

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL STALEC and VONDA STALEC,

Plaintiffs/Counter-Defendants-
Appellees,

UNPUBLISHED
March 17, 2011

v

DONALD STEPHENS and KARI J. STEPHENS,

Defendants/Counter-Plaintiffs-
Appellants,

No. 295656
Kent Circuit Court
LC No. 07-008239-CH

and

ANDY K. ST. DENIS and SHERRY A. ST.
DENIS,

Defendants/Counter-Plaintiffs.

Before: SHAPIRO, P.J., and HOEKSTRA and TALBOT, JJ.

PER CURIAM.

Donald and Kari Stephens (hereinafter “Stephens”) challenge the trial court’s determination that title to the property owned by Michael and Vonda Stalec was not burdened by an easement to and from Lake Wabasis and denying the existence of any boat docking rights by the Stephens. We affirm.

The Stephens own real property without lakeshore frontage, which they purchased in 2006 with the understanding that there was a valid easement granting access over the Stalec property to Lake Wabasis with boat docking privileges. The Stalecs contend that the purported easement is invalid. The origin of the disputed easement is a 1949 warranty deed issued by Kenneth and Leona Lewis (hereinafter “Lewis”). When Lewis granted the warranty deed that included the disputed easement they were not record title owners of the property. Lewis did not actually become the record title owners until 1951. The parcels now owned by the Stalecs and the Stephens were originally part of one large parcel owned by Lillian and Carl Hull (hereinafter “Hull”).

The Stalecs' chain of title began in 1955 when Hull granted a portion of their parcel to Lena Wood. Wood later conveyed her parcel to Ace and Alma Wisinski in 1962. In 1981, Wisinski conveyed the property to the Stalecs. Each deed in this chain of title refers only to driveway easements without any indication of an easement for lake access.

The Stephens' chain of title began in 1951 when Hull granted Lewis a portion of their parcel. This deed included an easement for driveway purposes, but did not mention an easement for lake access. In 1954, Hull granted another warranty deed to Lewis extending a driveway easement. But this subsequent deed did not mention a lake access easement. The alleged easement did not appear in Stephens' chain of title until 2003, when the Jenks family obtained the Lewis property and divided it into five smaller parcels. In each deed dividing the property, Jenks included the lake access easement and referenced the 1949 deed. Jenks sold a parcel to the Ross family and Stephens purchased that parcel from Ross.

The instant lawsuit arose from a 2003 claim by Ross regarding the validity of a lake access easement over the Stalec property. The Stalecs contested the validity and existence of the easement, but before the dispute was resolved Ross conveyed the land to Stephens. There is no evidence in the proffered record that the Stalecs or their predecessors ever acknowledged the existence of a lake access easement or that any previous owner of the Stephens' property ever exercised the lake easement rights now asserted. The Stephens' contention that past recognition of the easement is possible is premised solely on speculation.

An action to quiet title is equitable in nature. In an equitable action the factual "findings of the trial court are reviewed for clear error while its holdings are reviewed de novo."¹ The applicability of a statute is a question of law that is also reviewed de novo.²

The Stephens argue that the 1949 warranty deed granting the lake access easement is valid in accordance with the Marketable Record Title Act (MRTA). The MRTA provides that any person with an unbroken chain of record title for at least 40 years will be considered to have marketable record title free and clear of any and all interest, claims and charges based in whole or part on events occurring more than 40 years previous. Any claims to the interest based on defects outside the 40-year period are barred unless notice of such claims is filed during the 40-year period.³ A person has an unbroken chain of title if public records disclose "[a] conveyance [that] . . . purports to create the interest in that person, with nothing appearing of record purporting to divest that person of the purported interest."⁴ To invoke the protections of the MRTA the Stephens must establish an unbroken chain of title extending back at least 40 years. The Stephens cannot meet this burden as the 1949 warranty deed which originated the easement

¹ *Fowler v Doan*, 261 Mich App 595, 598; 683 NW2d 682 (2004).

² *Id.* at 598-599.

³ MCL 565.101; MCL 565.103.

