

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM W. BRUSH,

Plaintiff/Counterdefendant-Appellee,

v

PANHANDLE EASTERN PIPE LINE COMPANY,
LP,

Defendant/Counterplaintiff-Appellant,

and

NATIONSTAR MORTGAGE, LLC,

Defendant-Appellee.

UNPUBLISHED

August 19, 2026

11:55 AM

No. 376114

Wayne Circuit Court

LC No. 23-011279-CK

Before: ACKERMAN, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

Plaintiff/counterdefendant-appellee William Brush’s property is subject to both an easement and a restrictive covenant related to defendant/counterplaintiff-appellant Panhandle Eastern Pipe Line Company’s natural gas pipeline. The parties dispute whether certain structures on plaintiff’s property encroach on defendant’s interest in the parcel. The trial court granted summary disposition to plaintiff, holding that his structures did not violate defendant’s rights. We discern no reason to overturn its decision and therefore affirm.

I. FACTS

In 1983, plaintiff purchased a house in Taylor that had originally been built in 1958. When he purchased it, the property was subject to an easement that was originally created in 1936. It was granted to Michigan Gas Transmission Corporation—defendant’s predecessor in interest—and provided that the grantors

hereby grant to MICHIGAN GAS TRANSMISSION CORPORATION, a Delaware corporation (hereinafter called the Grantee), its grantees, successors and

assigns, the right to lay, maintain, operate, repair, replace, change the size of, and remove a pipe line, together with valves and other necessary appurtenances, on a certain 40 acre tract of land, situate in . . . Taylor Township, . . . [w]ith the right of ingress and egress to and from the same; the said Grantors to fully use and enjoy the said premises, except for the purpose hereinbefore granted to the said Grantee. Said pipe to be buried so as not to interfere with the cultivation of the land, and said Grantee to pay any damages which may arise to crops and fences from the laying, maintaining, repairing, replacing, operating and final removing of said pipe line And the said Grantee, its grantees, successors and assigns, is hereby further granted the right at any time to lay, maintain, operate, repair, replace and remove a second line of pipe alongside of the first line as herein provided . . . subject to the same conditions.

In the years since 1936, it appears that two pipelines were in fact laid down, and the original 40-acre parcel was further subdivided to create plaintiff's parcel. The physical dimensions of the easement were not defined in the 1936 conveyance of the easement interest. Plaintiff testified that when he purchased the home in 1983, a survey showed that defendant "had an 84-foot easement," and a later survey performed in 1985 showed "an 80-foot easement."

In 2017, the house on plaintiff's parcel burned down, but an unattached garage survived. At his deposition, plaintiff testified that he was working with a builder to construct a replacement house when "someone from Panhandle came out and red flagged the [string] lines or where the house was being laid out at." Plaintiff contacted defendant about this, and defendant sent a representative, Bruce Derenzy, to discuss the matter. Plaintiff "argued with Bruce about being outside the easement, the 80-foot easement, and he said that it didn't make any difference, that he could tie me up in court for years unless I signed an agreement with him stating that the house would be 33 feet from the center of the nearest pipeline." Because plaintiff had already made a down payment on a modular home for the site, he felt he had no choice and signed what Derenzy prepared.

What Derenzy prepared was a letter, dated July 9, 2019, describing a restrictive covenant. It provided as follows:

Panhandle owns and operates 2 natural gas transmission pipelines on your property with both easements being "blanket" in nature meaning there is not a defined width associated with each easement. Panhandle would define a blanket easement as being 100 feet in width, being 50 feet each side of each pipeline.

Panhandle understands the uniqueness of the location of our pipelines that traverse thru your property and will not object to the proposed location of your new house providing you agree to the restrictions below.

1- The location or any part of the house shall not be constructed within 33 feet of the pipeline.

2- Should any part of the house be located within 33 feet of the mentioned pipeline, Panhandle at its sole discretion may deem it necessary to remove in part

for the maintenance, operation, inspection, repairing and or replacement of the pipelines, it may do so without regard for the demolition or destruction of said pole barn.

3- No future improvements, structures or obstructions shall be placed or constructed within either of the pipeline easements located on your property.

* * *

If you agree to the restrictions mentioned above please indicate your acceptance by signing below and returning on [sic] of the two originals to my attention.

As noted, plaintiff signed and returned the letter.

