive easement for the use of the Driveway.

{¶41} Willison next takes issue with four of the trial court's conclusions of law. The trial court found:

> 90. The language of the Driveway Easement does not limit the duration of the easement rights therein conveyed.
>
> 91. The Driveway Easement Agreement has not expired.
>
> 92. The plain language of the Driveway Easement Agreement reveals the parties' intent to provide a lasting means of access to both current and future owners of both Plaintiffs' Property and Defendant's Property.
>
> 93. The context and circumstances surrounding the execution of the Driveway Easement Agreement demonstrates that the parties intended for the easement to provide the Plaintiffs and all future owners of the Plaintiffs' Property with access over and across Defendant's Property, by way of the shared driveway, for the purposes of ingress and egress to and from Western Reserve Road.

(October 13, 2015 Judgment Entry).

{¶42} Willison contends these conclusions of law contradict the evidence. She points out that the Driveway Easement was for "a limited reasonable time."

While she agrees that "a limited reasonable time" may be subject to interpretation, Willison argues the trial court's conclusions of law conclude that the Driveway Easement will never expire. She asserts that even the Ramunnos acknowledged that they would eventually have to install their own driveway.

{¶43} As to its term, the Driveway Easement provides:

> 1. Grantor hereby grants and conveys to Grantee, a limited reasonable time to share with Grantor the use of the said gravel driveway over Grantor's property. The parties acknowledge that the burdens and benefits of this easement shall run with the land and be binding upon all subsequent owners or occupiers of the real property that is the subject of this agreement.

{¶44} Nothing in the record disputes the trial court's findings regarding the Driveway Easement.

{¶45} When ascertaining the intent of the parties to an easement, a court is to review the specific wording of the document itself. *Beaumont v. FirstEnergy Corp*., 11th Dist. No. 2004-G-2573, 2004-Ohio-5295, ¶ 19. If the parties' intent is clear from the document's wording, the court is not to consider any parole evidence. *Id*. Only if the document's wording is not plain and unambiguous, may a court look beyond the four corners of the document to determine the intent of the parties. *Id.*

{¶46} In this case, pursuant to the Driveway Easement, it shall be in effect for a "limited reasonable time." Nothing in the Driveway Easement defines a "limited reasonable time." But the Driveway Easement does bind "all subsequent owners or occupiers," which suggests that a "limited reasonable time" extends for some time into the future.

{¶47} Amanda Ramunno stated in her deposition that she believed the Driveway Easement would continue throughout their ownership of their home. (2015 A. Ramunno Dep. 7, 24). She also stated in a previous deposition that she thought the Driveway Easement would continue until they decided to put in their own driveway. (2014 A. Ramunno Dep. 24). Robert Ramunno simply stated that he

believed the Driveway was a shared driveway. (2015 R. Ramunno Dep. 8). Newton Murphy stated that when he entered into the Driveway Easement with Willison, he understood it to be permanent. (Murphy Dep. 22-23).

{¶48} Tommy Layton, Willison's son-in-law and power of attorney, stated that Willison has not done anything to interfere with the Ramunnos' use of the Driveway. (Layton Dep. 25). He stated that he installed a gate for the Driveway but they had never shut the gate. (Layton Dep. 25-26).

{¶49} The trial court found that the Driveway Easement has not expired. Implicit in this finding is that it can expire at some time in the future. Thus, the trial court did not find the Driveway Easement to be permanent as Willison suggests. Moreover, although Willison has erected a gate on the Driveway, she has not blocked the Ramunnos' access to the Driveway. So she has not interfered with their use of the Driveway.

{¶50} Willison next argues, assuming arguendo that the express Driveway Easement does not control in this case, that the Ramunnos did not meet the requirements for establishing an implied easement. She also argues the trial court's finding that the Ramunnos have a "prescriptive right-of-way and easement for the enjoyment and use of the shared driveway" was against the manifest weight of the evidence

{¶51} As stated above, however, the express Driveway Easement governs the use of the Driveway. Thus, these arguments are moot.

{¶52} Accordingly, Willison's first assignment of error has merit and is sustained in part because the trial court erred in finding an implied easement and a prescriptive easement. Willison's first assignment of error is without merit and is overruled in part because the trial court was correct in finding that the express easement governs the use of the Driveway.

{¶53} Willison's second assignment of error states:

> THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT FINDING THAT THE RAMUNNOS HAVE AN IMPLIED

AND PRESCRIPTIVE EASEMENT FOR THE USE AND ENJOYMENT OF A SHARED WATER WELL.

{¶54} Here Willison argues there was no evidence that Newton Murphy's use of the Well was adverse during his occupancy from 1994 to 2012. She claims the evidence was that Murphy used the Well with her permission. Therefore, Willison argues the trial court erred in finding a prescriptive easement. She cites to Layton's affidavit, where he averred that Willison granted Newton permission to use the Well. (Layton Aff.). She also cites to Murphy's deposition testimony that there were never any disagreements regarding the Well and its maintenance. (Murphy Dep. 42-43).

{¶55} Additionally, Willison argues the Ramunnos' use of the Well is not reasonably necessary and therefore, the court should not have found they have an implied easement. She asserts the Ramunnos can dig their own well on their property.

{¶56} Finally, Willison argues that even if the Ramunnos are correct that the Well sits partially on their property, the Ramunnos' survey only indicates that the Well sits less than one foot onto the Ramunno property. She cites to Ohio Admin. Code 3701-28-07, which provides that "where two or more dwellings are serviced by a private water system, the entire private water system shall be owned, operated and maintained by one person."

