

STATE OF MICHIGAN
COURT OF APPEALS

TRILOK DESAI and SURABI DESAI,

Plaintiffs-Appellants,

v

MOHAMMAD RABBANI and
NAYER RABBANI,

Defendants-Appellees.

UNPUBLISHED

January 5, 2001

No. 216333

Oakland Circuit Court

LC No. 98-004944-CH

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition. We affirm.

On appeal, the trial court's ruling on a motion for summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). It appears that the trial court granted defendants' motion under MCR 2.116(C)(7), (C)(8), and (C)(10). However, because the trial court relied on materials outside the pleadings, we will review the ruling under the standards applicable to MCR 2.116(C)(7) [claim barred by statute of frauds] and (C)(10) [no genuine issue of material fact]. *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). Under both subsections, this Court considers the affidavits, pleadings, depositions, and other documentary evidence to determine whether a genuine issue of any material fact exists to warrant a trial. *Spiek v Michigan Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 735-736; 613 NW2d 383 (2000).

This case arises from a dispute between neighbors regarding the height of a row of approximately twenty evergreen trees planted along the north and northeast boundaries of defendants' property. Plaintiffs alleged that, at the time of their planting in approximately 1990, defendants had orally agreed to keep the trees trimmed to a height of six feet. At the time of the lawsuit, defendants' trees were alleged to be at heights of between twelve and fifteen feet and obstructed the view, light, and air associated with plaintiffs' adjoining property. Plaintiffs averred that defendants' failure to keep the trees trimmed violated the terms of their express and/or implied easement and warranted injunctive relief.

On appeal plaintiffs argue that the trial court erred in finding that the statute of frauds bars plaintiffs' expressed and/or implied easement claims to light, view, and air. We disagree.

An easement is an interest in land subject to the statute of frauds. *Forge v Smith*, 458 Mich 198, 205; 580 NW2d 876 (1998). The statute of frauds provides that no interest in land shall be created "unless by act or operation of law, or by a deed or conveyance in writing." MCL 566.106; MSA 26.906. Plaintiffs argue that they had an oral agreement with defendants that created, in effect, an express and/or implied easement to light, air, and view. Express easements are created only when there is language in writing manifesting a clear intent to create a servitude. *Forge, supra*. The "Declaration of Easement of Record" and the "Shores of Wabeek North Association Agreement" relied upon by plaintiffs do not create relevant express easements. Michigan law does not recognize implied prescriptive easements of light or air nor the right to a view. *Hasselbring v Koepke*, 263 Mich 466, 475-476; 248 NW 869 (1933).

Plaintiffs next argue that defendants' alleged promise to maintain the trees at a height of six feet is enforceable, despite noncompliance with the statute of frauds, under the doctrine of promissory estoppel. We disagree.

Promissory estoppel may arise when the following elements are present: (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999). We agree with the trial court's conclusion and hold that, on the facts and circumstances presented by the evidence, equity does not require that plaintiffs be relieved from the requirements of the statute of frauds. Plaintiffs did not set forth evidence of a special relationship of trust permitting reliance, nor evidence of actual reliance or forbearance, arising from the alleged promise to maintain the trees at a height of six feet.

Finally, plaintiffs argue that defendants' failure to maintain the evergreens was the product of a malicious intent to obstruct plaintiffs' enjoyment of their view, light, and air. We disagree.

Malicious interference with another property owner's right to enjoy his property may warrant injunctive relief. See *Flaherty v Moran*, 81 Mich 52, 55; 45 NW 381 (1890). The evidence of record revealed that the trees were approximately twelve inches tall when they were planted in 1990 and between twelve and fifteen feet tall when this dispute arose in 1998. There was no evidence that the trees had been trimmed over the preceding years. Defendants' failure to trim their trees and the allegation of another dispute between plaintiffs and defendants regarding a different matter, alone, do not tend to establish or give rise to an inference of malice.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Patrick M. Meter