

STATE OF MICHIGAN
COURT OF APPEALS

ARBUTUS BEACH ASSOCIATION,

Plaintiff-Appellee,

v

JOSE AGUILAR, CAROLYN AGUILAR, JANE MARIE ANDERSON, MIKE BUTKA, JAMES CHAFFEE, LUTHER CLARK, MARCIA CLARK, LEON COLE, NANCY COLE, RICHARD COLE, KARLEN COLE, LINDA CRAWFORD, JACK D. ERWIN, JUDITH ERWIN, LORI FULLER, PATRICK FULLER, DAN HADLEY, DOROTHY HART, RICHARD HONIG, CASS HOYT, PATRICIA HOYT, GEORGE HUNTER, CAROLYN HUNTER, JERRY HURLEY, SYLVIA HURLEY, JERRY ISENOGLE, VIRGINIA ISENOGLE, ELEANOR JONES, TODD KOSSOW, PATRICIA KROH, RICHARD LEPPHEN, PATRICIA LEPPHEN, DAVID LUNDELL, CELESTE MANN, DAVID MANN, DENISE MANN, JAMES MCFARLAND, JOSEPH MULVANEY, ROBYN MULVANEY, GERALD NOWACECK, MARGUERITE NOWACECK, JEFFERY ORLER, PAULA ORLER, THOMAS OUELLETTE, SHERYL OUELLETTE, MARILYN PORTER, BRADLEY PORTER, BEATRICE SMITS, KENNETH SMITS, NANCY SAWYER, ROBERT SAWYER, ORVA REED, DOUGLAS REED, JANET PROCTOR, HOWARD PROCTOR, JOHN SCOUTEN, JEAN TAYLOR, BUD TAYLOR, WILLIAM STODDARD, DARLENE WISELY, and CHARLES WISELY,

Defendants-Appellants,

and

WILLIAM AHRENBURG, MARJORIE

UNPUBLISHED
April 18, 2013

No. 300755
Otsego Circuit Court
LC No. 03-010300-CH

AHRENBURG, PAUL BENHAMIN, RENE A
BENJAMIN, ROBERTA CAMPBELL, SUSAN
CHARBONEAU, CAREY CHARBONEAU,
BETTE CROOK, WILLIAM DIXON, WILLIAM
DIXON, RENEE DUTCHER, MICHAEL
GIACOBONE, CARRIE GIACOBONE, ROD
GREENE, MARY HARALSON, JACK
HENDERSON, GAYLE HENDERSON,
WILLIAM HOMIAK, LAWRENCE HUNTER,
CAROLE HUNTER, RICHARD HUNTER,
BEVERLY LUNDELL, DANNY MENNA,
MARY MENNA, PATRICIA MERRILL, BETSY
MILLER, LEA MILLS, LAWRENCE MILLS,
RALPH MONTGOMERY, KATHRYN
MONTGOMERY, LORETTA NAGLE,
CHARLES NELSON, PATRICIA NELSON,
MARGUERITE O'CONNELL, ERMA
SHERMAN, LORETTA SHARKY, ROBERT
SHARKY, RUTH SEIFERT THOMASON,
BARBARA SCOUTEN, ALEN SCOUTEN,
LUCIA SCOUTEN, LYNDA RUTKOWSKI,
JAMES RUTKOWSKI, SANDRA RIDER, GARY
RIDER, BETTY REDBURN, ROY REDBURN,
TAMMY RAGER, CURT RAGEN, LEONARD
PROCTOR, LISA TREVER, RICHARD
TREVER, HUGH THOMPSON, ELAINE
STODDARD, JOE WOODWARD, DARLENE
WOODWARD, ROSANNA WILLIS,
RAYMOND WILLIS, GWEN WILLIAMS,
EARL WILLIAMS, LINDA WELLS, GORDON
WELLS, ERNESTINE WALTER, ANNETTE
VOORHIS, JEAN VANKERSBILOK, FRANK
VANKERSBLICK, VERIZON NORTH INC.,
CONSUMERS ENERGY CO., DEPARTMENT
OF NATURAL RESOURCES, DEPARTMENT
OF CONSUMER & INDUSTRY/DEPARTMENT
OF LABOR & ECONOMIC GROWTH,
TOWNSHIP OF BAGLEY, EUGENE FLEMING,
CRAIG ZAMLER, MAUREEN ZAMLER,
GERALD ZINK, KATHERINE ZINK, and
MARTIN ZINK,

Defendants,

and

TED HACKER, JOANNE HACKER, DON

KEATON, TINA KEATON, DON KOEPPHEN,
RICHARD LANGE, DIANE LANGE,
MARYLOU MOAK, HARRY MOAK, RISA
SHERMAN, RICHARD SHERMAN, MARILYN
SERVENY, WILLIAM SERVENY, SHELLY
SCHICK, ROBERT SCHICK, JULIE RAEDY,
DOUGLAS RAEDY, LINDA PROCTOR, and
BRIAN PROCTOR.