⁴ MCL 565.102(a).

is not in either the Stalecs' or the Stephens' chain of title. The first mention of the lake access easement in the Stephens' chain of title is in a deed issued in 2003.

Contrary to the position assumed by the Stephens, this issue would not be resolved in their favor even if we were to presume that the 1949 warranty deed is part of their chain of title. Quite simply, it is well established that a grantor cannot convey a right he does not possess,⁵ and since Lewis did not have record title to the property when granting the 1949 deed, any assertion of a lake access easement stemming from that deed is rendered invalid.⁶

The Stephens alternatively contend that even if the 1949 deed is not valid, equitable revision should apply because omission of the lake access easement from the 1951 and 1955 deeds comprised a mutual mistake. Reformation of a deed comprises a form of equitable relief.⁷ A trial court's factual findings regarding a grant of equitable relief are reviewed for clear error, and whether equitable relief was proper under the facts is a question of law reviewed de novo.⁸

"There is abundant authority for reforming a deed or mortgage which, through error, fails to express the result of the meeting of the minds of the parties, particularly when it is clear that the description fails to embody the clear, undisputed visual standard of the parties."⁹ To obtain this remedy, the Stephens must prove that reformation is warranted by "clear and satisfactory" evidence.¹⁰ Reformation is warranted when mutual mistake results in a deed that does not express the true intent of the parties.¹¹ The Stephens contend that the original parties, Lewis and Hull, intended to include the lake access easement in the 1951 and 1955 deeds. In support of their position, the Stephens note the existence of the 1949 deed granting the lake access easement, that Hull later deeded this property to Lewis, and that both the 1951 and 1955 deeds included the driveway easement extending in the direction of the lake but stopping short of the lakeshore. The Stephens assert the existence of a mutual mistake because this easement has no conceivable purpose except to provide access to the lake as it simply ends in the middle of landlocked property with no other discernable purpose or destination.

These assertions fail to substantiate the existence of a mutual mistake. The 1951 and 1955 deeds explicitly recognize the two driveway easements and unambiguously explain their intended purpose as being for "driveway purposes." If the parties wished to include a lake

⁵ *Gowdy v Gordon*, 240 Mich 558, 564; 215 NW 702 (1927).

⁶ *Von Meding v Strahl*, 319 Mich 598, 606; 30 NW2d 363 (1948).

⁷ *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 371; 761 NW2d 353 (2008).

⁸ *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

⁹ *Etherington v Bailiff*, 334 Mich 543, 552; 55 NW2d 86 (1952).

¹⁰ *Johnson Family Ltd Partnership*, 281 Mich App at 379.

¹¹ *Troff v Boeve*, 354 Mich 593, 596-597; 93 NW2d 311 (1958).

access easement they could have designated such or incorporated the language of the 1949 deed. Historically, cases that permit or decline to grant reformation have required more specific and concrete evidence than that which the Stephens have proffered.¹² The Stephens have failed to present any direct evidence of an agreement to establish a lake access easement. In contrast, the evidence demonstrates that for the immediately preceding 55 years of ownership of the Stalec parcel there has been no lake access easement claim asserted until Ross in 2003. Although the Stephens contend that the easement for lake access is logical and that the 1949 deed proves the easement was intended, no one involved in the original land transaction is available to testify to confirm such an assertion, leaving the Stephens to rely solely on limited circumstantial evidence and speculation to support their position. The minimal evidence proffered by the Stephens in support of their claim is significantly less, on both a qualitative and quantitative level, when compared to cases in which the parties were found to be deserving of the remedy of reformation. Based on the evidence presented and the better position of the lower court to judge the credibility of witnesses¹³, we find that the trial court did not err in its determination that the Stephens had failed to establish a basis for reformation.

Finally, the Stephens challenge the trial court's ruling that even if the 1949 deed granting lake access was valid its use today impermissibly surpasses the scope originally intended and unreasonably burdens the servient estate. Because we find that the 1949 deed was invalid and that the Stephens do not have the right to a lake access easement over the Stalec property, this claim is rendered moot.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ Michael J. Talbot

¹² See *Johnson Family Ltd Partnership*, 281 Mich App at 381-382.

¹³ *Troff*, 354 Mich at 597.