

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

MARSHA Y. CAMUS and DENNIS C. DARRIN,	)	
	)	No. 64907-8-I
	)	
Respondents and	)	DIVISION ONE
Cross Appellants,	)	
	)	UNPUBLISHED OPINION
v.	)	
	)	
ROMAINE C. CULPEPPER, ARDITH L. CHRISTENSEN, and DELORES J. DARRIN	)	
	)	
	)	
Appellants and	)	
Cross Respondents,	)	FILED: August 30, 2010
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Appelwick, J. — The parties appeal the trial court’s order regarding an easement. Five siblings each own a portion of their deceased parents’ rural property. The parties by deed created an easement for ingress, egress, and utilities along a preexisting farm road. Culpepper contests the trial court’s order removing gates across the road and requiring fencing to contain cattle. Culpepper also alleges that the trial court erred in granting an injunction and in requiring that its order be recorded to run with the land. Finally, Culpepper argues that the trial court expanded the scope of the easement without just compensation. Camus argues that the trial court erred in failing to award them damages and other fees. All parties contest the trial court’s appointment of a

third party to direct maintenance. We affirm.

## FACTS

The property in question is rural land located in Grays Harbor County, Washington. Russell and Muriel Darrin previously owned the property as one piece of land and used it in part as a farm. The property is now divided into five parcels owned by five siblings. A high level of animosity exists between two factions, with Romaine Culpepper, Ardith Christensen, and Delores Darrin (collectively, "Culpepper")<sup>1</sup> on one side and Marsha Camus and Dennis Darrin (collectively, "Camus") on the other. The parties are unable to communicate.

All five parcels are accessed by a gravel and dirt road that existed before the division of the property. Each deed specifies an easement tracking the existing road for the purpose of "ingress, egress, and utilities."<sup>2</sup> Each landowner holds an interest in the easement that corresponds with the span from the county road to the far border of each respective party's property. Only Ardith lives on any of the properties in question and uses the easement to access her home.

Several issues have arisen regarding the use of the easement, specifically regarding the use of four gates across the easement road, the presence of cattle on the easement road, and maintenance of the easement road. Camus filed suit for injunctive relief and damages against Romaine and Ardith, and Delores intervened as a defendant. Specifically, Camus requested

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<sup>1</sup> Because some parties have the same last name, first names will be used when referring to individuals.

<sup>2</sup> The deeds each denominate a 30 foot "permanent easement, for the purpose of ingress, egress, and utilities" over the existing gravel and dirt road.

an injunction preventing Romaine and Ardith from interfering with the use of the easement, including interfering with maintenance, allowing livestock to enter the easement, blocking the easement with gates, and preventing use of the easement by guests. Also, Camus requested damages for waste caused by damage to the road by cattle and failure to maintain the road, nuisance, and emotional distress. Culpepper filed counterclaims alleging emotional distress, harassment, waste, trespass, and timber trespass and requesting ejectment of Camus from use of the easement. All parties requested attorney fees.

Pretrial, the parties' behavior regarding the property prompted the trial court to enter a temporary restraining order. After an eight day bench trial spread across several months, the court directed any party wishing to raise animals to erect a fence along the easement to prevent animals from entering the easement. The court appointed Don Hurd as a third party decisionmaker to direct maintenance of the roadway and determine allocation of any expenses. Although the trial court ruled orally that all gates except one gate at the entrance of the easement would have to be permanently removed that ruling was not included in the findings of fact and conclusions of law. All parties sought reconsideration, and the court denied the motions without explanation.

Culpepper appeals. Camus cross-appeals. The trial court granted a stay preventing permanent fencing and removal of the gates during this appeal.

## DISCUSSION

### I. Interpretation of the Easement and Injunctive Relief

Culpepper contends the trial court abused its discretion in fashioning

injunctive relief. The trial court enjoined interference with use of the easement by use of gates, obstruction by livestock or failure to maintain vegetation. To effectuate the injunction the court ordered the following: the erection of lateral fencing in any area necessary to prevent farm animals from entering the easement; the removal of all interior gates across the easement; and maintenance of the road as directed by Don Hurd, a third party.

