

**COURT OF APPEALS
DECISION
DATED AND FILED**

NOTICE

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September 29, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0200

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

RONALD J. RUCKS,

PLAINTIFF-RESPONDENT,

v.

GEORGE BURNETT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County:
WILLIAM H. CARVER, Judge. *Affirmed.*

NETTESHEIM, J. George Burnett appeals from a trial court order holding him in contempt of court for violating the terms of a judgment that granted Ronald J. Rucks a prescriptive easement which prohibited parking or obstructing passage in a driveway area separating the parties' adjoining properties. Burnett contends his construction of a fence in the disputed area did not unreasonably interfere with Rucks's ability to utilize the easement for ingress and egress. We

hold that the evidence supports the trial court's finding that Burnett's construction of the fence violated the prescriptive easement granted to Rucks.

Burnett also disputes the trial court's additional finding that he was in contempt of court for parking vehicles in a portion of the area covered by the prescriptive easement. Because we hold that the construction of the fence alone supports the trial court's contempt finding, we need not address this added argument. See *Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983).

FACTS

Burnett owns a duplex located at 638 West 9th Avenue in the city of Oshkosh. Rucks owns the adjoining tavern property to the west located at 642 West 9th Avenue. A residential unit is located in the rear portion of the tavern building. A gravel driveway that allows access to the back portion of each property separates the Burnett and Rucks buildings. The exact boundary line between the two properties lies at an unknown point on the driveway. This entire dispute revolves around the rights of each party regarding use of the driveway in order to gain access to the rear portion of each property for parking purposes.

The driveway was created in 1966 when one of Rucks's predecessors in title, William Novotny, laid gravel down upon the strip of land that separated his building from what is now the Burnett residence. Novotny did this without any written or oral consent from his neighbor. At no point prior to Burnett's purchase of his property in 1994 were Rucks or his predecessors barred from using the driveway to access parking in the rear portion of their property by the prior owners of the Burnett property. In fact, the trial court found at the original proceedings in this case that "there was an understanding between the

parties that no one was permitted to park in the driveway” in a manner that would “impede the ingress and egress” of either party.

After Burnett purchased his property, disputes began to arise over ownership rights to the driveway. Typical disputes involved one of the parties, often Burnett, parking in the driveway in such a way as to prevent passage to the back portion of each property. On numerous occasions, the police were called out to referee these disputes.

Eventually, Rucks turned to the courts seeking a prescriptive easement. In a bench trial, the trial court agreed with Rucks that a prescriptive easement had been established and that the driveway was to be kept open by both parties to allow use by the other for ingress and egress. The court ruled that the easement area should encompass the entire driveway from 9th Avenue to a point even with the back portion of Burnett’s building. The original judgment was entered accordingly.

Within a couple of months, the parties were back before the trial court. Rucks sought a modification of the judgment, complaining that Burnett was parking vehicles in the back of the driveway in a manner that prevented Rucks’s passage. After hearing additional testimony and examining additional evidence, the court issued an amended judgment that increased the easement area to include a twelve-foot-wide arc from the back corner of Rucks’s property across Burnett’s property.

That proceeding sowed the seeds for the current action. Burnett took the trial court’s “12 foot” language and ran with it, believing that it permitted him to do as he pleased so long as he left a twelve-foot passage. On this belief, Burnett constructed a chain-link fence in the easement area that narrowed the passage to

twelve feet, as measured from the fence to Rucks's building. This, along with continued parking violations, prompted Rucks to commence the instant contempt action. As noted, the trial court determined that Burnett had violated not only the parking provisions of the amended judgment but also the ingress and egress provisions based upon his construction of the fence. The court found Burnett in contempt of court. Burnett appeals.

DISCUSSION

We review contempt orders by the circuit court for erroneous exercise of discretion. *See Monicken v. Monicken*, 226 Wis.2d 119, 124, 593 N.W.2d 509, 512 (Ct. App. 1999). Discretionary determinations may contain findings of fact and conclusions of law. *See id.* at 125, 593 N.W.2d at 512. We will not overturn findings of fact unless they are clearly erroneous. *See Krieman v. Goldberg*, 214 Wis.2d 163, 169, 571 N.W.2d 425, 429 (Ct. App. 1997), *review denied*, 216 Wis.2d 613, 579 N.W.2d 45 (1998); § 805.17(2), STATS. However, we review questions of law de novo. *See Monicken*, 226 Wis.2d at 125, 593 N.W.2d at 512.

