STATE OF MICHIGAN

COURT OF APPEALS

DESSIE M. ORMSBEE, Plaintiff/Cross-Defendant-Appellee,	UNPUBLISHED December 18, 2012
v	No. 308137 Cheboygan Circuit Court
DARLEEN ORMSBEE, WILLIAM SKOWTEN, CATHY SKOWTEN, TODD ORMSBEE, and LORAL ORMSBEE, Defendants/Cross-Plaintiffs-Appellent.	LC No. 10-008091-CH

Before: WHITBECK, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Defendants/Cross-Plaintiffs (defendants) appeal as of right the "Judgment Establishing Easement" in favor of Plaintiff/Cross-defendant (plaintiff) in this action to quiet title to an easement. We affirm.

Before July 23, 1960, Richard John Charboneau, Sr., owned all of the land that is the subject matter of this lawsuit. The Cheboygan River was on one end of the land, and US 27 (the highway) was on the other end. On July 23, 1960, Charboneau sold a riverfront lot to plaintiff and her now-deceased husband, Leroy,[1] by warranty deed. Charboneau retained the land between the riverfront lot and the highway. After the legal description of the property in the warranty deed, the deed provided that "Road will be provided for ingress and egress to the above property." A dirt road ran from the highway to the river and provided access to plaintiff's riverfront lot. On November 12, 1960, Charboneau sold to plaintiff the land between plaintiff's parcel (parcel 1) and the highway by warranty deeds. This land consisted of the land bordering

[1] Use of the term "plaintiff" refers to Dessie Ormsbee and her late husband unless otherwise denoted.

the highway (parcel 2), as well as a 100 foot by 300 foot parcel directly to the west of parcel 1 and contiguous to it. The deed provided, "Grantees to provide for own road."[2]

In 1963 plaintiff sold a portion of their riverfront property to their son, John, and his wife, Darlene.[3] That same year, the same builder built homes for both Ormsbee families on the adjacent riverfront lots. Both Ormsbee families used the dirt road that existed in 1960 to access their homes.

On September 19, 1972, plaintiff sold parcel 2 to John and Darlene by warranty deed. Plaintiff retained the rights of ingress and egress across the parcel.[4] John began using parcel 2 as a commercial property for an automobile dealership in 1972. Both families continued to use the dirt road to access their homes.

On July 1, 1992, defendants William and Cathy Skowten purchased the front portion of parcel 2 that is adjacent to the highway, including the commercial building on the parcel, from John and Darlene by land contract. John continued to use the rear portion of parcel 2 for his commercial operations. On April 8, 1999, a warranty deed was executed by John and Darlene for fulfillment of the land contract. Following the legal description of the property, the deed states:

> SUBJECT TO AND RESERVING AN EASEMENT over the following described driveway for Dessie M. Ormsbee for ingress and egress to her home, and to John L. Ormsbee and Darleen A. Ormsbee for ingress and egress to their home, which shall extend to the immediate heirs of Dessie M. Ormsbee, John L. Ormsbee and Darleen A. Ormsbee, but does not extend to purchasers.

The deed then provides the legal description of the driveway easement.

On April 27, 2001, Jack and Darlene Ormsbee issued a quit claim deed that extinguished any easement in favor of themselves over the Skowten property.

On March 15, 2000, Darlene conveyed to her son, Todd Ormsbee, and his wife, Loral, an adjacent parcel of land along the river by warranty deed. Todd testified that he blocked access to the dirt road in 2010 at Darlene's request.

According to plaintiff, she and her husband built their riverfront cottage in 1963, the same year that John and Darlene built their riverfront home. She and her husband, as well as John and Darlene, used the same dirt road to access their homes. According to Darlene, John

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[2] Because plaintiff owned both parcels, an easement for ingress and egress was not necessary at that time.

[3] John died in _____.

[4] Following the legal description of the property, the deed stated, "RESTRICTIONS: Rights of egress and ingress are reserved."

developed and built an alternative road from the highway to the residential lots in 1999 or 2000 to avoid having to drive through the commercial businesses that were adjacent to the old dirt road. Defendants offered plaintiff a recorded easement along the new road that would run with the land. Plaintiff acknowledged that John had added a new road that went around the commercial businesses, but indicated that she wanted to use the old road as she had since she acquired the property in 1960.