A suit for an injunction is an equitable proceeding addressed to the trial court's sound discretion, which it exercises on a case-by-case basis. Standing Rock Homeowners Ass'n v. Misich, 106 Wn. App. 231, 240, 23 P.3d 520 (2001). This court reviews the decision to grant an injunction, and its terms, for abuse of discretion. Kucera v. Dep't of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000). We give great deference to the trial court, interfering in its decision only where it bases its ruling on unreasonable or untenable grounds. Lowe v. Double L Props., Inc., 105 Wn. App. 888, 893, 20 P.3d 500 (2001).

Where the findings of fact and conclusions of law are challenged, we limit our review to determining whether substantial evidence supports the findings and whether those findings, in turn, support the legal conclusions.<sup>3</sup> Panorama

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<sup>3</sup> A conclusion of law mislabeled as a finding will be treated as a conclusion. Moulden & Sons, Inc. v. Osaka Landscaping & Nursery, Inc., 21 Wn. App. 194, 197, 584 P.2d 968 (1978). Any error by the trial court in simply mislabeling is harmless. See, e.g., Id. A finding of fact is a determination that concerns whether evidence shows that something occurred or existed. Inland Foundry Co. v. Dep't of Labor & Indus., 106 Wn. App. 333, 340, 24 P.3d 424 (2001). A conclusion of law is a determination made by a process of legal reasoning from facts in evidence. Id.

Findings of fact nos. 21, 26, 27, 28, and 29 are conclusions of law. The first sentence of finding of fact no. 13, "Vegetation, including briars, bushes, and trees have increasingly grown into and encroached upon the easement road

Vill. Homeowners Ass'n v. Golden Rule Roofing, Inc., 102 Wn. App. 422, 425, 10 P.3d 417 (2000). Substantial evidence exists where there is a sufficient quantity of evidence to persuade a fair-minded, rational person of the finding's truth. Id. Any findings of fact not assigned error are verities on appeal.<sup>4</sup> Green v. Lupo, 32 Wn. App. 318, 322–23, 647 P.2d 51 (1982) (construing easement grant).

The scope of an easement is determined by the deed's language. City of Seattle v. Nazareus, 60 Wn.2d 657, 665, 374 P.2d 1014 (1962). In construing the deed's language about the scope, the court looks at the intent of the parties at the time of the deed's creation. Id. The intent of the original parties to an easement is determined from the deed as a whole. Zobrist v. Culp, 95 Wn.2d 556, 560, 627 P.2d 1308 (1981). If the plain language is unambiguous, extrinsic evidence of intent will not be considered. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). If the language of the easement is ambiguous or silent, the rules of construction call for examination of the situation of the property, the parties, and surrounding circumstances. Rupert v. Gunter, 31 Wn. App. 27, 31, 640 P.2d 36 (1982). The interpretation of an easement is a mixed question of law and fact: the original parties' intent is a question of fact and the legal consequence of that intent is a question of law. Sunnyside, 149 Wn.2d at 880; Veach v. Culp, 92 Wn.2d 570, 573, 599 P.2d 526

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over the years," is a finding of fact. Otherwise, that challenged finding is a conclusion of law.

<sup>4</sup> Camus argues that Culpepper's assignment of error relating to the findings of fact and the conclusions of law regarding the gates is vague. But, Culpepper's assignments of error properly include reference to each finding by number as required by RAP 10.3(g). Although not precise, this is sufficient for review.

(1979).

A. Fences and Cattle

Culpepper first contests the trial court order relating to fencing and cattle. The court required the erection of lateral fencing to prevent farm animals from entering the road. There are presently some fences along portions of the fields that abut the easement road. Natural barriers, such as an embankment and a drop off also prevent cattle access to the road in some places. But, cattle are able to meander onto the easement.

