

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT DALRYMPLE,

Plaintiff/Counter-Defendant-  
Appellant,

v

NANCY MACLAIN, SCOTT CURTIS, and  
CANDICE CURTIS,

Defendants/Counter-Plaintiffs-  
Appellees,

and

MARILYN BAILEY f/k/a MARILYN KELLER,

Defendant-Appellee,

and

BRUCE MACLAIN,

Defendant.

UNPUBLISHED  
December 15, 2011

No. 301088  
Oceana Circuit Court  
LC No. 09-007587-CH

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Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

In this prolonged property dispute, plaintiff-appellant appeals as of right from a judgment of the circuit judgment denying his request for an injunction, limiting his rights in his right-of-way easement to strictly ingress and egress, finding defendant-appellee Nancy MacLain's property in violation of a restrictive covenant, ordering appellant to pay damages for stalking, conversion of a trailer, and damage to land, and clarifying the boundaries and rights of appellees in their real property. For the reasons set forth in this opinion, we reverse in part, affirm in part, and remand.

Appellant argues that he has the right to make the easement passable and perform regular maintenance and repairs. The scope of a party's rights under an easement represents a question of fact. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). We review a trial court's factual determinations for clear error. *Id.*

Our State's jurisprudence on this matter has remained consistent: The owner of a right of way "has the right to a reasonably unobstructed passage at all times, and also such rights as are incident or necessary to the enjoyment of such right of passage." *Kirby v Meyering Land Co*, 260 Mich 156, 169; 244 NW 433 (1932). Appellant's easement is "for road and travel purposes" only. The use of an easement must be confined to the purposes for which it was granted, including any rights incident to or necessary for the reasonable and proper enjoyment of the easement, which are exercised with as little burden as possible to the fee owner of the land. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 131; 737 NW2d 782 (2007). Generally, the owner of the dominant estate is entitled to repair and maintain the easement for its express uses. *Carlton v Warner*, 46 Mich App 60, 61; 207 NW2d 465 (1973). Repairs to the easement, however, are not permitted where they unreasonably increase the burden on the servient estate. *Mumrow v Riddle*, 67 Mich App 693, 700; 242 NW2d 489 (1976).

In this case, appellant argues that he has the right to make the easement passable and perform regular maintenance and repairs. The trial court held that appellant "is permanently enjoined from maintaining and improving . . . the easement on" appellees' properties, and has no right to be on that portion of the easement other than for ingress and egress. While the trial court correctly enjoined appellant from improving the easement, it clearly erred when it ruled that he had no right at all to maintain it. See *Blackhawk*, 473 Mich at 41 (observing that "[i]t is an established principle that the conveyance of an easement gives to the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement" [internal citations and quotation marks omitted]).

The record supports the conclusion that appellant has used his access to the easement improperly. This includes not maintaining but damaging the roadway, harassing his neighbors, provoking unnecessary arguments, and even going so far as telephoning an employee of the county prosecutor's office and informing them that he was threatening to kill one of his neighbors. Thus, our review of the record leads us to conclude that it was reasonable for the trial court to presume that once appellant's right to repair and maintain the easement had been confirmed, appellant would once again take advantage of the access, thereby necessitating further legal action. However, appellant's right to repair and maintain the easement does not encompass the myriad of harassing, annoying and threatening activities he engaged in leading to this case. As stated by our Supreme Court: "The existence of an easement necessitates a thoughtful balancing of the grantor's property rights and the grantee's privilege to burden the grantor's estate. And while the easement holder's rights are ultimately 'paramount . . . to those of the owner of the soil,' the latter's rights are subordinate only to the extent stated in the easement grant. *Cantienny v Friebe*, 341 Mich. 143, 146; 67 N.W.2d 102 (1954), quoting *Hasselbring v Koepke*, 263 Mich. 466, 475; 248 NW 869 (1933), quoting *Harvey*, *supra* at 322. Consequently, 'the use of an easement must be confined strictly to the purposes for which it was granted or reserved.' *Delaney v Pond*, 350 Mich. 685, 687; 86 N.W.2d 816 (1957)."

*Blackhawk*, 473 Mich at 41.

Our review of the record leads us to conclude that the trial court was engaging in this balancing test set forth by our Supreme Court when it ruled that appellant was enjoined from "maintaining and improving . . . the easement of appellees' properties . . ." Appellant's actions made clear that he intended, on numerous occasions, to use his right to repair and maintain the easement as a means to harass, annoy and threaten adjoining property owners. His actions were

intended to burden adjacent property owners and can best be described as outlandish. Simply put, the trial court correctly concluded that appellant failed to grasp both the limited nature of this right as well as his inherent responsibility to perform repairs and maintenance in a cautious and reasonable manner. Nonetheless, in the absence of any pleadings or arguments from any of the appellees, we must find that appellant has a lawful right to repair and maintain the easement. Such a finding is mandated by our State's jurisprudence. *Blackhawk*, 473 Mich at 41; *Carlton*, 46 Mich App at 61; *Mumrow*, 67 Mich App at 700. While we share the trial court's concerns that appellant may use his right to repair and maintain the easement in a manner inconsistent with the law herein set forth, we are confident that the learned trial court will swiftly and properly dispose of any future actions, should there be any, on the part of appellant to engage in *any* act beyond his limited right to repair and maintain the easement.

We need not discuss appellant's arguments on this issue further, as we find them conclusory and primarily based on the credibility of witnesses. It is well established that an appellate court should defer to the credibility determinations of the trier of fact. *Tuttle v Dep't of State Highways*, 397 Mich 44, 46 n 3; 243 NW2d 244 (1976).

