

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN L. BELLVILLE and NANCY L.
BELLVILLE,

UNPUBLISHED
May 19, 2015

Plaintiffs-Appellants,

v

TED MATUSZAK and CARLA R. MATUSZAK,

No. 320381
Ogemaw Circuit Court
LC No. 12-658434-CK

Defendants-Appellees.

Before: BOONSTRA, P.J., and SAAD and MURRAY, JJ.

PER CURIAM.

Plaintiffs appeal the trial court’s judgment in favor of defendants. For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In the 1980s, plaintiffs purchased 160 acres of land in Ogemaw County. Most of the property had been farmed by the prior owner, but a 40-acre section of the parcel was used as a cattle pasture and woodlot. Plaintiffs put this section of the property to agricultural use by clearing some of the trees, and installing a drainage system. The drainage system, which was built with the help of the USDA, used tile lines,¹ and helped drain water from roughly 64 acres of plaintiffs’ property. The ground above the tile line was covered with grass to minimize erosion of the soil surrounding the tile line below.

Plaintiffs sold the 40-acre section of their parcel that contained the tile line to defendants in 2001. The warranty deed noted that the conveyance was

¹ According to Michael Thorne, a witness for the plaintiffs and former district conservationist for the Soil Conservation Service in Ogemaw County, tile lines are a type of open pipe that are placed along the sides of a drainage waterway in a farmer’s field, and then covered with somewhere “between two and a half and four [feet]” of ground cover. The lines help remove excess water from the soil, which might otherwise retard crop growth.

[s]ubject to an easement for the existing tiling/water course and main tile line that serves the balance of Seller's property. Said easement is to provide a continuing easement for the use and maintenance of said tile lines and water ways, and to provide access for maintenance, repair, and/or replacement to Grantors.^[2]

Defendant Carla Matuszak's brother, Kelby Ruckle, began farming defendant's 40-acre plot in 2003. For several years, Ruckle worked around the grass that covered the tile line. However, defendants did not cut the grass covering the tile line, and the overgrowth made it difficult for Ruckle to farm the surrounding land in small sections to avoid the grass. In 2011, Ruckle cleared the grass and planted crops on the land above the tile line, but said that he did so in a way that would ensure the continued drainage of plaintiffs' property. Plaintiffs asked defendants to remove the crops and restore the grass cover, but defendants did not do so.

Thereafter, plaintiffs filed this action in the Ogemaw Circuit Court, and sought to enjoin defendants from farming the land over the tile line, and to require defendants to restore the grass cover. Specifically, they alleged that the grass surface of the tile line was necessary for the "optimal use and continuation of proper drainage" of their property, without which they could suffer economic harm. As such, defendants' failure to maintain the grass surface violated the easement.

Defendants agreed that plaintiffs had an easement on their property, but denied that they had violated the terms of the easement. The warranty deed specified that the easement was only "to provide . . . for the use and maintenance of said tile lines and waterways, and to provide access for maintenance, repair, and/or replacement to Grantors." Defendants noted that they had never prevented plaintiffs from accessing the tile line for maintenance, repair, or replacement, and asserted that the grass cover was not necessary to properly drain plaintiff's property.

The trial court conducted a bench trial in December 2013, and heard testimony from, among others, plaintiffs, defendant Ted Matuszak, Kelby Ruckle, and two individuals who had experience installing tile lines and drainage systems. In its holding from the bench, the trial court found that the warranty deed created an easement on defendants' property for the maintenance and repair of the tile line.³ However, the court noted that the easement never specified that the tile line needed to be covered by grass, and that plaintiffs' claim of economic harm from defendants' removal of the grass cover was "speculative . . . at best." Accordingly, the trial court rejected plaintiffs' claim, and held that the defendants may continue to farm the

² The purchase agreement, dated November 7, 2000, also made explicit reference to such an easement, stating: "Buyers [defendants] agree to allow current Sellers [plaintiffs] and future owners, easement to maintain existing tile lines."