Culpepper argues that the fencing obligation creates a greater burden on the servient estates than originally contemplated. They argue that the trial court's equitable powers with respect to the injunction and its terms do not extend to telling them how to use their property as long as their use of the property is not infringing on the use of the easement. McInnes v. Kennell, 47 Wn.2d 29, 38, 286 P.2d 713 (1955). We agree.

But, substantial evidence supports the trial court's finding that allowing the livestock to have unrestricted access to the easement unreasonably interfered with Camus's use of the easement. Multiple witnesses testified that they had been hindered in their progress along the road by cattle. Witnesses stated they had to shoo away the cows or wait for long periods of time until the cows vacated the road. Witnesses also testified that the cows showed aggression to individuals using the road. Jessica Camus, Marsha's daughter, testified that a cow once chased her and caused damage to her vehicle. Dennis testified that he had once been attacked by a cow. Also, the excrement left by

the cattle on the road is a hazard for motorcycle users. Finally, the court reasoned that having an easement road littered with livestock would impact the merchantability of the parcels in the future. The trial court concluded that although cattle had been permitted on the road when the property was owned by one landowner, now that individual land owners used the road to access their properties, unfettered access to the road by the cattle was no longer appropriate. We hold substantial evidence supports the trial court's findings that in turn support the conclusion that cattle on the road unreasonably interfered with Camus's use of the easement.

A servient owner may not unreasonably interfere with the dominant owner's use of an easement.<sup>5</sup> Rupert, 31 Wn. App. at 31. Because the livestock on the road unreasonably interfered with Camus's use of the easement, the trial court did not abuse its discretion in ordering fencing to contain livestock.<sup>6</sup>

### B. Gates

Culpepper argues that the court erred when ordering the removal of the interior gates.<sup>7</sup> The deeds are silent regarding the use of gates on the

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<sup>5</sup> A dominant estate benefits from the easement. See M.K.K.I., Inc. v. Krueger, 135 Wn. App. 647, 655, 145 P.3d 411 (2006), review denied, 161 Wn.2d 1012, 166 P.3d 1217 (2007). A servient estate is burdened by the easement. Id.

<sup>6</sup> The court ordered that the parties benefitting from the fence share in the cost of the fence as an equitable remedy. In doing so it referred to RCW 16.60.030 and .040. These statutes do not require the parties to share the cost of fencing. The plain language of the statute applies only to enclosed land, meaning adjoining land enclosed by one fence without a center partition. RCW 16.60.030; .040. The court's reference to the statute as recognizing the sharing of costs in a comparable setting was not error.

<sup>7</sup> Although it ordered the parties to remove the interior gates at the time of the oral ruling, the trial court did not make a written conclusion. The court did enter the written finding that "[t]he road should be kept open for all reasonable

easement. The trial court must therefore examine the situation of the property, the parties, and surrounding circumstances to determine the original intent of the parties. Rupert, 31 Wn. App. at 31.

The previous landowner built the easement road in the 1970s. Before the creation of the easement in 1998, four gates were on the road. Before their deaths, the parties' parents used the property as a dairy farm and raised cattle on the land. When the parties created the easement, the adjacent land was likely still used for cattle. The first and second gates were used, if at all, to prevent trespassers. Those gates were commonly left open. The third and fourth gates were used to contain the farm's livestock. Those gates currently must be closed to restrain cattle. The gates are all tube gates or steel gates except for the fourth gate, which consists of barbed wire and wooden slats which need to be lifted and coiled to open. All of the parties agree that a gate is necessary to discourage access by trespassers. The record does not establish whether the parties understood one or more of them planned to run livestock on their individual parcel, which would require gates. The absence of language in the easement restricting the use of gates makes it reasonable to infer that the parties did not anticipate that gates would interfere with ingress, egress, or utilities.

But, that silence does not support an inference that the parties

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purposes.” Both parties understood the order to include the removal of gates and acknowledge that the failure to explicitly include the order in the findings of fact and conclusions of law was an oversight. We will proceed as if the written order included removal of the gates and not require a remand for correction. But, we do not preclude the parties from seeking such an amendment.



contemplated livestock roaming the easement or the necessity of gates to contain them. We must determine whether the trial court abused its discretion in ordering the removal of the interior gates. Kucera, 140 Wn.2d at 209. In order to do so, we evaluate whether substantial evidence supports the challenged, findings of fact, and the supported findings together with undisputed findings support the court's conclusions. Panorama, 102 Wn. App. at 425.

First, the court found that the plaintiffs requested the removal of the gates and offered to share the cost of constructing fences as a substitute.<sup>8</sup> The request for the removal of the gates is evident in the complaint. The plaintiffs clearly offered to share in the cost of constructing the fence. This finding of fact is supported by substantial evidence.

Next, the trial court found that closing only the gate nearest the county road would be sufficient to prevent trespassers. That finding of fact is supported by substantial evidence. Although the first gate has generally been left open, both sides testified that closed gates would prevent trespassers.<sup>9</sup> No party claims that once that gate is closed it will be less effective at restraining trespassers than the other gates. Also, the court permitted the parties to put up additional gates on their own property to prevent trespassers or for their own

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<sup>8</sup> The trial court found that the four existing gates discouraged access by uninvited users and contained livestock. Culpepper assigns error to this finding of fact, but they allege the same factual information in their briefing. This assignment of error is abandoned by concession.

<sup>9</sup> Romaine testified that the front gate is only used to prevent trespassers, such as fisherman, from using the easement to access the river during certain fishing seasons and holiday weekends.

purposes.<sup>1</sup>

Culpepper contends that Camus concedes that additional gates are needed to prevent trespassing, as they erected a new rope gate past the fourth gate with a sign that says “no trespass.” But, the location of this gate suggests that it may be intended to prevent family members, rather than strangers, from entering the property.<sup>11</sup> The relevant findings of fact are supported by substantial evidence.

The owner of a property subject to an easement may maintain gates over the easement if the servient owner is being subjected to a greater burden than that originally contemplated by the easement. Rupert, 31 Wn. App. at 31. Such gates must not unreasonably interfere with the dominant estate’s right to use the easement within its scope. Standing Rock, 106 Wn. App. at 241. In Standing Rock, the court found that unlocked gates constituted reasonable burdens on the dominant owner where the gates were necessary to control increased public use of the easement road. Id. Camus alleges no burden of increased public use as justification for the use of gates. The gate nearest the county road and gates at the entrances to individual driveways would discourage trespassers. Any non-trespasser traffic is attributable to the parties to the easement. This burden was contemplated by the easement.

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<sup>1</sup> In fact, Ardith testified that she prevents trespassers from entering her property with a gate across her own driveway.

<sup>11</sup> Some confusion existed among the parties at the time the easement was created. Some parties believe they had the right to use the entire easement road. In fact, the deeds grant each party an easement only to the end of his or her respective parcel. We speculate that this confusion may have led to the erection of the new gate.

The trial court ordered that any party who wishes to have livestock must erect appropriate fencing to keep the livestock off of the easement. Once the animals are contained by fences, the gates on the easement are no longer necessary. An individual can use gates on his or her own property to restrict the movement of cattle and to shift them from field to field. Also, the court authorized the use of the easement to move cattle from one fenced area to another. With these measures in place, the only remaining purpose of the gates is to impede access of people using the road.

We note that the trial court did not expressly conclude that the gates unreasonably interfered with the dominant estate's right to use the easement within its scope. However, the conclusion was implicit in the decision to order removal of the gates. In other contexts, merely opening and closing four gates while traversing a road may not constitute unreasonable interference. But, when balanced against the fact that the gates will no longer serve a containment purpose after the livestock is contained away from the road, allowing the gates to remain is unreasonable in this context. We hold that the trial court's findings of fact on this issue are supported by substantial evidence, and support the implicit conclusion that the gates unreasonably interfered with ingress and egress. The trial court did not abuse its discretion in ordering the removal of the gates.

### C. Maintenance

Both Culpepper and Camus challenge the trial court's orders regarding maintenance of the road. Culpepper argues that Camus failed to show that lack

of maintenance prevented them from accessing their properties.