Appellant next argues that a restrictive covenant running with the land was violated when Candice and Scott Curtis built a single-family residence on a three-acre parcel they purchased from Nancy and Bruce MacLaine. The covenant at issue provides, "This property to be known and described as residential property, and there shall not be more than one single family dwelling permitted on each parcel." Restrictive covenants "are to be strictly construed against the party seeking their enforcement and . . . any doubts pertaining to their interpretation are to be resolved in favor of the free use of the property." *Huntington Woods v Detroit*, 279 Mich App 603, 628; 761 NW2d 127 (2008).

While the restrictive covenant limits a landowner to one single-family dwelling per parcel, there is nothing in the protective restrictions preventing a landowner from selling or otherwise conveying a portion of the landowner's parcel. Once the parcel has been split, the owner of the new parcel has the right to erect one single-family dwelling under the restrictive covenant. As that occurred in this case, the trial court correctly noted, "[t]he protective restrictions do not prohibit a re-division of the parcels so long as the re-divisions are consistent with state and local ordinance. Therefore, the residence on the north 125 feet [Curtis property] is not in violation of the restriction." We concur in the decision of the trial court on this issue.

Appellant next argues that the Curtis parcel does not comply with the Land Division Act (LDA), MCL 560.101 *et seq.*, because the frontage-to-depth ratio violates MCL 560.109(b).<sup>1</sup> Further, appellees did not comply with MCL 560.104(a).<sup>2</sup> Therefore, according to appellant, the

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<sup>1</sup> MCL 560.109(b) provides in part, "Each resulting parcel has a depth of not more than 4 times the width or, if an ordinance referred to in subsection (5) requires a smaller depth to width ratio, a depth to width ratio as required by the ordinance."

<sup>2</sup> MCL 560.104(a) provides as follows:

split should not have been allowed. We review de novo the applicability and interpretation of the LDA. *Beach v Lima Twp*, 489 Mich 99, 105-106; 802 NW2d 1 (2011).

Under the LDA, a municipality, board of county road commissioners, county plat board, the attorney general, a prosecuting attorney, or the purchaser of an improperly divided parcel has standing to challenge a land split. MCL 560.265-.267. Adjacent landowners, such as plaintiff, are not granted standing under the act to challenge a land split.

Even if appellant had standing to challenge the split under the LDA, his argument still lacks merit. Plaintiff argues that because Daniel Kirwin, Hart Township assessor, was unaware of approval for the split being given or requested by anyone, the implication is raised that the LDA was not complied with. Kirwin testified that he has been responsible for land divisions since 1999 or 2000. Kirwin's lack of awareness of a land split at a time when he was not charged with the responsibility of handling parcel splits cannot be evidence of the failure to comply with the LDA. We therefore concur with the decision of the trial court on this issue.

Lastly, appellant argues that appellees did not establish substantive proof of stalking at trial. We review a trial court's findings of fact for clear error, while questions of law are reviewed de novo. *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 124; 680 NW2d 485 (2004).

“[U]nder Michigan civil and criminal law, stalking constitutes a willful course of conduct whereby the victim of repeated or continuous harassment actually is, and a reasonable person would be, caused to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 722; 691 NW2d 1 (2005). A civil cause of action involving stalking exists under MCL 600.2954(1):

A victim may maintain a civil action against an individual who engages in conduct that is prohibited under section 411h or 411i of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.411h and 750.411i of the Michigan Compiled Laws, for damages incurred by the victim as a result of that conduct. A victim may also seek and be awarded exemplary damages, costs of the action, and reasonable attorney fees in an action brought under this section.

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A replat of all or any part of a recorded subdivision plat may not be approved or recorded unless proper court action has been taken to vacate the original plat or the specific part thereof, with the following exceptions:

(a) When all the owners of lots which are to be part of the replat agree in writing thereto and record the agreement with the register of deeds, and proof that notice to the abutting property owners has been given by certified mail and the governing body of the municipality in which the land included in the recorded plat is situated, has adopted a resolution or other legislative enactment vacating all areas dedicated to public use within the proposed replat.

Appellant argues that appellees failed to provide substantive proof of stalking as defined under MCL 750.411h and 750.411i. Specifically, appellant argues that his action served a legitimate purpose, and, thus, did not constitute harassment as defined in MCL 750.411i(1)(d):

“Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

While appellant had the right to repair and maintain his easement, as previously noted, his actions were not solely confined to repair and maintenance of the easement. Rather, as previously stated, appellant’s behavior repeatedly went beyond a legitimate purpose and constituted harassment as defined by the stalking statute. Appellant admitted that he had threatened to kill Scott Curtis during a telephone call with the prosecuting attorney’s secretary. These actions led to Curtis obtaining a PPO against appellant. Appellant later violated that PPO by spreading Curtis’s sand pile that was partially located on the easement and partially located only on Curtis’s property. On a separate occasion, the trial court found that appellant cursed and yelled at appellees, digging ruts in the easement roadway with his truck. He also allegedly drove his tractor repeatedly down the MacLaines’ private driveway as part of his ongoing efforts to harass his neighbors. Appellee Marilyn Keller testified that appellant repeatedly called her, her children, and the other appellees for the sole purpose of harassment. She further testified that he routinely would sit in his truck outside her house and the houses of the other appellees. From this evidence, the trial court properly concluded that appellant engaged in stalking and that appellant’s actions did not fall within the legitimate purpose exception to the statutory definition of harassment. Accordingly we concur with the trial court on this issue and appellant is not entitled to any relief.

We reverse only that portion of the trial court’s order enjoining appellant from maintaining the easement and remand for the sole purpose of the trial court entering an order consistent with this opinion. In all other respects the trial court’s judgment is affirmed. We do not retain jurisdiction. No costs are awarded to any party. MCR 7.219(A).

/s/ Jane E. Markey  
/s/ E. Thomas Fitzgerald  
/s/ Stephen L. Borrello