³ Specifically, the trial court stated: "[The easement] has to provide for two things: It has to provide for surface drainage for the [plaintiffs]. It has to provide for subsurface drainage through a tile system. And if it ever fails, [plaintiffs] have the right to come in, they have the right to maintain it, they have the right to replace it. However, there's nothing that says it has to be a 'grass waterway.'"

land over the tile line “consistent with [generally accepted agricultural and management practices].”

Plaintiffs appealed the decision of the trial court in February 2014, and make the same arguments here as they did at trial.

II. STANDARD OF REVIEW

“The scope and extent of an easement is generally a question of fact that is reviewed for clear error on appeal.” *Wiggins v City of Burton*, 291 Mich App 532, 550; 805 NW2d 517 (2011). “A finding is clearly erroneous when, on review of the whole record, [the reviewing court] is left with the definite and firm conviction that a mistake has been made.” *Nat’l Wildlife Federation v Dep’t of Environmental Quality*, 306 Mich App 369, 373; 856 NW2d 394 (2014).

III. ANALYSIS

An easement is the right to use the land of another for a specified purpose. *Bowen v Buck and Fur Hunting Club*, 217 Mich App 191, 192; 550 NW2d 850 (1996). “An easement may be created by express grant, by reservation or exception, or by covenant or agreement.” *Rossow v Brentwood Farms Dev, Inc.*, 251 Mich App 652, 661; 651 NW2d 458 (2002). “The language of an express easement is interpreted according to rules similar to those used for the interpretation of contracts.” *Wiggins*, 291 Mich App at 551.

Accordingly, to ascertain the scope and extent of an easement, it is necessary to determine the true intent of the parties at the time the easement was created. *Hasselbring v Koepke*, 263 Mich 466, 477–478; 248 NW 869 (1933). Determining the true intent of the parties begins with an examination of “the plain language of the easement, itself. If the language of the easement is clear, it is to be enforced as written and no further inquiry is permitted.” *Wiggins*, 291 Mich App at 551 (citation omitted). A party’s use of the servient estate “must be confined to the plain and unambiguous terms of the easement.” *Dyball v Lennox*, 260 Mich App 698, 708; 680 NW2d 522 (2003).

Here, plaintiffs, owners of the dominant estate, say that the trial court clearly erred when it found that the easement did not require defendants, owners of the servient estate, to maintain a grass surface over the tile line. Again, to discern the dominant estate’s rights over the servient estate, we look to the “plain language of the easement, itself,”⁴ which states:

[s]ubject to an easement for the existing tiling/water course and main tile line that serves the balance of Seller’s property. Said easement is to provide a continuing easement for the use and maintenance of said tile lines and water ways, and to provide access for maintenance, repair, and/or replacement to Grantors.

⁴ *Wiggins*, 291 Mich App at 551.

The plain language makes clear that plaintiffs may enter defendants' property to use, maintain, repair, and/or replace the existing "tile lines and water ways."⁵ Yet, the easement neither makes clear nor specifies that grass (or any substance) must cover the tile line, nor does it require defendants to maintain a grass cover over the tile line. If plaintiffs wanted to ensure the continued existence of a grass surface over the tile line, as opposed to any other type of vegetative cover, they could have included language to that effect in the easement, but they did not do so. See *Jackson Community College Classified and Technical Ass'n, MESPA v Jackson Community College*, 187 Mich App 708, 714; 468 NW2d 61 (1991).

Accordingly, plaintiffs' insistence that defendants maintain a grass cover over the tile line is outside of the "plain and unambiguous terms of the easement." *Dyball*, 260 Mich App at 708. And, again, defendants have not prevented plaintiffs from using the servient estate for the purposes contained in the easement. Moreover, we note that the trial court heard testimony that defendants' removal of the grass and farming operations has not and will not interfere with the existing tile lines and drainage of plaintiffs' property. Therefore, the trial court correctly rejected plaintiffs' claim, and we affirm its order.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Christopher M. Murray

⁵ Although plaintiff Brian Bellville testified that he understood the term "water way" to mean a "grass waterway"—i.e., a tile line covered by grass—he conceded that he was not sure how defendants would have known he understood "water way" to be defined as such. He also admitted that the parties did not discuss whether the land surrounding the easement should remain uncultivated.