Plaintiff then built a house on the parcel. The new house is attached to the garage, meaning the geography of the structures on the lot has changed somewhat from when plaintiff purchased it in 1983. It is not entirely clear what happened next, but there was apparently some contact between plaintiff and defendant that prompted plaintiff to believe that defendant was reneging on the 2019 agreement. In a letter to defendant, plaintiff's attorney wrote that plaintiff had "constructed a new home that wholly complies with terms of the letter agreement duly signed on July 9, 2019," but "someone from your firm came out and flagged [my] client's property in contravention of the agreement that was reached." At his deposition, plaintiff testified that he wanted to sell the house and agreed that "the surveyor walked off the job because he was concerned about maybe litigation from Panhandle," which apparently prompted plaintiff's attorney to send the letter. Plaintiff's counsel asked defendant to "confirm to my office in writing that Panhandle will abide by the agreement reached in 2019."

Plaintiff was apparently unsatisfied with defendant's response to the letter, because in August 2023 he filed suit against defendant in Wayne Circuit Court. His complaint did not expressly invoke any specific legal theory in seeking relief, but it referenced the prior letter sent to defendant (including the demand that defendant comply with the 2019 agreement) and alleged that defendant "has refused to comply with Plaintiff's request and is now demanding that Plaintiff both pay a fee in the amount of \$2,500 and obtain a survey among other things." It then complains that "Plaintiff cannot obtain a survey without ratification of the July 19, 2019 agreement" and asserts that "equity requires that PANHANDLE Defendant specifically perform the agreement."¹ At his deposition, plaintiff agreed with his attorney when asked "[s]o what you need is just confirmation that something that you can live with, a potential buyer of your home can live with to allow you to sell your house" and responded that "[t]he 80-foot easement [from the 1936 easement] would suffice."

¹ The complaint also named the property's mortgagee, Flagstar Mortgage Corp, as a defendant but sought no relief from them. Flagstar has since been replaced by Nationstar Mortgage, LLC, its successor in interest.

Along with its answer to the complaint, defendant asserted a two-count counterclaim of its own. It asked for “enforcement of easement rights”—essentially seeking a declaratory judgment, injunction, and cash damages for trespass from violations of the 1936 easement—as well as breach of contract in relation to the 2019 restrictive covenant. Defendant later moved for summary disposition under MCR 2.116(C)(10), arguing that there was no genuine issue of material fact that plaintiff’s house encroached within 22 feet of defendant’s pipeline in violation of the 33-foot provision of the 2019 restrictive covenant. Plaintiff responded by asking for summary disposition under MCR 2.116(I)(2) and argued: (1) that the 1936 easement was unenforceable for lack of specificity; (2) the 2019 restrictive covenant was void because the property’s mortgagee, Flagstar Mortgage Corp, was not a party to it; (3) the 2019 restrictive covenant did not apply to plaintiff’s existing garage; and (4) the rebuilt house was outside of the 33-foot range provided for in the 2019 restrictive covenant.

At the hearing on defendant’s motion, the trial court expressed some frustration that no survey had been performed to verify the geography of the parcel, and the court ultimately ordered that such a survey be performed. The court ordered that the parties obtain a certified survey of the property and split the cost. The parties were unable to agree on a surveyor, and the parties each obtained their own survey. Plaintiff’s surveyor included a detailed series of notes. These included:

Note 1: . . . Location of the easement is not clearly defined in the document. The easement does not appear to be blanket in nature as it allows the grantor to fully use and enjoy the premises. It does have a mechanism for the grantee to pay for damages due to laying, maintaining, repairing, etc. of the pipe line. Also if the easement were blanket in nature, it would not have to grant the right to lay a second line along side the first line.

* * *

Note 4: The location of the pipeline is shown per points marked in the field by the ground penetrating radar services company and located by the . . . survey crew.

Note 5: The 2019 Agreement appears to be a bad faith attempt by the pipeline company to assert rights over the subject property. The document by Panhandle notes an assumed width in favor of the pipeline company with no recorded instrument to backup its assertions. The document was never recorded to put the public or future owners on notice of the restrictions (Michigan Marketable Record Title Act may apply in this case). There is no way to identify the actual locations of the pipelines, the relationship of the lines to the existing garage (built 1958), or the location of the proposed house in the document. There are also no legal descriptions for the subject property or easements associated with the agreement.