Defendants-Appellees.

Before: BECKERING, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Appellants appeal as of right the trial court opinion and order regarding the use of property in Arbutus Beach. We affirm in part, reverse in part.

I. FACTUAL BACKGROUND

The instant litigation was initiated when the Arbutus Beach Association (the Association), filed a complaint to vacate, amend, and revise the plat of Arbutus Beach, a subdivision that borders the waterfront of Otsego Lake. Inexorably related to this instant litigation is a 1992 case involving Arbutus Beach, when various plaintiffs filed an action requesting that certain streets and alleyways in the then subdivision be vacated and legal title be vested in the respective owners. The two germane rulings that resulted from the 1992 litigation were the Settlement Agreement and Order (Settlement Agreement) and the Consent Order, both entered on April 27, 1994.¹ The Consent Order represented an agreement between the parties to vacate certain streets, alleys, and part of Lake Park (the beach). The Settlement Agreement, on the other hand, confronted the issue of the various lot owners' right to use Lake Park. In particular, the agreement stated that roadfront owners (lot owners whose property was not adjacent to Lake Park) were free to use Lake Park "for campfire and similar gatherings . . . within the sidelines of those portions of the beach opposite the ends of the non-vacated streets." In contrast, parkfront owners (lot owners whose property was adjacent to Lake Park) were free to use the portion of the beach in front of their respective properties for activities like volleyball, football, picnics, campfires, and beach parties.

While the 1992 litigation appeared to resolve the disputed issues in Arbutus Beach, the plaintiff in the instant case filed its lawsuit in 2003, requesting that the court revoke the public's

¹ An opinion regarding riparian rights was also issued a month before these two orders, where the trial court found that there was an easement appurtenant for the benefit of the public, and that there were not "lakefront" lots but rather "lakeview" lots.

interest in Lake Park and restore the interests of the lot owners and public to certain alleys lying south of Fern Street. As the litigation slowly progressed through the lower court, it became evident that roadfront and parkfront owners, both of whom were defendants, disagreed about their respective rights to use Lake Park. Several drafts of a proposed order were considered, and despite extensive negotiation, parkfront and roadfront defendants could not agree on the meaning of paragraphs 10 and 12 from the Settlement Agreement, which pertained to their respective rights to use Lake Park.

On October 15th, 2009, the first day of the hearing, the trial court entered an order regarding some of the disputed issues (October 15th order). While the parties agreed to the language in the order, derived largely from the Settlement Agreement, they could not agree on the meaning of paragraphs 10 and 12. Thus, a hearing was conducted and significant testimony was taken from roadfront and parkfront owners alike, who spoke about the historical and current use of Lake Park.

The trial court ultimately issued its opinion on September 30, 2010. Upon consideration of the October 15th order and hearing testimony, the court found that roadfront owners were to constrict activities such as games, sunbathing, picnicking, and campfires to the road ends, although they maintained the right to socialize and comingle with parkfront owners in front of those respective properties. Appellants, comprised of various roadfront owners, now appeal.²

II. STANDARD OF REVIEW

“A settlement agreement is a binding contract.” *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 665; 770 NW2d 902 (2009).³ “The proper interpretation of a contract is a question of law, which we . . . review de novo.” *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). Whether an ambiguity exists in the contract also is a question of law, reviewed de novo. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

“Only when contractual language is ambiguous does its meaning become a question of fact.” *Coates*, 276 Mich App at 504. A trial court’s factual findings will be reversed “only if they are clearly erroneous.” *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000). A finding of fact is clearly erroneous if the reviewing court is “left with a definite and firm conviction that the trial court made a mistake.” *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

III. INTERPRETATION OF OCTOBER 15TH ORDER

“The primary goal in the construction or interpretation of any contract is to honor the intent of the parties.” *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349-350; 605

² Appellees are comprised of various parkfront owners.

³ The October 15th order purported to amend the Consent Order and Settlement Agreement from the previous litigation. On appeal, both parties agree that it should be interpreted according to the principles of contract interpretation.

