

STATE OF MICHIGAN
COURT OF APPEALS

DONNA M. COLLINS,

Plaintiff-Appellee,

v

JOHN ROBERT PASIKE, CHERYL JEAN
PASIKE, ROBERT M. GOEPFERT, ELIZABETH
M. GOEPFERT, BETTY L. EVERLING, and
JOHN S. ERZNOZNIK,

Defendants-Appellants.

UNPUBLISHED

June 22, 2001

No. 218441

Oakland Circuit Court

LC No. 97-547513-CH

Before: Hood, P.J., and Doctoroff and K. F. Kelly, JJ.

PER CURIAM.

Defendants appeal as of right from an order denying their motion for summary disposition and granting plaintiff's motion for summary disposition. We reverse and remand for entry of an order granting defendants' motion for summary disposition.

On December 28, 1978, property owner Lloyd H. Garretson executed an affidavit that purportedly created an easement. The affidavit provided, in relevant part:

LLOYD H. GARRETSON, being first duly sworn, deposes and states the following based upon his personal knowledge:

1. Affiant is the developer of certain real property situated in the Northeast ¼ of Section 13, T5N-R9E, Brandon Township, Oakland County, Michigan, the diagram and survey drawing of which development is attached hereto as an exhibit and incorporated herein by reference, reflecting Lots 1-11, inclusive together with a certain easement.

2. The said easement is described as follows, and has been, and is, granted reserved and excepted from the conveyances of other property in the said development for the purpose of providing vehicular ingress and egress to *certain lots* in the development and for installation and maintenance of utilities and other services to lots in the development [Emphasis added.]

Prior to the execution of the affidavit, Garretson and his wife Alice Garretson entered into a purchase agreement for the sale of lot or parcel two of the property to Robert and Margaret Norton on May 25, 1977. Before entering into the purchase agreement, the Garretsons and Nortons discussed the placement of an easement that would run the full length of the westerly line of parcel two and partially along the southerly line of parcel two. However, after construction of a private road on the easement commenced, the Nortons objected to the construction, claiming that no part of the private road was to be built upon parcel two. Apparently, as a result of the dispute, the easement was not placed in the exact location described in the affidavit and additional costs were incurred to accommodate the Nortons' objections. A lawsuit filed to address the easement dispute was submitted to binding arbitration. The Garretsons requested costs incurred to keep the road off of parcel two, while the Nortons requested repair costs incurred as a result of the construction. The arbitrator concluded that the easement for the private road was not preserved on parcel two. The arbitrator's decision occurred on October 26, 1983.

On June 12, 1985, the Garretsons transferred parcel one of the development to Donald and Maria Muxlow. The warranty deed documenting the transfer provided that the sale was subject to "Building and use restrictions and easements of record if any." On October 26, 1988, the Muxlows transferred the property through a warranty deed to plaintiff and her husband. This warranty deed provided that the property was subject to:

Easements, building and use restrictions of record, if any and also subject to the acts and omissions caused and created by the Grantees herein since February 27, 1987, said date being the date of execution of the Land Contract for which this deed is given

On August 2, 1988, plaintiff received permission from Brandon Township to split parcel one into two separate parcels known as "A" and "B." On April 11, 1989, Lloyd Garretson executed a second affidavit regarding the private road easement. This affidavit provided that the easement was designed to provide ingress to lots seven through eleven only and corrected the description of the easement to correlate with its actual location following the dispute with the Nortons regarding the placement. In April 1997, plaintiff sought to split parcel B into three parcels. However, in order to receive permission for the split of parcel B, the township determined that plaintiff had to demonstrate that the newly split parcels would be accessible through the private road easement known as Garretson Lane. Accordingly, plaintiff filed this lawsuit seeking a determination that ingress and egress to the property split of parcel B may be attained through the use of the easement created in 1978. After a hearing regarding cross-motions for summary disposition, the trial court granted plaintiff's motion for summary disposition and denied defendants' motion for summary disposition.

Defendants argue that the trial court erred in granting plaintiff's motion for summary disposition. We agree. The grant or denial of summary disposition is reviewed de novo. *The Herald Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000). An easement is defined as "a liberty, privilege, or advantage without profit, which the owner of one parcel of land may have in the lands of another." *Nicholls v Healy*, 20 Mich App 393, 395; 174 NW2d 43 (1969) quoting 19 CJ Easements, § 1, p 862. The easement holder's rights are defined by the easement agreement.

Schadewald v Brule, 225 Mich App 26, 38; 570 NW2d 788 (1997). The scope of an easement is strictly confined to the purposes for which it was granted or reserved. *Cheslek v Gillette*, 66 Mich App 710, 715; 239 NW2d 721 (1976) citing *Delaney v Pond*, 350 Mich 685, 687; 86 NW2d 816 (1957). The extent of the burden presented by the easement is determined by the language or express reservations of the grant. *Unverzagt v Miller*, 306 Mich 260, 266-267; 10 NW2d 849 (1943). When the rights to an easement have been fixed by grant, the easement cannot be altered by either party without the consent of the other. *Douglas v Jordan*, 232 Mich 283, 287; 205 NW 52 (1925). The language contained within the four corners of the instrument determines the intent of the parties in granting the easement. *Hasselbring v Koepke*, 263 Mich 466, 477-478; 248 NW 869 (1933).

Review of the plain language of the affidavit creating the easement reveals that plaintiff as the successive owner of parcel one was not entitled to the use of the private road easement. Rather, the easement was created for the purpose of allowing “ingress and egress” and for allowing utilities access for installation and maintenance. The affidavit creating the easement merely refers to Garretson as the owner of lots one through eleven. The language creating the easement expressly states that it is required for “certain lots.” Thus, the easement was intended to benefit some lots, not all, where access for ingress and egress was needed and where utility maintenance was required. Review of the documentary evidence presented in this case reveals that parcel one did not need an easement for ingress or egress because such access was provided by Hummer Lake Road. Furthermore, there was no evidence presented in the lower court record that an easement was necessary for utility maintenance. Rather, it appears that such access also could have been achieved by Hummer Lake Road. Plaintiff’s requested use of the easement would expand the scope of the easement beyond the express grant or reservation. However, the scope of the easement must be strictly confined. *Cheslek, supra*. Accordingly, plaintiff’s requested entitlement to the use of the easement is without merit.

Additionally, we note that plaintiff does not seek to use the private road easement as currently constructed. The easement itself does not extend past plaintiff’s property. Rather, the easement itself merely *touches the corner* of plaintiff’s property. Therefore, plaintiff in her brief on appeal requests that Garretson Lane simply extend into parcel eight. Plaintiff’s brief on appeal notes that the grant of an easement to the current existing private road is insufficient and “the new roadway, which will travel north from the Garretson Lane, just inside Parcel 8 at its northwest corner, will be within the boundaries of the 1978 easement and *will be only approximately 30 feet in length within Parcel 8.*” (Emphasis added.) Even if we could conclude that plaintiff had obtained the use of the private road easement pursuant to the original affidavit, plaintiff’s use, to serve the split of her property, requires alteration and extension of the easement into parcel eight. The rights of the easement were fixed and cannot unilaterally be altered by plaintiff. *Douglas, supra*. Furthermore, plaintiff’s proposed acquisition of parcel eight is unnecessary where she could subdivide property in such a manner as to provide access to the split parcels.

Reversed and remanded for the purpose of entry of an order granting defendants' motion for summary disposition and denying plaintiff's motion for summary disposition. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Martin M. Doctoroff

/s/ Kirsten Frank Kelly