For its part, defendant included an “explanatory memorandum” with its survey and noted that while the exact figures differed, both surveys agreed that plaintiff’s structures came to within less than 33 feet of defendant’s pipeline.²

The trial court then issued an opinion granting summary disposition to plaintiff. It first held that it agreed with plaintiff’s surveyor that the 1936 easement did not establish a “blanket easement,” because defendant said the easement had specific dimensions—an apparent reference to Derenzy’s letter saying that “Panhandle would define a blanket easement as being 100 feet in width.” It also found that defendant had not contradicted the remark of plaintiff’s surveyor that “there is no way to ascertain the locations of the pipelines.” It concluded that plaintiff’s complaint was moot, because his concern was that he was unable to get a surveyor absent confirmation from defendant that it would honor the 2019 agreement, and plaintiff now had a survey.

Turning to an interpretation of defendant’s rights, the trial court first noted that plaintiff testified that he had signed the 2019 agreement under duress and defendant had not contradicted that testimony. It then held that the garage was not part of the house and, because it preexisted the 2019 restrictive covenant, was not subject to it. It also held that plaintiff’s house did not breach the 2019 restrictive covenant, although its reasoning is not entirely clear and contains some internal contradictions. For example, the court said several times that the 2019 agreement was “unambiguous,” but also that it had “an unresolvable latent ambiguity.” It also held that “the house itself does not encroach on the easement,” which is in some tension with its earlier conclusion that it is impossible to determine where the pipelines are. Nevertheless, it concluded that defendant “has failed to establish a genuine issue of material fact that Brush breached the July 9, 2019 agreement” and therefore granted summary disposition to plaintiff under MCR 2.116(I)(2). This appeal followed.

II. DISCUSSION

On appeal, defendant argues that the trial court made three errors: (1) concluding that the location of its pipelines cannot be determined; (2) ruling that plaintiff’s garage is not part of his house, such that the 2019 restrictive covenant does not apply to it; and (3) dismissing defendant’s counterclaim for violation of its easement rights. We consider each argument in turn. In granting summary disposition, the trial court relied on MCR 2.116(I)(2). “If, after careful review of the evidence, it appears to the trial court that there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2).” *Lockwood v Ellington Twp*, 323 Mich App 392, 401; 917 NW2d 413 (2018). We review the grant or denial of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

² Specifically, defendant’s survey showed that plaintiff’s garage is as close as 22.37 feet to the pipeline and the house is as close as 28.12 feet away, while plaintiff’s survey showed his garage was as close as 20.52 feet and the house comes to within 29.17 feet.

A. PIPELINE LOCATION

Defendant first argues that the trial court erred in holding that its pipeline's location could not be ascertained. We agree, although we conclude that the error was harmless.

In concluding that the location of defendant's pipelines could not be fixed, the trial court apparently relied on the remark from plaintiff's surveyor that "[t]here is no way to identify the actual locations of the pipelines." In context, however, that remark appears to refer to the 2019 agreement, which did not specify the locations of the pipelines. The fact that plaintiff's surveyor estimated the location of the pipeline using, among other things, "ground penetrating radar," and calculated how far away the house and garage are from it, is compelling evidence that the trial court misread that note from plaintiff's surveyor. Although there are slight discrepancies between the surveys regarding how far away the structures are from the pipeline, defendant says it is willing to stipulate to the distances shown on plaintiff's survey.

That said, we cannot discern any impact that this error had on the dispositive aspects of the trial court's decision that defendant challenges on appeal. Under MCR 2.613(A), appellate "relief is appropriate only when [an] error results in substantial prejudice that denies a fair trial to the aggrieved party." *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 157-158; 908 NW2d 319 (2017). Defendant does not link this error to any specific disposition that the trial court directed, and while we agree that the trial court's remark was unsupported by the record, we see no basis for overturning its decision on account of that mistake.

B. PLAINTIFF'S GARAGE AND THE RESTRICTIVE COVENANT

Next, defendant argues that the trial court erred in holding that plaintiff's garage is not part of his house and is therefore not subject to the restrictive covenant to which he agreed in 2019. Defendant argues that the 2019 agreement must be construed in this fashion because it would not make sense for defendant to agree to allow the garage to encroach if other structures could not. We disagree.

Under the terms of the restrictive covenant, plaintiff agreed that "[t]he location or any part of the house shall not be constructed within 33 feet of the pipeline." The word "constructed" is the past participle of "construct," which means "[t]o form by assembling or combining parts; build." *The American Heritage Dictionary of the English Language* (5th ed). Grammatically, the form of "shall" combined with "be" and a past participle is the simple future tense in the passive voice. This phrasing contemplates some *future* act of "form[ing] by assembling or combining parts," although in the passive voice, placing the focus on the act rather than the actor. It is the *house* that shall (not) be so *constructed*, rather than that the *plaintiff* shall (not) so *construct* the house. This future orientation is further confirmed by the commitment in the restrictive covenant that "[n]o future improvements, structures, or obstructions shall be placed or constructed within either of the pipeline easements."

