

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT LITTLE and BARBARA LITTLE,

Plaintiffs/Counterdefendants-
Appellants,

v

THOMAS TRIVAN, DARLENE TRIVAN,
STEVEN KIN, and ROSALYN KIN,

Defendants/Counterplaintiffs-
Appellees.

UNPUBLISHED

March 23, 2006

No. 257781

Oakland Circuit Court

LC No. 1998-006136-CZ

Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

In this case concerning the scope and validity of an easement to Pine Lake in West Bloomfield, Michigan, plaintiffs appeal as of right from an order granting defendants' motion for summary disposition. We affirm.

I. FACTS

The facts and procedural history of this case are set forth in *Little v Kin*, 249 Mich App 502, 505-507; 644 NW2d 375 (2002):

After a 1974 fire gutted C.A. Muer Corporation's Charley's Crab restaurant on Pine Lake in West Bloomfield, the corporation subdivided the property into two three-lot columns, consisting of two lots with approximately one hundred feet of lakefront each, designated as lots A and B, and two lots stacked behind each lakefront lot (lots C and E behind lot A, and lots D and F behind lot B), for a total of six lots. To maximize the market value for each of the six lots, the corporation resolved to guarantee all lot purchasers substantial access to and use of Pine Lake. To that end, the corporation divided each of the one-hundred-foot shoreline lots into three equal sections and specified that the "frontlot" owners have the exclusive use of thirty-three feet of shoreline and, in a duly recorded easement,

provided that the backlot owners hold a non-exclusive, permanent easement over the remaining sixty-six by thirty feet of shoreline "for access to and use of the riparian rights to Pine Lake." This case involves a dispute between the owners of lot B and the owners of lots D and F.¹

Plaintiffs Robert and Barbara Little bought frontlot B for \$40,000 in 1977. Documents in the record reveal that plaintiffs purchased their lot with notice of the easement, which appeared in their title commitment, in the plat survey, and in the recorded easement. Defendants Thomas and Darlene Trivan bought their home on backlot F in the late 1980s for \$550,000, and defendants Steven and Rosalyn Kin bought a home on backlot D in 1995 for \$475,000. Before defendants' purchase of these lots, the Findlays, who formerly owned backlot D, approached plaintiffs about building a dock on the sixty-six-foot easement. Though information in the record differs regarding the intended size of the dock, evidence indicates that the Findlays built the dock in 1988 and used it for launching their boat, sunbathing, and picnicking. Defendants maintain that they continued to use the boat dock after they bought their backlots.

On May 13, 1998, plaintiff filed this action to prevent defendants from maintaining a boat dock on Pine Lake. Specifically, plaintiffs sought an injunction for removal of the dock and to prevent the building of future docks, and a declaration of defendants' rights under the easement. Thereafter, defendants filed a countercomplaint alleging that plaintiffs intentionally placed thorny bushes and landscape timbers on the easement, which interfered with their use and enjoyment of their easement rights. The parties filed motions for summary disposition on both claims and, following oral argument, the trial court granted summary disposition to plaintiffs. In a written opinion, the trial court reasoned that defendants, as owners of backlots, are not riparian owners and that, as a matter of law, an easement permits only a right of access to and use of the lake and cannot confer the right to construct a boat dock. Regarding the countercomplaint, the trial court issued a second written opinion and stated that it granted in part and denied in part the parties' motions. The order states that plaintiffs may not interfere with or obstruct defendants' right of access to the lake, but does not require plaintiffs to remove their plantings or other landscaping.

In that case, this Court remanded for further proceedings concerning the scope of an easement:

After reviewing applicable case law from our Supreme Court and our Court of Appeals, we hold that, while full riparian rights and ownership may not be severed from riparian land and transferred to nonriparian backlot owners, Michigan law clearly allows the original owner of riparian property to grant an easement to backlot owners to enjoy certain rights that are traditionally regarded

¹ A survey depicting the layout of the lots is attached as exhibit 5 to plaintiffs' brief.

as exclusively riparian. Because the trial court erred in interpreting Michigan case law and erred in resolving the scope of defendants' rights under the easement as a matter of law rather than (sic) as a question of fact, we reverse and remand for further proceedings consistent with this opinion. [*Id.* at 504-505.]

Plaintiffs appealed to our Supreme Court, which affirmed this Court's decision, but clarified the scope of the proceedings on remand:

First, the trial court must determine whether the easement contemplates the construction and maintenance of a dock by defendants. In answering this question, the trial court shall begin by examining the text of the easement. Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. See, e.g., *Gawrylak v. Cowie*, 350 Mich 679, 683, 86 NW2d 809 (1957). If the text of the easement is ambiguous, extrinsic evidence may be considered by the trial court in order to determine the scope of the easement.

If the easement grants defendants the right to construct or maintain a dock, the trial court must determine whether the particular dock at issue is permissible under the law of easements. Under our well-established easement jurisprudence, the dominant estate may not make improvements to the servient estate if such improvements are unnecessary for the effective use of the easement or they unreasonably burden the servient tenement. *Crew's Die Casting Corp. v Davidow*, 369 Mich 541, 120 NW2d 238 (1963); *Unverzagt v Miller*, 306 Mich. 260, 265, 10 NW2d 849 (1943); *Mumrow v Riddle*, 67 Mich App 693, 700, 242 NW2d 489 (1976). Accordingly, if the trial court concludes that the easement grants defendants the right to construct or maintain a dock, it must then determine (1) whether the dock is necessary for defendants' effective use of their easement and (2) whether the dock unreasonably burdens plaintiffs' servient estate. [*Little v Kim*, 468 Mich 699, 700-701; 664 NW2d 749 (2003) (footnote omitted).]

On remand, the trial court issued an opinion and order granting defendants' motion for summary disposition, concluding that the language of the easement granted defendants the right to construct a dock, that a dock was necessary to allow defendants to effectively use the easement, and that the dock did not unreasonably burden the servient estate.

II. STANDARD OF REVIEW

As this Court stated in *Little, supra*, 249 Mich App at 507:

The extent of a party's rights under an easement is a question of fact for the trial court, which we review for clear error. However, we review de novo a trial court's decision regarding a motion for summary disposition in a declaratory judgment action. We also review de novo a trial court's rulings on equitable issues, including the grant of injunctive relief. [Citations omitted.]

Also, a motion under MCR 2.116(C)(10) tests the factual support for a claim. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). In reviewing a motion under MCR

2.116(C)(10), this Court ““must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law.”” *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114; 617 NW2d 725 (2000), quoting *Unisys Corp v Comm’r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

III. ANALYSIS

We disagree with plaintiffs’ contention that the plain language of the easement only grants access to Pine Lake, and does not grant the right to construct a dock or permanently moor boats. The easement is described as being “for access to *and* use of the riparian rights to Pine Lake” (emphasis added). Erecting or maintaining a dock near the water’s edge is a “riparian right.” *McCardel v Smolen*, 404 Mich 89, 94; 273 NW2d 3 (1978); *Dyball v Lennox*, 260 Mich App 698, 705; 680 NW2d 522 (2004). Because the easement expressly grants both access to and “use of the riparian rights to Pine Lake,” and because constructing and maintaining a dock is within those rights, the trial court properly concluded that the language of the easement grants defendants the right to construct or maintain a dock.

The trial court also properly concluded that a dock was permissible under the law of easements, because it was necessary for the effective use of the easement and would not unreasonably burden plaintiffs’ property. *Little, supra* at 701.

Defendants were granted full riparian rights, which include the right to permanently anchor boats off shore. *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985). There is no genuine issue of fact that a dock is necessary to effectively dock boats.

Finally, the trial court did not err in determining that plaintiff’s property would not be unreasonably burdened. An unreasonable burden results when the servient estate is burdened to a greater extent than was contemplated at the time of the creation of the easement. *Barbaresos v Casaszar*, 325 Mich 1, 8; 37 NW2d 689 (1949); *Schadewald v Brule*, 225 Mich App 26, 37; 570 NW2d 788 (1997). In this case, it is apparent that the easement, by granting both access to *and use of the riparian rights* to Pine Lake, contemplated use of the easement to install a dock. Thus, a dock would not burden plaintiffs’ property more than was originally contemplated. Moreover, plaintiff offered no evidence that defendants’ dock would result in increased traffic, overuse or overcrowding, or loss in property value.²

² We disagree with plaintiffs that defendants’ dock would be a nuisance per se because it would violate West Bloomfield Township Ordinance, § 26-78. *Soupal v Shady View, Inc*, 469 Mich 458, 465; 672 NW2d 171 (2003). Because the proper construction of an ordinance is a question of law, *Ferguson v Lincoln Park*, 264 Mich App 93, 95-96; 694 NW2d 61 (2004), the interpretation of the ordinance advanced by West Bloomfield Township’s planning director, Thomas Bird, is not controlling. Our review of the plain language of § 26-78 discloses that it is not applicable to the situation presented here.

The trial court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ Bill Schuette

/s/ Christopher M. Murray

/s/ Pat M. Donofrio