Each party asserts an absolute right to maintain the easement for their use. However, the case law cited does not support an exclusive right to maintain the easement for either the dominant or servient estate owners. Generally, the duty to maintain an easement is on the owner of the dominant estate. See generally, D.E. Evins, Annotation, Right of Servient Owner to Maintain, Improve, or Repair Easement of Way at Expense of Dominant Owner, 20 A.L.R. 3d 1026 (1968); 25 Am. Jur. 2d Easements and Licenses § 86 (2004). In Colwell v. Etzell, 119 Wn. App. 432, 440, 81 P.3d 895 (2003), the court permitted the owner of the servient estate to maintain the road on his land in a reasonable fashion for his protection, because that maintenance was consistent with the use of the easement. But, nothing in that case nor any other cited by the parties prevents a court sitting in equity from imposing necessary conditions on the right to maintain an easement, where such conditions are not an abuse of discretion.<sup>12</sup> The cases cited by Camus are irrelevant. In both cases, the courts concluded that the alleged easements did not exist. Dreger v. Sullivan, 46 Wn.2d 36, 40, 278 P.2d 647 (1955); State ex rel. Carlson v. Super. Court for Kitsap County, 107 Wash. 228, 238, 181 P. 689 (1919). The trial court is not prevented from exercising its equitable powers to fashion an appropriate remedy

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<sup>12</sup> Culpepper cites to Lowe for the proposition that it was an abuse of discretion to impose a burden on parties by requiring conditions on maintenance. In Lowe, the trial court conditioned the party's ability to maintain their easement upon permission by the other landowner. 105 Wn. App. at 895. The court held that the trial court had abused its discretion by interfering with a previous maintenance order that was res judicata. Id. at 896. Lowe is irrelevant here.

in regard to maintenance.

The following unchallenged findings of fact support the trial court's conclusion regarding maintenance. The parties were unable to reach an agreement regarding maintenance, as they are not on speaking terms. Vegetation, including briars, bushes, and trees has increasingly grown into and encroached upon the easement road over the years. Both Dennis and Ardith attempted to perform various maintenance services without seeking permission of the other landowners. Marsha did not hold a gathering on her property during the summer of 2006, because she believed the vegetation encroaching on the easement road prevented large recreational vehicles from traversing the road without damage. Meanwhile, the overgrowth has limited the type of vehicle that can traverse the road.

Culpepper assigned error to the court's conclusion that the road should be kept open for all reasonable purposes. The trial court concluded that the road should be maintained to an extent which would allow for logging, recreational vehicles, and other uses the parties may seek to enjoy.<sup>13</sup> Culpepper argues that the scope of the easement was limited to its historical use as a "fair weather' farm road," so requiring maintenance to allow Camus's use for recreational vehicles and logging trucks unreasonably expands the scope of the easement and unfairly burdens the servient estates.

The evidence does not support the limited interpretation of the easement

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<sup>13</sup> Although the trial court termed this a finding of fact, it is actually a conclusion of law. Inland Foundry Co., 106 Wn. App. at 340.

that Culpepper proposes. Testimony showed that the road was traditionally used to log and to harvest hay. But, the historical use of the road before the easement existed does not necessarily indicate the intent of the parties on this issue. The purpose of the road adapted when the parties divided the property into parcels to serve multiple owners. The plain language of the easement is very broad, allowing for ingress, egress, and utilities. The fact that the parties specified that the easement could be used for utilities obviously contemplates a change from the original purpose of the road. Also, the express language creating an easement 30 feet wide, despite the actual size of the road, indicates that the existing use did not determine the scope of the easement. This leaves the parties reasonably free to use the easement in the manner allowing all parties to enjoy full use of their respective parcels. We hold that the trial court did not err in refusing to interpret the easement language in the narrow manner proposed by Culpepper.