Here, there is no dispute that the garage was already on the property at the exact location it presently occupies. It was unaffected by the 2017 fire. Grammatically, the agreement between the parties refers only to new, future construction, not existing structures, meaning the pre-existing garage does not come within its terms. Defendant relies on *McGreggor v Peabody*, 240 Mich 425,

427; 215 NW 241 (1927), for the notion that a garage can be “part of a dwelling house.” But regardless of whether the garage is or is not part of the house, temporally the 2019 restrictive covenant does not apply to existing structures. Moreover, defendant can hardly be heard to complain that this interpretation is nonsensical if it only accords with the facts on the ground before the agreement was signed. The garage’s proximity to the pipeline had apparently been tolerated for decades without incident, and nothing in the 2019 agreement expresses any intent that plaintiff is obliged to relocate existing structures. We affirm the trial court’s ruling that the location of the garage is not affected by the 2019 agreement.

C. DEFENDANT’S EASEMENT RIGHTS

Finally, defendant argues that the trial court erred in construing its rights under the 1936 easement agreement. Once again, we disagree.

To construe defendant’s rights under the easement, we must first look to its terms.

The nature of an easement granted for a pipeline right-of-way depends on the language used in the instrument of conveyance. In the absence of an express provision to the contrary, the rights acquired by the pipeline owner are those of an easement in the property, and the right-of-way grants only user privilege and not title or ownership in the land. Thus, the landowner has the right of full dominion and use of the property except insofar as the landowner is limited by the grant. [61 Am Jur 2d, Pipelines, § 34, p 613 (footnotes omitted).]

Defendant argues that the 1936 agreement created a blanket easement, with which we agree.

The language of the grant forming the easement determines whether it is a specific easement or a blanket easement; a specific easement is formed when the width, length, and location of the easement for ingress and egress have been expressly described in the instrument creating the easement, while the instrument creating a blanket easement does not delineate specific dimensions of the easement for ingress and egress as it crosses the servient tenant’s property. [*Id.* at 614 (footnotes omitted).]

The 1936 instrument that created this easement “does not delineate specific dimensions of the easement for ingress and egress as it crosses the servient tenant’s property,” so it is a blanket easement, and we disagree with the trial court’s contrary conclusion.

That said, whether the easement is characterized as specific or blanket does not specify defendant’s rights. To determine defendant’s rights under this easement, we must look to “the language used in the instrument of conveyance.” It provides that the original grantors conveyed to defendant’s predecessor in interest “the right to lay, maintain, operate, repair, replace, change the size of, and remove a pipe line” on a certain tract of land. That grant came “[w]ith the right of ingress and egress to and from the same [tract of land], the said Grantors to fully use and enjoy the said premises, except for the purpose hereinbefore granted to the said Grantee.” At no point does this easement ever confer upon defendant the prerogative to exclude anybody from any portion of the land. The terms of the easement give defendant “the right of ingress and egress to and from” the land to “lay, maintain, operate, repair, [and] replace” its pipeline, but the landowner is entitled

“to fully use and enjoy the said premises” except for the *purpose* given to the grantee (now defendant) by the easement agreement. Defendant has the prerogative to enter onto the land to do pipeline-related work, but in doing so it must bury the pipeline deep enough “so as not to interfere with the cultivation of the land,” and the owner otherwise has the right “to fully use and enjoy the said premises.” Because the 1936 easement does not confer upon defendant the prerogatives it believes it has, we detect no reversible error in the trial court’s decision.

III. CONCLUSION

Defendant’s arguments on appeal do not provide us any basis for reversing the trial court’s decision. Because the 2019 restrictive covenant applies only to new construction, plaintiff’s garage is not affected by it. Defendant’s argument that its rights under the 1936 easement are being violated is also unpersuasive, as that agreement provided it only with the right of ingress and egress to lay, maintain, and operate its pipeline; it gives defendant no right to exclude, and the landowner retains the right to fully use and enjoy the land. While we agree that the record does not support the trial court’s assertion that there is no way to identify the location of defendant’s pipelines, we conclude that this error was harmless under MCR 2.613(A). The judgment of the trial court is affirmed.

/s/ Matthew S. Ackerman

/s/ Mariam S. Bazzi

/s/ Andrew J. Lievens