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STATE OF MICHIGAN

COURT OF APPEALS

JEREMY LEFFRING and IVANNA LEFFRING,

Plaintiffs/Counterdefendants-Appellees,

v

MARK CAHILL and LINDSEY BISSETT,

Defendants/Counterplaintiffs/Third-Party Plaintiffs-Appellants,

and

TIMOTHY UPDYKE, ALLISON UPDYKE, and LANCE W. FOWLER,

Third-Party Defendants-Appellees,

and

FIVE STAR REAL ESTATE, LLC, and MEGAN GILLES,

Third-Party Defendants.

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No. 371140
Muskegon Circuit Court
LC No. 2022-003348-CH

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

We primarily consider today whether the trial court's finding that a property owner did not grant an encumbering easement qualifies as a "finding of title" sufficient to trigger MCR 3.411(F)'s provision that allows for a party to recover the costs of making improvements to another's property. Under the facts of this dispute (especially defendants' request for quiet title), the trial court answered "yes." We agree and thus affirm.

I. FACTUAL AND PROCEDURAL HISTORY

This property dispute concerns neighboring parcels on Lake Drive in Norton Shores, each of which has access to the south side of Mona Lake. Plaintiffs, Jeremy and Ivanna Leffring, purchased their property in 2016. They then entered into a verbal access-easement agreement with their neighbors, third-party defendants Timothy and Alison Updyke, so that both could readily traverse over a marshy area between their residences and the lake. More specifically, they mutually agreed to build a boardwalk and dock (splitting costs) for mutual use, and that the agreement was to "be binding on them and future owners and could not be revoked or terminated." They located the boardwalk and dock on what they thought was the boundary line (without a survey), but all parties agree those improvements were entirely within the bounds of the Updykes' property.

Two years later, the Updykes sold their property to defendants, Mark Cahill and Lindsey Bissett. Following the sale, plaintiffs continued to use the boardwalk without issue. However, 2022 brought discord to the arrangement.

In that year, plaintiffs listed their house for sale with the intention to lease it to tenants until the property sold. Defendants then "installed a 'No Trespassing' sign along the boardwalk and placed a pile of sticks on the normal route [plaintiffs] and their family, guests and invitees walked to use the boardwalk." That act, and others not pertinent to this appeal, eventually led to this litigation.

Plaintiffs sought a declaratory judgment and an injunction prohibiting defendants from interfering with their use of the easement. Defendants counterclaimed, requesting an order quieting title and stating that plaintiffs "have no right, title, claim, or interest" in defendants' property. Defendants also filed a third-party complaint against the Updykes, alleging breach of contract, fraudulent misrepresentation, and innocent misrepresentation.

The trial court eventually concluded that no enforceable easement existed given the lack of a written memorialization required by the statute of frauds. That determination led to what is largely at issue here—plaintiffs' motion for compensation under MCR 3.411(F) to reimburse them for the value of the boardwalk and dock improvements. After conducting a bench trial, the trial court concluded that plaintiffs "did not act in bad faith" in constructing and maintaining the boardwalk and dock and that they were entitled to $55,750 for their contribution to the increase in value to defendants' property. And in a separate order, the trial court dismissed defendants' indemnification claim filed against the Updykes. This appeal by right followed, raising issues with both the trial court's award of damages under MCR 3.411(F) and its dismissal of defendants' indemnification claim.

II. THE TRIAL COURT'S DAMAGES AWARD UNDER MCR 3.411(F)

We address first whether the trial court erred in entering an award of damages in plaintiffs' favor under MCR 3.411(F). It did not.

A. OVERVIEW OF MCR 3.411

MCL 600.2932(1) provides a cause of action to "[a]ny person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land . . . against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not." The Court Rules then set forth the general procedures parties and courts must follow in such "actions to determine interests in land under MCL 600.2932." MCR 3.411(A). That includes the process by which a plaintiff may assert an interest in land through a complaint (MCR 3.411(B)), title documentation and reference requirements (MCR 3.411(C)), and that a court "shall," after taking evidence, "make findings determining the disputed rights in and title to the premises." MCR 3.411(D)(1).