Next, both parties contend that the trial court erred in granting Hurd the right to manage the maintenance of the easement. Given the factors at play in this case, specifically the parties' inability to agree on maintenance issues and their various degrees of interest in the easement, the court reasonably concluded that a third party must supervise maintenance. The undisputed evidence showed that Culpepper obstructed Camus's attempts to maintain the easement road. There is also evidence to support Culpepper's claims that Camus's attempts at maintenance were disruptive and destructive to their property. In view of this evidence, the trial court did not abuse its discretion in

ordering that Hurd act as a third party intermediary to direct the erection of fences and maintenance of the easement. In light of the total situation, we hold that the trial court did not abuse its discretion in its maintenance order.

Finally, in addressing all of the issues raised, the court gave due consideration to family dysfunction. The parties could not address these issues without court intervention. The court noted that the behavior of the parties indicated conflicts would continue. Therefore, the court was required to design an order requiring minimal future interaction between the parties. Also, the court was cognizant that an easement road free of restraint would be necessary to the merchantability of the dominant estates, should the owners choose to sell them. The court therefore reasonably ordered that the road should be open for use by the dominant estates, free from gates, animals, and plants and properly maintained. We hold that the trial court's grant of injunctive relief was not an abuse of discretion.<sup>14</sup>

## II. Actual and Substantial Injury

Culpepper alleges that granting the injunction with regard to maintenance was improper because Camus failed to prove substantial injury by the alleged lack of maintenance. One who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury

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<sup>14</sup> The trial court displayed a commendable use of judgment and discretion in this matter.

to him. Port of Seattle v. Int'l Longshoremen's & Warehousemen's Union, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958).

Culpepper unreasonably interfered with Camus's ability to use the easement. This is sufficient to establish substantial injury. No finding of economic damages is required. Culpepper argues that inability to bring in guests and recreational vehicles cannot constitute substantial injury, because such use was not contemplated when the easement was created. As explained above, neither the plain language of the easement nor the evidence introduced at trial required the trial court to interpret the easement in such a way. We hold that the trial court did not abuse its discretion on this issue when it ordered the injunction regarding maintenance.

### III. Just Compensation

Culpepper contends they are entitled to just compensation for condemnation for private necessity under RCW 8.24.030<sup>15</sup> caused by the alleged expansion of the easement to prevent gates and livestock. The condemnation statute does not apply here. Normal changes in the manner of

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<sup>15</sup> RCW 8.24.030 states:

The procedure for the condemnation of land for a private way of necessity or for drains, flumes or ditches under the provisions of this chapter shall be the same as that provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies.

In any action brought under the provisions of this chapter for the condemnation of land for a private way of necessity, reasonable attorneys' fees and expert witness costs may be allowed by the court to reimburse the condemnee.



use and resulting needs will not constitute deviation from the original grant of the easement. Logan v. Brodrick, 29 Wn. App. 796, 800, 631 P.2d 429 (1981). An expansion of the use of the easement is permissible as long as it is not outside of the intent of the parties at the time of the creation of the easement. Id. Because the trial court reasonably found that sufficient maintenance and removal of the gates and cows fell within the scope of ingress, egress, and utilities, RCW 8.24.030 does not apply here and compensation is not required.

#### IV. Unclean Hands

Culpepper argues that Camus requested the injunction with unclean hands, preventing the trial court from awarding an equitable remedy. Under the “clean hands” doctrine, a court in equity will not intervene on behalf of a party whose conduct has been unconscientious, unjust, or marked by lack of good faith. King County v. Taxpayers of King County, 133 Wn.2d 584, 644, 949 P.2d 1260 (1997). But, the clean hands doctrine only precludes a party from obtaining equitable relief if the party has committed willful misconduct that has an immediate and necessary relation to the requested relief. J.L. Cooper & Co. v. Anchor Sec. Co., 9 Wn.2d 45, 73, 113 P.2d 845 (1941). The trial court, in its discretion while sitting in equity, awarded the requested injunction despite Culpepper’s allegations of unclean hands. This court may not substitute its judgment for the trial court absent an abuse of discretion. In re the Foreclosure of Liens, 123 Wn.2d 197, 204, 867 P.2d 605 (1994).