A person may be held in contempt for refusing to comply with a judgment made by a competent court. *See id.* While the person may disagree with the judgment, he or she is nevertheless bound to obey it until relieved therefrom in some legally prescribed way. *See id.* To determine whether Burnett complied with the judgment of the circuit court requires us to interpret both the original judgment and the subsequent amendment. *See id.* at 126, 593 N.W.2d at 513. The interpretation of these judgments, or any written document for that matter, is a question of law we decide de novo. *See Jacobs v. Jacobs*, 138 Wis.2d 19, 23, 405 N.W.2d 668, 669 (Ct. App. 1987).

In Burnett's brief to this court, he cites a line of easement cases to support his argument that the trial court erred in holding that his chain-link fence encroached on the prescriptive easement. These cases generally hold that obstructions similar to the one at issue here do not prevent ingress or egress. *See, e.g., Figliuzzi v. Carcajou Shooting Club*, 184 Wis.2d 572, 588, 516 N.W.2d 410, 416 (1994) ("An owner of property subject to an easement may make all proper use of the land, including the right to make changes in or upon it, but the owner may not unreasonably interfere with the use by the easement holder."); *see also Dyer v. Walker*, 99 Wis. 404, 409, 75 N.W. 79, 80 (1898) ("It would seem that, whether created by grant or acquired by prescription, in point of width the way need be only such as is reasonably necessary and convenient for the purpose for which it was used or granted."). Burnett reasons that because the trial court did not make any finding that the fence interfered with Rucks's ability to reasonably use the easement area, the contempt finding is flawed.

While Burnett correctly recites this body of easement law, his argument misses the mark. The starting point for our inquiry is the original judgment granting the prescriptive easement. In this document, the trial court found that the preceding owners agreed "*the driveway was to be kept open, and in fact was kept open*" and they "did not use any of the driveway for parking purposes." (Emphasis added.) As a conclusion of law, the court declared that the driveway "*shall be free and clear and open* for the use of both parties to the rear of their [properties]." (Emphasis added.) The court further concluded that "[n]o parking of any vehicles shall be permitted in the *area of the existing driveway* and no unattended vehicles shall be permitted to remain in the driveway." (Emphasis added.) Finally, the court concluded that the purpose of the prescriptive easement was to "use the property located *between the two buildings.*" (Emphasis added.)

These statements do not allude to a “12 foot” easement; nor do they allude to an area reasonably necessary to allow the parties to ingress and egress their respective properties. Rather, the trial court’s findings and conclusions clearly refer to the entire driveway area between the buildings. Furthermore, these statements clearly establish that the purpose of the prescriptive easement was to keep this area completely open—whether it be from parked cars or intruding fences. If Burnett felt aggrieved by the grant or scope of the prescriptive easement, he should have appealed the original judgment. He did not.

The later proceeding that produced the amended judgment confirms our interpretation of the original judgment. The amended judgment clarified that the entire area was to be kept open in a manner that fostered the use of the easement for ingress and egress. The second hearing was necessitated by repeated parking violations by Burnett. Rucks submitted photos to the court documenting occasions when Burnett parked vehicles in the driveway that were outside the original easement area, but nevertheless obstructed access because they created a bottleneck in the driveway with the northeast corner of Rucks’s building. The trial court responded by ordering that the prescriptive easement “shall exist over the driveway which is currently *located between the two premises* to the rear most portion of [Burnett’s] building ... *and shall further include* an area determined to be 12 feet from the northeast corner of [Rucks’s] property.” (Emphasis added.)

Thus, the amended judgment added to the easement area while reaffirming the scope of the original area. The language about a twelve-foot passage was clearly in response to the new problem created by Burnett’s parking habits. No reasonable reading of the amended judgment allows for Burnett’s contention that it afforded him the right to construct a fence within the area of the easement previously granted.

CONCLUSION

We hold that the evidence supports the trial court's determination that Burnett violated the terms of the prescriptive easement as granted in the original judgment and as confirmed in the amended judgment. We therefore affirm the contempt order.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