After a bench trial, the trial court "granted and affirmed an easement over and across" the described properties, "said easement servicing property owned by Dessie Ormsbee." The judgment provided that "The width of the easement is that as has been established by user." The judgment also ordered Todd Ormsbee to "restore the easement road to the condition it was before he first altered the road by placing a berm across the road" and provided that the restoration work was to be performed within 6 months of November 30, 2011. The trial court reasoned that the court did not have "authority to move an easement road once established, where that easement road was pursuant to an express reservation of easement over a specific parcel of property, to a new, or otherwise, parcel of property over which an easement was not specifically reserved."[5]

Defendants first argue that the trial court erred by finding an easement by reservation where the language in the 1972 warranty deed provides for a reservation of "rights of ingress and egress." Defendants contend that this language is not of sufficient specificity to grant an easement. The trial court's determination whether plaintiff held an easement over defendants' property involves a question of law that we review de novo. *Minerva partners, LTD v First Passage, LLC*, 274 Mich App 207, 218; 731 W2d 472 (2007). Michigan courts seek to effectuate the intent of those who created them. *Curran v Maple Island Resort Ass'n*, 308 Mich 672, 679-681; 14 NW2d 655 (1944).

"Michigan courts recognize two types of easements: easements appurtenant and easements in gross." *Heydon v MediaOne*, 275 Mich App 267, 270; 739 NW2d 373 (2007). "An appurtenant easement attaches to the land and is incapable of existence apart from the land to which it is annexed." *Id.* And, an easement appurtenant "may pass with the benefited property when the property is transferred." *Id.* A property owner can create an easement appurtenant by "express grant, by reservation or exception, or by covenant or agreement." *Id.* (quotations omitted). With respect to an easement by reservation:

> An easement may be created by an express reservation in a document of conveyance, as when, at the time a parcel of property is conveyed by its owner, the owner reserves an easement over it for himself. To create an express grant or reservation of an easement, there must be language in the instrument of conveyance manifesting a clear intent to create the easement. *It is not necessary that the party reserving the easement right use any particular words as long as*

[5] In so ruling, the trial court acknowledged that "Plaintiff has no known legitimate reason to prefer the original access road and reject the new and better road offered to her. The only stated reason is her legal right to do so."

> *the intent to claim an easement is apparent and it is described sufficiently so that the easement and the parcel of land to which the right is attached can be determined, using parol evidence if necessary.* [*Chapdelaine v Sochocki*, 247 Mich App 167, 170; 635 NW2d 339 (2001) (internal citations omitted) (emphasis added).

Here, plaintiff conveyed an interest in property via the warranty deed to John and Darlene. Therefore, we must determine whether the warranty deed reserved an express easement appurtenant. The warranty deed provides "RESTRICTIONS: Rights of egress and ingress are reserved." The plain language of the warranty deed expressly reserved an easement appurtenant for purposes of ingress and egress. Although the easement language does not delineate the precise location of the easement – that is, there is no metes and bounds description – "[i]t is not necessary that the party reserving the easement right use any particular words as long as the intent to claim an easement is apparent and it is described sufficiently so that the easement and the parcel of the land to which the right is attached can be determined, using parol evidence if necessary." *Chapdelaine*, 257 Mich App at 170. There can be no legitimate assertion in this case involving a deed for the conveyance of land between family members that there was any doubt over the location of the easement, given that both families had utilized the dirt road for access to their properties since at least 1963 and the general location of the dirt road remained unaltered.

Although it was subsequently discovered that the dirt road slightly crosses Darlene's riverfront lot – a parcel of property not conveyed in the 1972 warranty deed –the trial court found that plaintiff acquired a prescriptive easement over the slight turn of the dirt drive that crossed Darlene's lot. Defendant contends that the trial court's finding that the "record is barren of any evidence that such use of Defendant's land was permissive" is erroneous because Darlene testified that plaintiff's "use of her land (Lot 2) from 1922 [sic] was permissive." However, defendants have misquoted the record. Darlene's reference to permissive use referred to the land conveyed in the 1972 warranty deed and not Darlene's riverfront lot. There is no evidence in the record to support a finding that plaintiff or her late husband ever asked permission to cross Darlene's riverfront lot or that Darlene ever granted plaintiff or her husband permission to cross the riverfront lot. Rather, plaintiff testified that she never asked permission to cross Darlene's riverfront lot.

Defendants also argue that "a court of equity has the power to establish an alternate route by necessity of user." Their argument that "any easement granted by reservation" is no longer necessary because "there is an alternative ingress and egress available to plaintiff" is based on the assumption that plaintiff had an easement by necessity. However, as stated earlier, the 1972 warranty deed created an easement by reservation, not an easement by necessity. Thus, the law concerning extinguishment of an easement by necessity does not apply.

The easement in this case was pursuant to an express reservation over a specific parcel of property. The trial court properly determined that an easement, once granted, cannot be unilaterally modified by either party. *Schwadewald v Brule*, 225 Mich App 26, 36; 570 NW2d 788 (1997). Thus, the trial court properly declined to move the easement to a different parcel of property over which an easement was not reserved.

Affirmed.

/s/ William C. Whitbeck
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering