

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT J. CLARK and DONNA M. CLARK,
Plaintiffs-Appellees,

UNPUBLISHED
August 16, 2012

v

LARRY A. MEITZNER,
Defendant-Appellant.

No. 304639
Presque Isle Circuit Court
LC No. 10-002952-CH

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by right from the trial court's judgment enjoining defendant from encroaching upon or interfering with plaintiffs' use of an easement that runs across defendant's land. We affirm.

In 1992, plaintiffs were granted an easement across the property of Paul and Mary Schalk so that plaintiffs could create a 16-foot wide road for the purpose of accessing a parcel of property that they had purchased from the Schalks. According to plaintiffs, the ground making up the easement floods and becomes exceedingly soft and difficult to traverse in the spring. As a result, plaintiffs installed a rock base with smaller rocks on top, with a plan to eventually surface the right of way with gravel.

In 1998, defendant purchased the property subject to plaintiffs' easement. In November 2010, plaintiffs filed suit against defendant, alleging that defendant had used farm equipment to dig up the base stones of the easement road, that defendant had accused plaintiffs and their guests of trespassing when using the easement, that defendant had blocked the easement with farm equipment, and that defendant's actions had reduced the width of the easement road to as little as eight feet in several places. Plaintiffs' suit requested the trial court to order defendant to restore the road to its undamaged state and to enjoin defendant from interfering with plaintiffs' use of the easement in the future.

The trial court found in favor of plaintiffs and enjoined defendant from using farm equipment within 42 inches of plaintiffs' 16-foot-wide roadway and from interfering with, intimidating, harassing, threatening, obstructing, or otherwise annoying plaintiffs and their guests, employees, or agents who might utilize the easement. The trial court did not require defendant to reimburse plaintiffs for the damage to the roadway, finding that insufficient evidence had been presented at trial to establish the cost of the repairs. This appeal ensued.

First, defendant argues that the objections made by plaintiffs' counsel during defendant's cross-examination of Robert Clark denied defendant a fair trial. We disagree.

Defendant sought to use several photographs and a diagram of the easement during his cross-examination of Clark and during his own direct testimony. Plaintiffs' counsel objected several times to the use of the photographs and diagram on the basis that defendant had not provided them to plaintiffs prior to the day of trial despite pre-trial interrogatories and requests to produce. While acknowledging that defendant had not produced the documents before trial, the trial court nonetheless allowed defendant to use them.

Because the trial court overruled plaintiffs' counsel's objections, defendant's first claim on appeal is without merit. Plaintiffs' counsel had a right to object to the use of exhibits that were not produced during discovery. The argument that the trial court was prejudiced against defendant due to plaintiff's counsel's objections is contradicted by the fact that the trial court did not sustain those objections, and instead permitted defendant rather wide latitude during cross-examination. Defendant was not denied a fair trial.

Defendant next argues that insufficient evidence supported the trial court's finding that he harassed plaintiffs, their guests, and their agents. We disagree.

The decision to grant injunctive relief is within the discretion of the trial court; we review the trial court's decision for an abuse of discretion. *Kernen v Homestead Dev Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1998). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). A trial court's findings of fact are reviewed for clear error *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 8-9; 596 NW2d 620 (1999). "A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* at 9.

At trial, Clark testified that defendant confronted him in a hostile manner when Clark was working to improve the surface of the easement. Plaintiffs entered photographs into evidence showing cultivation marks running through the easement and the resulting damage. Plaintiffs also presented the testimony of Charles Rhode, Jr., who testified that defendant confronted him in a hostile manner on several occasions and that he had witnessed defendant harassing utility workers who were installing power lines under the easement. Thus, the trial court's finding that defendant engaged in harassment is not clearly erroneous, and we will not disturb it. Because the trial court's findings are not clearly erroneous, the trial court did not abuse its discretion when it entered the injunction against defendant.

Affirmed. Plaintiffs, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan