STATE OF MICHIGAN

COURT OF APPEALS

RONALD D. THOMPSON and
AUDREY A. THOMPSON,

Plaintiffs-Appellees/
Cross-Appellants,

v

DARWIN L. CAMPBELL and
JULIE ANN CAMPBELL,

Defendants-Appellants/
Cross-Appellees,

and

GUARANTY TITLE COMPANY and
SECURITY UNION TITLE INSURANCE
COMPANY,

Defendants and Cross-Appellees.

UNPUBLISHED
November 26, 1996

No. 182051
LC No. 93-25592-CZ

Before: Saad, P.J., and Griffin and M. H. Cherry,* JJ.

PER CURIAM.

Defendants Darwin Campbell and Julie Ann Campbell appeal as of right a judgment limiting their easement across plaintiffs' property to rights of ingress and egress. Plaintiffs Ronald D. Thompson and Audrey A. Thompson cross-appeal as of right from the same judgment, claiming that the trial court erred in finding that an easement existed and in dismissing plaintiffs' suits for negligence and breach of contract against defendants Guaranty Title and Security Union Title Insurance. We affirm in part and reverse and remand in part.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Charles Rodgerson owned a large parcel of land fronting Lobdell Lake. He sold a portion of it to Carol Eckles. Because the frontage on that parcel was swampy, Rodgerson granted Eckles a twenty-foot easement on his lakefront property for purposes of ingress, egress and placement of a dock. Eckles recorded her land contract, which described the easement. The easement was not otherwise recorded. Eckles sold her land to the Campbells, who placed a dock along the easement. Rodgerson sold to the Thompsons the parcel of land encompassing the easement. Three witnesses testified that they informed plaintiff Ronald Thompson of the existence of the easement prior to the Thompsons' purchase of the land. Ronald Thompson testified that, upon inquiry about the easement at the offices of Guaranty Title, he was assured that no such easement existed. The trial court found that an easement existed and that the Thompsons bought the land with notice of it. The court limited the scope of the easement to ingress and egress.

I

The Campbells contend that the trial court should have considered parol evidence in determining the scope and purpose of the easement. Actions to quiet title are equitable and are reviewed de novo on appeal. *Michigan Nat'l Bank v Morren,* 194 Mich App 407, 410; 487 NW2d 784 (1992); *Gorte v Dep't of Transportation,* 202 Mich App 161, 165; 507 NW2d 797 (1993). We believe the trial court erred in refusing to consider parol evidence regarding the scope and purpose of the easement. The trial court limited the scope of the easement to ingress and egress because the recorded land contract between Rodgerson and Eckles described the easement by metes and bounds only. This Court has found no rule of law stating that an easement described only in terms of metes and bounds is limited in scope to ingress and egress. Rather, the metes and bounds description leaves an ambiguity as to the scope and purpose of the easement. When a deed is ambiguous, or when it fails to express the obvious intention of the parties, courts will try to ascertain the parties' intent and grant or deny relief in accordance with that intent. *Farabaugh v Rhode,* 305 Mich 234, 240; 9 NW2d 562 (1943). Where an instrument's meaning is in doubt, the court considers the "situation, acts, conduct and dealings of the parties to the instrument and also as to the subject matter." *Id.* Here, the metes and bounds description does not inform interested parties of the purpose of the easement and recourse to parol evidence to determine the scope and purpose comports with ordinary rules of construction of deeds. We remand to the trial court for consideration of parol evidence regarding the scope and purpose of the easement. Such parol evidence shall include but shall not be limited to evidence of grantor Rodgerson's intent.

II

The Thompsons argue on cross-appeal that the easement was too indefinite to be enforced. Although this particular question was not presented to the trial court, it is obvious that the trial court did not believe that the easement was too indefinite to be enforced because it ordered the parties to observe the easement for purposes of ingress and egress. We agree with the trial court's implicit finding that the easement was definite enough to be enforced. This Court found an easement too indefinite to be enforced in *Kahn-Reiss v Detroit & Northern Savings & Loan,* 59 Mich App 1; 228 NW2d 816 (1975), overruled in part by *Schmidt v Eger,* 94 Mich App 728; 289 NW2d 851 (1980). There, the easement was described as "a means of ingress and egress" that would be located on parcels known as

lots 6 and 7. *Id.*, at 4, 9. That description, however, was erroneous. The easement was supposed to have been located on lots 8 and 9, it was not clear whether the "means" was for pedestrian or vehicular traffic, and there was no recital of the specific shape or dimension of the claimed easement, nor reference to lot lines or specific structures. The lack of specificity in *Kahn-Reiss* of the easement's location is not analogous to the lack in this case of a recital of the easement's scope and purpose. We find no error.

III

Next, the Thompsons argue that the trial court erred in dismissing their breach of contract and negligence claims against Guaranty Title and Security Union Title Insurance Companies. We disagree. The existence of a duty is a question of law for the court. *Schneider v Nectarine Ballroom (On Remand)*, 204 Mich App 1, 4; 514 NW2d 486 (1994). This Court reviews questions of law de novo. *Westchester Fire Ins Co v Safeco Ins Co*, 203 Mich App 663, 667; 513 NW2d 212 (1994). The trial court properly noted that the Thompsons had no cause of action against Security Union Title Insurance Company, which issued the Campbells' title insurance policy. It had no duty, contractual or otherwise, to the Thompsons. We affirm dismissal of the complaints against Security Union Title Insurance Company.

The Thompsons contend that Guaranty Title breached its contract with them by failing to list the easement in each title commitment issued. Guaranty Title was Security Union Title Insurance Company's agent. Guaranty Title issued at least two title commitments on the Thompsons' parcel. The first title commitment failed to list the Campbells' easement. No title insurance policy was ordered from that commitment. The last title commitment, from which the title insurance policy was ordered, and which was issued by Guaranty prior to the closing on the purchase of the Thompsons' parcel, listed the easement. Guaranty Title had no contractual duty to list all recorded easements. Nowhere in the title commitment did the issuer undertake *to list* all encumbrances on the property. The issuer undertook *to insure* the property against all unlisted encumbrances except those not shown by the public record. The Thompsons' breach of contract claim was properly dismissed.

IV

Finally, the Thompsons assert negligence on the part of Guaranty Title and Security Union Title Insurance with regard to the failure to list the easement in the first title commitment and with regard to informing the Thompsons that no easement existed. We disagree. Here, the trial court stated that "[s]ince . . . the plaintiffs were on notice of the easement, the Court does not believe they are entitled to damages." A negligence action requires that the plaintiff establish four elements: (1) that the defendant owed the plaintiff a duty; (2) that the defendant breached that duty; (3) that the asserted breach of duty was the proximate cause of the plaintiff's damages, and (4) that the plaintiff suffered damages as a result. *Baker v Arbor Drugs*, 215 Mich App 198, 203; 544 NW2d 727 (1996). Although the court discussed the issue as if it were a matter of damages, implicit in its finding that notice obviated the Thompsons' damages was the finding that such notice relieved the title companies of any duty they might allegedly have had to inform the Thompsons of the existence of a recorded easement. The trial court

did not err. Having had notice that an easement existed, the Thompsons cannot claim that they were damaged by any alleged failure on the part of the title companies to warn them via a title commitment of the existence of an easement. Defendant title companies had no duty to tell the Thompsons that which the Thompsons already knew. The Thompsons' negligence claim was properly dismissed.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Richard Allen Griffin
/s/ Michael H. Cherry