

STATE OF MICHIGAN
COURT OF APPEALS

GERRY A. SMITH,

Plaintiff-Appellant,

v

RICK BURNS,

Defendant-Appellee.

UNPUBLISHED

April 27, 2004

No. 246595

Kent Circuit Court

LC No. 00-09050-CH

Before: White, P.J., and Markey and Owens, JJ.

PER CURIAM.

In this quiet title action regarding the existence of an express easement, plaintiff appeals as of right from the trial court's judgment in favor of defendant. Plaintiff contends that the trial court erred in failing to find that an express joint easement was abandoned by defendant, or alternatively, that the easement was extinguished for failure of the purpose of the easement. We affirm.

Plaintiff and defendant own adjacent lots which include an express recorded joint easement. Defendant purchased his property, Lot 3, in 1984, and defendant purchased her property, Lot 2, in 1986. The easement, originally created in 1945, is for a joint driveway and access to other portions of their respective properties, and it provided essentially as follows:

Lot 3, Block 12, Lee's Add., and also granting to said 2nd parties, their heirs and assigns, a joint right of way across the Sly part of Lot 2, Said Blk 12 to garage situated on said Lot 3. And also, reserving a joint right of way across the Nly part of said lot 3 to garage situated on said Lot 2, and giving joint use of said driveway on Lot 2.

The problems between the parties began in 1993 when defendant destroyed and removed bushes and plants that plaintiff had placed in such a way as to block defendant's access to his backyard via the easement.

First, plaintiff argues that the trial court failed to make sufficient findings. We disagree. A trial court sitting without a jury must make specific findings of fact, state its conclusions of law separately, and direct entry of the appropriate judgment. MCR 2.517(A)(1). "Findings of fact regarding matters contested at a bench trial are sufficient if they are '[b]rief, definite, and

pertinent,' and it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation." *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

After requesting the parties to provide written factual findings, and receiving submissions from both parties, the trial court informed the parties that it adopted defendant's factual findings; in its order the court stated that it found the easement to be valid and dismissed plaintiff's complaint with prejudice. That is sufficient to satisfy the rule.

Second, plaintiff argues that the trial court erred in failing to find that the easement no longer existed because the purpose of the easement ceased to exist since the garages are no longer there. It is true that where an easement is granted for a particular purpose, the right to the easement ends when that purpose ceases. *MacLeod v Hamilton*, 254 Mich 653, 656; 236 NW 912 (1931). However, the trial court concluded that the "to garage" reference in the deeds was merely an indication of the location of the easement rather than a limiting purpose. The court apparently concluded that the purpose of the easement was to allow access, via the joint driveway, to the rear of the houses on plaintiff's and defendant's lots, regardless of whether garages were there. In light of the record below, we do not find that conclusion to be clearly erroneous. Further, there was ample testimony that defendant used the easement on numerous occasions to access the property at the rear of his house.

Third, plaintiff argues that the easement has been abandoned because defendant's predecessor put up a fence blocking access to the easement.

In *Ludington & N R Co v The Epworth Assembly*, 188 Mich App 25, 33; 468 NW2d 884 (1991), this Court stated the rule for abandonment of an express easement:

To prove abandonment, both an intent to relinquish the property and external acts putting that intention into effect must be shown. *Strong v Detroit & M R Co*, 167 Mich App 562, 569; 423 NW2d 266 (1988). Nonuse, by itself, is insufficient to show abandonment. *Hustina v Grand Trunk W R Co*, 303 Mich 581, 587; 6 NW2d 902 (1942); *Strong*, 569. Rather, nonuse must be accompanied by some act showing a clear intent to abandon. *McMorran Milling Co v Pere Marquette R Co*, 210 Mich 381, 393; 178 NW 274 (1920); *Odoi v White*, 342 Mich 573, 576; 70 NW2d 709 (1955); *Hustina*, p 587.

The fence was put up by defendant's predecessors in order to provide a safe place for their Downs syndrome child to play. Defendant removed the fence after he purchased the property. We do not believe that the installation of the fence alone indicates an intent to relinquish the easement.

Plaintiff also argues that the easement should be terminated or considered abandoned because plaintiff's access was blocked by a structure put up by defendant or a predecessor in interest of defendant.

When a party blocks the enjoyment of a joint easement with a permanent obstruction, then the easement is considered extinguished for that party or least abandoned by the obstructing party. *Bricault v Cavanaugh*, 261 Mich 70, 73; 245 NW 573 (1932). In *Bricault*, our Supreme Court interpreted unclear language regarding a joint easement in a deed to include a five-foot easement on each of two adjacent lots creating a joint driveway. However, the Bricaults, the party attempting to enforce the easement, constructed their house so as to obstruct the entire area on their property, which was to be devoted to the joint driveway. Therefore, the Court found that the Bricaults' action "amounts to an extinguishment or at least shows an abandonment by the plaintiffs." *Id.* at 73.

Plaintiff argues that defendant's testimony establishes that defendant's garage/bedroom structure blocks plaintiff's use of the joint easement, except to the driveway. Therefore, argues plaintiff, the easement should cease, following the rule in *Bricault*. However, although defendant admitted that the garage/bedroom blocks plaintiff's access to a portion of his lot, he also testified that the structure of the building was the "original kitchen" and it "was never moved or added to." More important, that structure was never part of the joint driveway. Therefore, *Bricault* does not apply, and the trial court did not err on this issue.

Finally, plaintiff claims that the court erred in failing to grant her damages of \$273 on her conversion claim for the destruction of her bushes and plants by defendant. Plaintiff planted various bushes and plants adjacent to the joint driveway, blocking defendant's access to his backyard via the easement. Defendant testified that after asking plaintiff numerous times to move the plants, he purposefully drove over them and then removed them with a sickle.

Although we do not hold that defendant acted properly in destroying the vegetation, neither will we award damages to plaintiff. We conclude, as the trial court apparently did, that plaintiff planted the bushes for the purpose of blocking defendant's rightful access to the easement. Defendant had a right to use the easement and thus, plaintiff had no right to block his use. Therefore, destruction and removal of the bushes and plants cannot be said to be inconsistent with plaintiff's rights.

Affirmed.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Donald S. Owens