With that summary background, we turn to the subsection over which the parties disagree. Subsection (F) offers to the party who lost a claim to title under MCR 3.411 the ability to seek damages for the party's efforts to increase the disputed property's value. MCR 3.411(F) provides in full:

> (F) Claim for Value of Buildings Erected and Improvements Made on Premises.
>
> (1) Within 28 days after the finding of title, a party may file a claim against the party found to have title to the premises for the amount that the present value of the premises has been increased by the erection of buildings or the making of improvements by the party making the claim or those through whom he or she claims.
>
> (2) The court shall hear evidence as to the value of the buildings erected and the improvements made on the premises, and the value the premises would have if they had not been improved or built upon. The court shall determine the amount the premises would be worth at the time of the claim had the premises not been improved, and the amount the value of the premises was increased at the time of the claim by the buildings erected and improvements made.
>
> (3) The party claiming the value of the improvements may not recover their value if they were made in bad faith.

At issue here is whether the trial court erroneously found MCR 3.411(F)(1) applicable and that plaintiffs did not make the improvements in bad faith, MCR 3.411(F)(3). We consider each in turn.

B. APPLICABILITY OF MCR 3.411(F)(1)

Defendants' main argument on appeal is that the trial court's no-easement finding was one discerning the rights or interests in land and not title to land, and thus MCR 3.411(F)(1) does not apply because it is only triggered upon "the finding of title." This argument implicates both the trial court's decision on summary disposition and its interpretation of the court rule, each of which

we review de novo. *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 440; 814 NW2d 670 (2012) (summary disposition); *Varran v Granneman (On Remand)*, 312 Mich App 591, 599; 880 NW2d 242 (2015) (interpretation of court rules).

We interpret court rules using the same principles governing statutory interpretation. *Estate of Maki v Coen*, 318 Mich App 532, 540; 899 NW2d 111 (2017). So we must give effect to the drafter, the Michigan Supreme Court. *In re Ott*, 344 Mich App 723, 737; 2 NW3d 120 (2022). "Language contained in a court rule that is clear and unambiguous must be given its plain meaning and is enforced as written." *Id*. (quotation marks and citation omitted). And when language's meaning is not plainly evident, we may turn to a dictionary for assistance. *In re Mota*, 334 Mich App 300, 311-312; 964 NW2d 881 (2020).

Reading MCR 3.411 as a whole, we agree with the trial court that it made a finding of title that rendered MCR 3.411(F) operable. MCR 3.411(D)(1) required just that: "[T]he court shall make findings determining the disputed rights in *and* title to the premises." (Emphasis added.) Although this Court Rule does not define "title," it "has a particular legal meaning": "[T]he union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself[.]" *Wells Fargo Bank v Country Place Condo Ass'n*, 304 Mich App 582, 591; 848 NW2d 425 (2014), quoting *Black's Law Dictionary* (7th ed.) (quotation marks omitted).

Here, the trial court ably concluded that because defendants were required to have title over property encumbered by the claimed easement before adjudicating the existence of that easement, it necessarily determined defendants' title to their property. Indeed, that is what defendants asked the trial court to do when in their counterclaim against plaintiffs they alleged that plaintiffs' claimed easement "constitute[s] a cloud" to their title that "must be removed." Defendants' requested relief further reinforces the trial court's conclusion: defendants asked that the trial court "enter an order quieting title and declaring that [they] are the owners of the property . . . ."

Opposing this conclusion and ignoring the plain language of their pleading, defendants suggest that MCR 3.411(F)'s "finding of title" language excludes other property right or interests findings, like easement determinations. Perhaps, but resolution of that reading is not necessary today—as discussed, the trial court necessarily made a finding of full title in defendants' favor before determining no enforceable easement existed. That finding was sufficient to trigger MCR 3.411(F)'s provision.

C. THE TRIAL COURT'S NO-BAD-FAITH FINDING UNDER MCR 3.411(F)(3)

Defendants further argue that, even if plaintiffs are entitled to recovery under MCR 3.411(F)(1), plaintiffs made the improvements in bad faith, and therefore, are not entitled to their value pursuant to MCR 3.411(F)(3). Because this was a finding of fact, we review for clear error. See *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Id*. We cannot agree the trial court's factual findings were clearly erroneous.