NW2d 360 (1999) (quotation marks and citation omitted). This Court gives the words in a contract their plain and ordinary meaning and if the contract is unambiguous, we enforce the contract as written. *Coates*, 276 Mich App at 503. “When a court interprets a contract, the entire contract must be read and construed as a whole.” *Smith v Smith*, 292 Mich App 699, 702; 823 NW2d 114 (2011). “[C]ourts may not change or rewrite plain and unambiguous language in a contract under the guise of interpretation because the parties must live by the words of their agreement.” *Id.* (quotation marks and citation omitted).

In this case, appellants first challenge the trial court’s construction of the October 15th order and its holding that roadfront activities like sports, games, picnics, and sunbathing must be confined to the road ends. The relevant language is found in paragraph 10, which states:

The roadfront lot owners shall also be entitled to a non-exclusive irrevocable right to use the remainder of Lake Park for uses similar and in a manner consistent in nature and intensity with the uses which the roadfront lot owners have previously made of those beach areas before May 27, 1994 and for entering into the waters of Otsego Lake at any point along Lake Park within the amended plat of Arbutus Beach. Any use of the beach by roadfront lot owners and their guests for campfire and similar gatherings shall be within the sidelines of those portions of the beach opposite the ends of the non-vacated streets and the partially vacated streets. All owners of roadfront lots within the amended plat and their guests shall conduct their activities in the beach area with due regard for the rights and enjoyment of the beach area by all other lot owners.

The first sentence relevant for this appeal states: “The roadfront lot owners shall also be entitled to a non-exclusive irrevocable right to use the remainder of Lake Park for uses similar and in a manner consistent in nature and intensity with the uses which the roadfront lot owners have previously made of those beach areas before May 27, 1994[.]”

A threshold inquiry in interpreting this clause is whether extrinsic evidence can be considered. Only when a term or phrase is ambiguous may a court consider extrinsic evidence to resolve the ambiguity. *Tomecek v Bavas*, 482 Mich 484, 500; 759 NW2d 178 (2008). “A word is not rendered ambiguous, however, merely because a dictionary defines it in a variety of ways.” *Koontz v Ameritech Services, Inc*, 466 Mich 304, 317; 645 NW2d 34 (2002). Rather, a contract may be found to be ambiguous when a term “is equally susceptible to more than a single meaning[.]” *Coates*, 276 Mich App at 503 (quotation marks and citation omitted).

Nowhere in the October 15th order is there any explanation or definition of what is meant by the phrase “uses” that occurred “before May 27, 1994.” Further, an ambiguity may be found when factual circumstances render a term unclear. Referred to as a latent ambiguity, the Michigan Supreme Court has explained:

A latent ambiguity exists when the language in a contract appears to be clear and intelligible and suggests a single meaning, but other facts create the necessity for interpretation or a choice among two or more possible meanings. To verify the existence of a latent ambiguity, a court must examine the extrinsic evidence presented and determine if in fact that evidence supports an argument

that the contract language at issue, under the circumstances of its formation, is susceptible to more than one interpretation. Then, if a latent ambiguity is found to exist, a court must examine the extrinsic evidence again to ascertain the meaning of the contract language at issue. [*Shay v Aldrich*, 487 Mich 648, 668; 790 NW2d 629 (2010) (quotation marks and footnotes omitted).]

As is clear from the sharply disputed evidence at the hearing about the historic use of Lake Park, the trial court correctly found that the phrase “uses” that occurred “before May 27, 1994,” is ambiguous, susceptible to conflicting understandings, and the examination of extrinsic evidence was therefore proper.

Moreover, the trial court did not clearly err in finding the parkfront testimony about the historic use of Lake Park was credible. All parkfront owners testified that no one used the beach area in front of their property except themselves and their invited guests. In a seemingly irreconcilable conflict, the roadfront owners testified that they were free to use any part of Lake Park for activities like sunbathing or playing sports. Yet, as the trial court recognized, an undercurrent in much of the testimony from roadfront owners was that when they used the beach in front of parkfront owners’ property, they often were socializing with parkfront owners that they knew.⁴ Therefore, interpreting “uses similar and in a manner consistent in nature and intensity with the uses which the roadfront lot owners have previously made of those beach areas before May 27, 1994” to mean that roadfront owners confined their beach activity to the road ends or in front of parkfront property when they were implicitly or explicitly invited, was not in error.⁵