The facts alleged by Culpepper do not support a finding of unclean hands. Camus is not prevented from receiving equitable relief by their failure to

include Delores in the original complaint. Although Camus had knowledge that Delores owned part of the servient estate, Camus's actions did not prevent her participation in this action. Culpepper has not put forth evidence that Camus excluded Delores in bad faith.

Also, Camus's actions based on misunderstanding the law, including actions relating to the use of gates, handling of cattle, and rights of maintenance, do not prevent Camus from obtaining an equitable remedy. Misapprehension of legal rights is not grounds for unclean hands. J.L. Cooper, 9 Wn.2d at 74.

Finally, Culpepper failed to prove that Camus committed waste. It is a verity that Camus did not destroy trees of any value while attempting to maintain the easement. Culpepper asserts no other grounds for its waste claim here.

We hold that the trial court did not abuse its discretion in concluding that Camus had sufficiently clean hands to be awarded an equitable remedy.

#### V. Recording the Order to Run with the Land

Culpepper claims that the court erred in requiring annual review and allowing the findings of fact and conclusions of law to run with the land. Culpepper claims that this unfairly and disproportionately impacts the merchantability of their land and creates a substantial burden on future owners.

The relief offered by the trial court was permanent, including interpreting and clarifying the meaning of the easement. The easement here is an easement appurtenant that becomes part of the realty that it benefits. Green, 32 Wn. App. at 322–23 (“The grant of an easement for ingress, egress and utilities to the

owners of adjacent land is evidence of an intent that the easement benefit the grantees' adjacent land.”). Because the easement benefits the property, rather than the owner, the trial court reasonably found that its interpretation of the easement should be recorded to instruct future owners as to the nature and extent of the easement and prevent these issues from arising again.

Also, it was not an abuse of discretion to require annual review by Hurd. The trial court recognized that the inability of the parties to negotiate required third party intervention not just regarding immediate problems but regarding problems arising in the future. As issues relating to maintenance recur, it was reasonable for the trial court to anticipate future problems by requiring annual review of the handling of the easement.

VI. Damages to Camus

Camus alleges on cross-appeal that the trial court erred in failing to award damages, including attorney fees and costs, for interference with their easement under RCW 4.24.630. RCW 4.24.630 provides for treble damages, attorney fees and other costs if a person “wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land” of another. We review issues of statutory interpretation de novo. State v. Alvarado, 164 Wn.2d 556, 561, 192 P.3d 345 (2008).

RCW 4.24.630 is premised upon a wrongful invasion or physical trespass on another's property. Colwell, 119 Wn. App. at 439, 441. In Colwell, the court explained that the trial court had incorrectly reasoned that the wrongful invasion of a right in land, rather than the land itself, was protected by RCW 4.24.630. Id.

at 438. In fact, only physical invasion on the property itself is protected. Id. at 439, 441. Camus, as an easement holder, owns only a right to use the land, not the land itself. See City of Olympia v. Palzer, 107 Wn.2d 225, 229, 728 P.2d 135 (1986). Only physical invasion on the property, not a right in the land, is protected under RCW 4.24.630. Colwell, 119 Wn. App. at 438. Camus is not entitled to damages under the statute. We hold that the trial court properly declined to award damages to Camus at trial. Camus may not recover under this statute for their attorney fees and costs, at trial or on appeal.

Camus additionally requests damages for property damage and for the diminished value to their property, but fails to argue any basis for these fees other than the inapplicable statute addressed above. As Camus provided no basis for awarding fees, the trial court properly declined to do so.

#### VII. Fees on Appeal

Both sides seek costs and attorney fees on appeal, but fail to establish a basis for their claims. See RAP 18.1. Neither party has supported these general claims with argument or legal authority, so we need not consider either claim. State v. Dennison, 115 Wn.2d 609, 629, 801 P.2d 193 (1990). No fees are awarded.

We affirm.

Appelwick, J

WE CONCUR:

Dupe, C. S.

Schiveller, J