

STATE OF MICHIGAN
COURT OF APPEALS

SERENA L. BARTON, f/k/a SERENA L.
MELTON,

UNPUBLISHED
January 31, 2006

Plaintiff-Appellee,

v

EUGENE E. MACHCINSKI, JR., and LOUELLA
C. MACHCINSKI,

No. 255538
Wayne Circuit Court
LC No. 02-236718-CH

Defendants-Appellants.

Before: Sawyer, P.J., and Wilder and H. Hood*, JJ.

PER CURIAM.

Defendants appeal as of right a March 22, 2004, judgment granting an implied easement in favor of plaintiff in this quiet title action. We affirm.

Defendants first argue that the trial court erred in granting plaintiff an implied easement because it was not pleaded in the complaint. We disagree.

A trial court does not have the authority to grant relief based on a claim that was never pleaded in a complaint or requested at any time before or during trial. See *Peoples Savings Bank v Stoddard*, 359 Mich 297, 325; 102 NW2d 777 (1960); *City of Bronson v American States Ins Co*, 215 Mich App 612, 619; 546 NW2d 702 (1996). However, “[t]he shape of relief in equity is not of necessity controlled by the prayer, but is formed by the court according to the germane conditions and equities existing at the time decree is made.” *Advance Dry Wall Co v Wolfe-Gilchrist, Inc*, 14 Mich App 706, 712; 165 NW2d 906 (1968). In this case, at trial, plaintiff’s attorney discussed an implied easement with plaintiff, defendant Louella Machcinski, and a third witness. Although not specifically pleaded in the complaint, the complaint did request “such other and further relief that equity and conscience demand.” Because the complaint requested such relief as the trial court determined fit, and because plaintiff’s counsel did present the argument for implied easement at trial, the trial court did not err in ruling under an implied easement theory.

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

Defendants next argue that the trial court erred in finding that plaintiff had an implied easement and that the implied easement extended the entire length of the property. We disagree.

In an action to quiet title, which is equitable, the trial court's holdings are reviewed de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). The factual findings of the trial court are reviewed for clear error. Clear error exists when the reviewing court finds that upon reviewing the record as a whole, it is left with the definite and firm conviction that a mistake has been committed. *Grant v Meridian Charter Twp*, 250 Mich App 13, 18; 645 NW2d 79 (2002).

To establish an implied easement, three elements must be met: (1) that during the unity of title an apparently permanent and obvious servitude was imposed on one part of an estate in favor of another, (2) continuity, and (3) that the easement is reasonably necessary for the fair enjoyment of the property it benefits. *Schmidt v Eger*, 94 Mich App 728, 731; 289 NW2d 851 (1980). "The party asserting the easement has the burden of proving the claim by a preponderance of the evidence."

First, although the trial court did not specifically discuss the factual findings behind the unity of title, it did find that, though not listed in the deed, plaintiff was given an effective easement by defendants when they sold lot one. Further, defendant Eugene Machcinski, Jr., stated that the land had been under one title, with the single driveway on it:

Q. Well, let me ask it this way. Did you buy [the property] from the people that lived in the house?

A. Yes. It was a couple, they got it from their parents or somebody and they got divorced and they had it split up and that's when I bought it.

Q. They split up the marriage, you mean?

A. Right.

Q. But there were already two pieces of property?

A. Right. One deed I had.

Q. And the driveway was there when you bought it?

A. Yes.

This provides that the driveway was there under unity of title, and that it imposed a servitude on lot two in favor of lot one.

Second, the trial court found that there was continuity in use from 1979. Plaintiff had been continuously using the driveway all the way to the back of the property since 1979, without objection by defendant. The trial court stated that the plaintiff had an easement for the length of their property. Defendant Eugene Machcinski, Jr., stated that plaintiff's husband, Kurt Barton, did not utilize the driveway going to the back of his property as much as plaintiff's former husband, Jim Melton, had utilized it, thus indicating that both Barton and Melton had used the

full length of the property. Plaintiff stated that she had been continuously using the driveway all the way to the back of the property since 1979, without objection by defendant. Testimony by both plaintiff and defendant Eugene Machcinski, Jr., indicated that plaintiff had been using the full length of the driveway, continuously, and that usage of the full length of the driveway was reasonably necessary for the fair enjoyment of the property the driveway benefited. *Schmidt, supra*, p 731. The trial court did not clearly err in determining that the driveway easement extended to the back of the property. *Grant, supra*, p 18.

Third, the trial court found that the easement was reasonably necessary for the fair enjoyment of the property it benefits. The trial court stated:

Now, when I say the only way [to get in and out], the defendant might say well, it is not impossible to put a driveway on the north side of the house. Well, that's right. If the Army Corps of Engineers wanted to put a driveway there, they could do it. You know, and if the cost was going to go to the national debt, you could put a driveway there.

But this is a practical impossibility, not a literal impossibility, but a practical impossibility. You either have to move – you have to move the garage and the [pole] barn or you have to – I don't know what you do. You cover the ditch, you support the sand, you cut down trees, you pave it, and then you've got to make it curve. And even then I'm not sure how you get into the garage. Will you turn the garage around? It is a practical impossibility. It's absurd.

In his testimony, Barton explained that there were quite a few obstacles to moving the driveway to the other side of the house. Barton explained that the front yard was completely sand, they would have to remove two large pine trees, the septic tank would have to be removed and filled in, the gas lines would have to be relocated, and it would have to be curved around the property in the backyard until it reached the garage. Further, the access to the house is on the side where the current driveway is located. Plaintiff stated to gain access from the north side of lot one, a culvert would have to be filled in to gain access across the existing ditch, which is about fifteen feet across. The easement was reasonably necessary for the fair enjoyment of the property it benefits. Because the facts support the trial court's findings on all three elements of an implied easement, we believe that the trial court did not err when it found that plaintiff had acquired an implied easement to the driveway extending the length of the driveway. *Schmidt, supra*, p 731.

Affirmed.

/s/ David H. Sawyer

/s/ Kurtis T. Wilder

/s/ Harold Hood