This interpretation also is consistent with the subsequent sentence in paragraph 10, which states: “Any use of the beach by roadfront lot owners and their guests for campfire and similar gatherings shall be within” particular road ends. “When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate.” *Vushaj v Farm Bureau Gen Ins Co of Michigan*, 284 Mich App 513, 515; 773 NW2d 758 (2009) (quotation marks and

⁴ In particular, the testimony from roadfront owners Carole Hunter, Richard Leppien, Nancy Sawyer, and Sheryl Ouelette demonstrate that much of their beach activity consisted of visiting friends. Both Hunter and Leppien spoke of using the Tork bench, but also admitted that they or their families were friends with Mrs. Tork or that she invited people to sit on the bench. Sawyer admitted that she would generally confine her activities to the road ends due to the proximity to the bathroom, and explained that her parents had many friends that they would visit on the beach. Lastly, while Ouelette claimed that there were no restrictions on where she could go on the beach, she also admitted that she primarily socialized with friends on the beach.

⁵ Furthermore, appellants’ focus on a 1996 “golden rule” letter is unfounded, as that letter is of little relevance. This letter was circulated throughout the community and referenced respecting the rights of others by keeping in mind the “golden rule” when using the beach. However, the golden rule merely provides that one should treat others as they wish to be treated, which provides little guidance on the actual issue of whether roadfront owners used all of Lake Park before 1994 and what is meant by the phrase “campfire and similar gatherings.”

citation omitted). The dictionary defines “similar” as “having a likeness or resemblance, [especially] in a general way; having qualities in common.” *Random House Webster’s College Dictionary* (2005). Further, “gathering” is defined as “1. an assembly; meeting. 2. an assemblage of people. 3. a collection of anything. 4. the act of a person or thing that gathers. 5. something gathered together.” *Random House Webster’s College Dictionary* (2005).

Activities such as picnics, sunbathing, and beach sports are similar gatherings to campfires. Whether during daylight hours or after dark, such activities involve gathering for a specific purpose, primarily to socialize and enjoy the beach with one another. The activities involve congregating in a specific area, albeit a smaller portion of the beach for the more stationary activities, or a slightly widened perimeter for sport activities such as volleyball or football. While appellant takes exception to the trial court’s characterization of sport activities as “sedentary” or “stationary,” a reasonable understanding of the trial court’s choice of words is that sport activities involve some sort of defined area with a set boundary, in which the players restrain their activity.

Appellants, however, contend that the parties very carefully inserted a reference to the limitation of May 27, 1994, which the trial court ignored. Yet, that reference only appears in the first sentence regarding use of the remainder of Lake Park. The sentence about campfires, in contrast, states that “campfire and similar gatherings *shall* be within” particular road ends. There is no mention of historical use in this sentence and as this Court has repeatedly recognized, the word “shall” designates a mandatory provision. *Old Kent Bank v Kal Kustom, Enterprises*, 255 Mich App 524, 532; 660 NW2d 384 (2003). Further, as the trial court recognized, campfires and similar gatherings were specifically listed in a separate sentence, distinct from the general category of “uses similar and in a manner consistent in nature and intensity” to uses before May 27, 1994. If the parties had wanted campfires and similar gatherings to be held in places consistent with use before 1994, they were free to state that in the sentence.

This interpretation also is consistent when viewing paragraph 10 in context of the whole document. Specifically analyzing paragraph 10 in the context of paragraph 12, it is reasonable to conclude that parkfront and roadfront owners enjoy parallel use of Lake Park, with parkfront owners using the beach in front of their respective properties and roadfront owners using the beach at the road ends. Yet, it is significant to recognize that paragraphs 10 and 12 use different terms and phrasing, as paragraph 10 references using Lake Park for “campfire and similar *gatherings*,” while paragraph 12 references “campfires, beach parties and similar *uses*.” (Emphasis added). Thus, extrapolating the meaning of paragraph 10 from paragraph 12 in the technical manner suggested by appellants is unfounded.

IV. RULES OF CONSTRUCTION AND BURDEN OF PROOF

Appellants also proffer several arguments regarding the burden of proof, restrictive covenants, improperly interpreting roadfront owners’ rights to be secondary and minimal, and the trial court’s failure to recognize that roadfront owners had equal rights to use Lake Park. The underlying basis for these arguments, however, is appellants’ belief that this entire litigation was simply an attempt by parkfront owners to annex Lake Park to their respective properties. This is merely their characterization of the litigation. The trial court was free to adopt an alternate interpretation, such as the one proffered by parkfront owner H. Charles Nelson, who testified that

the original lawsuit was not an attempt to gain more land but only an attempt to clarify what land belonged to whom. As roadfront and parkfront owners were both defendants in this litigation, the trial court was permitted to understand this litigation as an attempt to clarify the respective rights to use Lake Park.