{¶57} As to the prescriptive easement, the trial court erred. The evidence is uncontroverted that Willison gave the Murphys express permission to use the Well. In his affidavit, Tommy Layton, Willison's power-of-attorney, averred that Willison granted Newton and Kyra Murphy permission to use the Well from 1994 to 2012. (Layton Aff. ¶ 4). Moreover, Newton Murphy stated in his deposition that his water was always supplied by the Well. (Murphy Dep. 42). Murphy stated that he and Willison jointly maintained the Well and they never had any disagreements regarding the Well. (Murphy Dep. 43).

{¶58} In order to have a prescriptive easement the use of the property must be (1) open, (2) notorious, (3) adverse to the neighbor's property rights, (4)

continuous, and (5) at least 21 years in duration. *Gulas v. Tirone*, 184 Ohio App.3d 143, 2009-Ohio-5076, 919 N.E.2d 833, ¶ 23 (7th Dist.), citing *J.F. Gioia, Inc. v. Cardinal Am. Corp.*, 23 Ohio App.3d 33, 37, 491 N.E.2d 325 (8th Dist. 1985).

{¶59} "A permissive use can never ripen into a prescriptive easement." *Kienzle v. Myers*, 167 Ohio App.3d 78, 2006-Ohio-2765, 853 N.E.2d 1203, ¶ 17 (6th Dist.), citing *Schmiehausen v. Zimmerman*, 6th Dist. No. OT-03-027, 2004-Ohio-3148, ¶ 20.

{¶60} Because the evidence is uncontroverted that Willison granted the Murphys permission to use the Well, a prescriptive easement does not exist here for the use of the Well.

{¶61} As to the implied easement, the trial court's decision is correct. An easement implied by prior use requires: (1) a severance of the unity of ownership in an estate; (2) before the separation takes place, the use giving rise to the easement must have been so long continued and obvious or manifest as to show it was meant to be permanent; (3) the easement is reasonably necessary to the beneficial enjoyment of the land granted or retained; and (4) the servitude is continuous as distinguished from temporary or occasional use. *Yowonski v. MDB Constr. Co*., 7th Dist. No. 09 BE 10, 2010-Ohio-4185, ¶ 19, citing *Ciski v. Wentworth*, 122 Ohio St. 487, 172 N.E. 276 (1930), at the syllabus.

{¶62} The evidence was uncontroverted as to the first, second, and fourth elements.

{¶63} As to the first element, neither party disputes that until February 15, 1994, the day that the re-plat was recorded, the Ramunno property and the Willison property comprised a single parcel of land.

{¶64} As to the second element, neither party disputes that Newton Murphy used the Well for many years before the separation of the estate. Murphy lived on the Ramunno property since 1979, when he had a trailer there. (Murphy Dep. 12, 14-15). He took ownership of the property and built the house that now sits on the property in 1996 or 1997. (Murphy Dep. 7, 14). Murphy used the Well the entire time he lived at the property. (Murphy Dep. 42-44).

{¶65} As to the third element, the evidence was clear that the Well has always been a shared well between the two properties. Tommy Layton testified that Willison's husband, Delbert Willison, installed the Well with the intent to service both parcels of land after the re-plat. (Layton Dep. 16). Layton also testified that the Well pit sits partially on the Ramunno property. (Layton Dep. 16, 18). Throughout the life of the Well, the electric bill for the Well pump had gone back and forth between Murphy and Willison. (Murphy Dep. 38-39, 48-49). And when Murphy sold the property to the Ramunnos, the electricity for the Well pump was metered to and billed to the Ramunno property. (Murphy Dep. 48-49). Thus, the Well has always been reasonably necessary to the beneficial enjoyment of the Ramunno property.

{¶66} Finally, as to the fourth element, it is undisputed that the Murphys continuously used the Well for all of their water needs while they occupied the Ramunno property until 2012. (Murphy Dep. 42-43). And the Ramunnos have continued to use the Well since that time.

{¶67} In sum, the trial court did not err in finding that the Ramunnos have an easement implied by prior use for the Well.

{¶68} Accordingly, Willison's second assignment of error has merit and is sustained as to the prescriptive easement. Willison's second assignment of error is without merit and is overruled as to the implied easement.

{¶69} Willison's third assignment of error states:

> THE TRIAL COURT ERROR [sic] IN DENYING WILLISON'S MOTION FOR SUMMARY JUDGMENT.

{¶70} In her final assignment of error, Willison asserts the trial court should have granted her motion for summary judgment and dismissed the complaint. She simply argues the Ramunnos' claims are not supported by the facts and are contrary to law.

{¶71} As addressed in the discussion of Willison's first and second assignments of error, some of the Ramunnos' claims have merit while others do not. Willison was entitled to judgment on the Ramunnos' claims for an implied easement

for the use of the Driveway, a prescriptive easement for the use of the Driveway, and a prescriptive easement for the use of the Well. But she was not entitled to judgment on the Ramunnos' claims for an express easement for the use of the Driveway and for an implied easement for the use of the Well.

{¶72} Accordingly, Willison's third assignment of error is without merit and is overruled.

{¶73} For the reasons stated above, the trial court's judgment is hereby affirmed as to its finding of an express easement in favor of the Ramunnos for the use of the Driveway. The trial court's judgment is also affirmed as to its finding of an implied easement in favor of the Ramunnos for the use of the Well. The trial court's judgment is hereby reversed as to its finding of an implied easement for the use of the Driveway, a prescriptive easement for the use of the Driveway, and a prescriptive easement for the use of the Well.

DeGenaro, J., concurs.

Robb, P.J., concurs.