Plaintiffs and the Updykes mutually constructed the boardwalk and dock to be shared between them, and both contributed toward the maintenance. Following defendants' purchase, plaintiffs continued to use the boardwalk and dock with no objection; defendants even assisted with the annual maintenance during their first year of ownership. We see nothing in the record indicating a lack of good faith in these actions by plaintiffs. See *Hogerheide v Hickey*, 2 Mich App 580, 584; 141 NW2d 357 (1966) (defining bad faith as the lack of good faith). Nor is there anything in the record establishing plaintiffs made improvements to the claimed easement on the property after the trial court found that no easement existed. Accordingly, the trial court did not clearly err by finding that plaintiffs did not act in bad faith under MCR 3.411(F)(3).

III. INDEMNIFICATION

That leaves us with defendants' argument that the Updykes were required to indemnify defendants under the terms of a bill of sale that accompanied their purchase of the property.

A. ADDITIONAL FACTS AND PROCEDURAL HISTORY

As part of the disclosure statement for their sale to defendants, the Updykes were asked whether there were any "encroachments, easements, zoning violations or nonconforming uses" of the property. They checked "unknown," but disclosed that the "Dock is shared with neighbor to east." They also warranted in the bill of sale that they "represent that the goods, as shown, are free and clear of all encumbrances and agree to defend any claim that may arise by another party claiming an interest in these goods." Such "goods" included "all pre-printed items if any now in or on the premises, as listed on the purchase agreement . . . ." That agreement, in turn, contained the following "Fixtures & Improvements" provision: "All improvements and appurtenances are included in the Purchase Price, if now in or on the Property, including the following . . . any and all items and fixtures permanently affixed to the Property."

In their third-party complaint against the Updykes, defendants asserted (among other things) that the Updykes breached the purchase agreement and bill of sale by failing to disclose plaintiffs' claimed easement, and that the Updykes breached the terms of the bill of sale by failing to indemnify defendants as required by its agreement-to-defend provision. The trial court disagreed and granted summary disposition in favor of the Updykes, concluding the indemnification provision "concern[ed] personalty—not realty."

B. ANALYSIS

"Indemnity relates to the obligation of one person or entity to make good a loss another has incurred while acting for its benefit or at its request." *Langley v Harris Corp*, 413 Mich 592, 596; 321 NW2d 662 (1982). The right to indemnification can arise out of "an express contract to indemnify" or "be based on an implied contract or be imposed by law." *Id*. at 596-597. We review de novo the trial court's decision on a motion for summary disposition, limited to the evidence presented at the time the motion was decided. See *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009).

Contractual indemnification. Below, defendants' only indemnification claim concerned the Updykes' failure to disclose plaintiffs' asserted easement as an encumbrance to the property. This argument misses the mark in that it is inconsistent to argue on the one hand that plaintiffs did

not have an easement for want of a written document and on the other hand to claim a right to indemnity for failing to disclose a phantom easement. Thus we agree with the trial court that the Updykes cannot be liable for contractual indemnification.

Equitable indemnification. On appeal, defendants press a new, implied indemnification claim. Even if we agree with defendants that the trial court and the Updykes were on notice of an implied indemnification claim,[1] we cannot agree with their position that it is meritorious. "[T]he general rule is that a person who, in whole or in part, has discharged a duty which is owed by him but which as between himself and another should have been discharged by the other, is entitled to indemnity from the other, unless the payor is barred by the wrongful nature of his conduct." *Langley*, 413 Mich at 597 (quotation marks and citation omitted). Here, it is undisputed that plaintiffs and the Updykes mutually constructed the boardwalk and dock, and that the Updykes disclosed that they shared the dock with defendants. Moreover, testimony at the bench trial indicated that defendants purchased their property with at least the *knowledge* that the boardwalk and dock were shared with plaintiffs' property. For these factual reasons, we are not persuaded by defendants' argument that the Updykes should indemnify them for the diminished value of plaintiffs' property without the easement and for the increased value of defendants' home with the boardwalk and dock—they simply failed to demonstrate that the Updykes were unjustly or inequitably enriched at defendants' expense.

IV. CONCLUSION

For these reasons, we affirm. Plaintiffs and the Updykes, as prevailing parties, may tax costs pursuant to MCR 7.219(A).

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock

[1] On that we are dubious. In our view, defendants' position on appeal concerning implied indemnification represents not a "more sophisticated or fully developed argument on appeal than was made in the trial court," *Glasker-Davis v Auvenshine*, 333 Mich App 222, 228; 964 NW2d 809 (2020), but instead an altogether new argument supporting indemnification. Because we may consider the issue nonetheless, *id*., we opt to do so here to provide finality in this long-running property dispute.