Moreover, even if we agree that this case implicates the issue of restrictive covenants, which are generally interpreted in favor of free use of the property, the intent of the drafter is deemed controlling and “when the intent of the parties is clearly ascertainable, courts must give effect to the instrument as a whole.” *City of Huntington Woods v Detroit*, 279 Mich App 603, 628; 761 NW2d 127 (2008) (quotation marks and citation omitted). As discussed above, the trial court properly interpreted the contract and gave effect to the instrument as a whole. Further, there was no improper burden shifting, as the trial court interpreted the contract as written, and found that parkfront owners’ testimony about ambiguous terms in the contract was decisive.⁶

Moreover, while appellants argue that they could not have intended to bottle themselves within the 33 feet road ends, the intent of the parties is derived from the October 15th order and the evidence adduced at the hearing, not appellants protestations on appeal. Also, contrary to appellants’ suggestion, the trial court’s conclusion that the roadfront owners agreed to stay within the road ends is a reasonable interpretation.

The October 15th order was a result of the 1994 Settlement Agreement and Consent Order. In the context of a settlement, it is reasonable to conclude that the roadfront owners may have made concessions in order to resolve conflicts. The trial court’s conclusion also adheres to the evidence adduced at the hearing, as some roadfront owners testified that they preferred to stay within the road ends merely because of convenience. Finally, appellants’ characterization of being “bottled up” at the road ends is inaccurate. A nearly unanimous sentiment at the hearing in the trial court was that parkfront and roadfront owners are permitted to walk along Lake Park wherever they want, consistent with past use. Also, many roadfront owners testified that they were friends with parkfront owners, and they remain free to visit these friends in front of the respective parkfront property. Thus, appellants have failed to establish any errors requiring reversal.

V. ALLEGED ERRORS & FACTUAL FINDINGS

Appellants make further arguments regarding the trial court’s failure to understand the use of Lake Park before 1994, failure to understand the legal history of Arbutus Beach, and

⁶ Appellants contend that because some of the parkfront owners were plaintiffs in the 1992 litigation, parkfront owners in the instant litigation should have been understood as the moving party and should have bore the burden of proof. Not only do appellants fail to cite any authority for such a proposition, they also fail to explain why all parkfront owners in this instant matter should bear the burden of proof when they did not initiate the instant litigation and may not have been involved in the prior litigation. As we have repeatedly held, an appellant may not simply assert an error and leave it to this Court to unravel its arguments or search for authority to sustain the position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

several other factual findings that appellants contend were clearly erroneous. Appellants' arguments are flawed for several reasons. First, while appellants contend that the riparian opinion from the 1992 litigation is the "law of the case," they fail to explain this conclusory statement or provide any legal support for it. Again, it is not enough for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).⁷

Appellants also incorrectly contend that the trial court misunderstood the legal history of Arbutus Beach and failed to characterize past orders properly. The October 15th order states: "The Consent Order and the Settlement Agreement and Order, both entered May 27, 1994 in Otsego Circuit Court File No. 92-5180-CH are hereby amended in their entirety and restated as set forth in this Order." Thus, the trial court correctly focused on the October 15th order, as it amended the prior orders "in their entirety." Further, the trial court tailored its analysis to the relevant inquiry, namely, interpreting the plain language of the October 15th order and relying on extrinsic evidence when necessary to determine the past use of Lake Park. Therefore, even if we were to agree that the trial court misconstrued the prior litigation and legal history, reversal is not required because the basis for the dispositive rulings was correct.⁸

Appellants' also are mistaken in arguing that the trial court should have focused on the roadfront owners' "right to use" Lake Park before 1994. The October 15th order states that roadfront owners are entitled to "a non-exclusive irrevocable right to use the remainder of Lake Park for uses similar and in a manner consistent in nature and intensity with the uses which the roadfront owners have previously made of those beach areas before May 27, 1994" Rather than deciding what the roadfront owners' "right to use" Lake Park was before 1994, the trial court was tasked with determining what right to use Lake Park the roadfront owners *have now*, which is dependent, in part, on how they used Lake Park before the 1994 orders.

Lastly, appellants posit that the trial court improperly characterized roadfront use of Lake Park as "with permission" or as "invited" guests. They also contend that the trial court clearly erred in ignoring evidence from every roadfront owner that they used Lake Park wherever they wanted, without permission. Appellants are correct that the roadfront owners testified that they freely used Lake Park without permission. However, this evidence was directly countered with testimony from parkfront owners, who stated that only they and their invited guests used the beach area in front of their property. The trial court found the parkfront owners' testimony to be

⁷ Furthermore, the law of the case doctrine applies to "a question of law decided by an *appellate court*["]. *Shade v Wright*, 291 Mich App 17, 21; 805 NW2d 1 (2010) (emphasis added).

⁸ Also, even if we were to agree that the trial court mischaracterized the October 15th order as granting "quasi riparian rights," there is no error requiring reversal because the trial court properly interpreted the language in the October 15th order.

credible, and “this Court must defer to the trial court on issues of credibility.” *Gagnon v Glowacki*, 295 Mich App 557, 568; 815 NW2d 141 (2012).

Further, scrutiny of the roadfront owners’ testimony reveals an underlying theme of implicit invitations when they used Lake Park, as they were primarily visiting with friends or acquaintances. Appellants focus much of their attention on the so-called Tork bench, arguing that it was a community bench and was evidence that roadfront owners had free reign of Lake Park. Yet, this argument overlooks the fact that people in the community used this bench because Mrs. Tork was gregarious and friends with many people.⁹ Moreover, in regard to the beach area in front of property owned by the Seymour’s, the Seymour’s son clearly testified that his father offered an “ongoing open invitation” to residents of Arbutus Beach. Thus, the trial court’s conclusion that roadfront owners used the beach in front of parkfront property with permission or as invited guests was not clearly erroneous.¹⁰

VI. UNWORKABLE RESOLUTION

Lastly, appellants argue that the trial court’s ruling is impractical and unworkable and requires reversal. We disagree. Appellants first contend that playing games like football or volleyball within a 33 foot area is “impossible.” Yet, testimony showed that these beach games are not on par with their professional counterparts requiring regulation length fields. Instead, they are played by children enjoying the beach. As parkfront owner Alan Scouten testified, “you’re not playing with big kids. We’re not playing NFL football and 100-yard field” Appellants’ argument also ignores evidence at the hearing of a general intermingling of parkfront and roadfront children. There is nothing “unworkable” in holding that parkfront and roadfront children can play such games in front of parkfront children’s property or at the road ends. Further, contrary to appellants’ suggested interpretation, nothing in the trial court’s order requires parents to accompany their children on the beach area. Rather, the trial court’s statements were merely a comment on the increased dangers children now face, which may prompt parents to increase supervision.

Lastly, we agree that the trial court erred in crafting the so-called “holiday provision.”¹¹ The parties agreed to the language in the October 15th order, which made no reference to a special exception for holiday weekends. As appellants have repeatedly asserted, the parties very

⁹ The testimony of roadfront owners Hunter and Leppien most clearly demonstrates that people using the Tork bench were friends or acquaintances of the Torks, as both admitted that they or their family were friends with the Torks or were invited to use the bench.

¹⁰ While appellants are correct that Arbutus Beach used to be a public beach, that does not contravene the clear testimony from parkfront owners about the actual historic use of the beach in front of their respective properties.

¹¹ The trial court stated that “[i]f on a holiday weekend, it is too crowded, the road fronters are permitted to spill over within a short distance perhaps 5 feet on each side of the non-vacated or partially vacated road ends in front of park front owners adjacent property”

carefully chose the language in the order, and courts are bound by negotiated property settlements. *Vittiglio v Vittiglio*, 297 Mich App 391, 400; 824 NW2d 591 (2012). Therefore, we find that the trial court erred when it read into the agreement an exception for holiday weekends, as this was not a provision that the parties agreed to or negotiated. That part of the trial court's ruling is therefore stricken, and the roadfront owners must restrict their activities to the road ends as delineated above.

VII. CONCLUSION

With the exception of the holiday provision, appellants have failed to demonstrate any error requiring reversal in the trial court's opinion regarding the use of Arbutus Beach and the interpretation of the October 15th order. In addition to the arguments addressed above, we have reviewed any remaining arguments in appellants' brief and found them to be without merit. We affirm in part, reverse in part. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Patrick M. Meter
/s/ Michael J. Riordan