STATE OF MICHIGAN

COURT OF APPEALS

PAUL A. BOSCO,

Plaintiff-Appellant,

v

JAMES A. ADAMS, JEAN P. ADAMS, HENRY E. GEORGE, EFFIE E. GEORGE, RICHARD M. HINTERMAN, JUDITH A. HINTERMAN, DONALD A. BOSCO, and GINA BOSCO,

Defendants,

and

FORRESTER CONSTRUCTION COMPANY, INC.,

Defendant-Appellee.

UNPUBLISHED
August 6, 2002

No. 228189
Oscoda Circuit Court
LC No. 98-002872-CH

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order delimiting the scope of a prescriptive easement across defendant Forrester Construction Company's property.[1] We affirm.

The parties do not dispute that plaintiff has acquired, through open, notorious, hostile and continuous use for a period of at least fifteen years, a prescriptive easement for ingress and egress over defendant's property. See *Killips v Mannisto*, 244 Mich App 256, 258-259; 624 NW2d 224 (2001). Plaintiff argues, however, that the trial court erred in limiting the scope of that easement to a width of between nine and eleven feet. Plaintiff asserts that such limitation is

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[1] Defendants James and Jean Adams, Henry and Effie George, Richard and Judith Hinterman, and Donald and Gina Bosco each at some time held an interest in defendant Forrester Construction Company's land. Their inclusion in the present action, however, stemmed from an incorporated action to quiet title, which has since been settled. Accordingly, references to "defendant" are to Forrester Construction Company – the only appellee in this matter.

contrary to the evidence of his use over the prescriptive period and is insufficient to support adequate maintenance of the easement. We disagree. Because this is an action in equity, we review de novo the trial court's ultimate decision and will reverse only if the findings supporting that decision are clearly erroneous. *Walch v Crandall*, 164 Mich App 181, 191; 416 NW2d 375 (1987).

An easement is merely the right to use the land of another for a specific purpose. *Killips*, *supra* at 258. It does not displace the general rights of the owner, and entitles the holder of the easement to possession only to the extent necessary for full enjoyment of the rights conferred under the easement. *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). With respect to prescriptive easements, "[t]he character and extent of [the] easement are fixed and determined by the use under which it was acquired. No different or materially greater use can be made of such an easement, except by further adverse use for the prescriptive period, or by the acquisition of additional rights in some other manner." 25 Am Jur 2d, Easements and Licenses, § 93, p 664-665.

In this case, the evidence at trial clearly indicated a consistent use by plaintiff during the prescriptive period of between eight and eleven feet. Although there was additional evidence that plaintiff had recently attempted to enlarge the scope of his use through grading of the easement and construction of "turn arounds," such use was not of a sufficient duration to expand his prescriptive rights. *Killips*, *supra* at 258-259. Accordingly, we cannot conclude that the trial court's finding establishing an easement width of between nine and eleven feet was clearly erroneous. MCR 2.613(C); *Walch*, *supra*.

Regarding plaintiff's argument that the easement must be enlarged so that necessary improvements can be made, we note that it is well settled that the owner of an easement cannot materially increase the burden on the servient estate or impose thereon a new and additional burden. *Delaney v Pond*, 350 Mich 685, 687; 86 NW2d 816 (1957); *Schadewald*, *supra* at 36. While this tenet must be balanced against the easement owner's right to do such acts as are necessary to effective enjoyment of the easement, the scope of this privilege is determined largely by what is reasonable under the circumstances. *Killips*, *supra* at 261, citing *Mumrow v Riddle*, 67 Mich App 693, 700; 242 NW2d 489 (1976). Thus, we must determine first, whether the improvement is necessary to effective enjoyment of the easement, and second, whether the repair or improvement, if necessary, unreasonably increases the burden on the servient tenement. *Mumrow*, *supra* at 700.

Here, we agree with the trial court that plaintiff's proposed enlargement of the "two track" easement from its pre-existing nine- to eleven-foot width, to a graded road approximately thirty-three feet wide with drainage and runoff ditches, is unnecessary for the effective enjoyment of the easement and would unreasonably increase the burden on the servient tenement. *Killips*, *supra*; *Mumrow*, *supra*. The trial court's order, which expressly permits reasonable maintenance of the easement, including restoration of the easement to its previous grade, was sufficient to eliminate the problems associated with the easement's wear over the years, and adequately protects plaintiff's right to make effective use of the easement without imposing an additional burden on the servient estate. Accordingly, we find no error in the trial court's refusal to expand the scope of the easement to allow the improvements proposed by plaintiff.

Plaintiff also challenges the trial court's order insofar as it grants defendant the right to place a gate across the western edge of the easement which, at defendant's option, may be locked so long as plaintiff is provided with a key. Plaintiff argues that such relief is inconsistent with his right to unobstructed use of the easement, and was outside the court's authority to grant as the relief was neither expressly requested nor supported by the evidence. Again, we disagree.

A trial court has broad discretion to grant relief supported by the evidence, even if such relief was not demanded in the pleadings. MCR 2.601(A); see also *Swan v Ispas*, 325 Mich 39, 45-46; 37 NW2d 704 (1949) (a court is not precluded from granting relief not specifically prayed for if it is germane to the issues presented by the pleadings). This is especially true where the relief is sought in equity. See, e.g., *Three Lakes Ass'n v Kessler*, 91 Mich App 371, 377-378; 285 NW2d 300 (1979) (when granting equitable relief, "a court is not bound by the prayer for relief but may fashion a remedy as warranted by the circumstances"). Here, evidence that the propriety of gated access was a disputed source of contention between the parties was introduced during cross-examination of plaintiff by defense counsel. Given such evidence, we conclude that the trial court properly acted to resolve the dispute despite any express request by the parties.

Moreover, although plaintiff is correct that he is entitled to unobstructed use of the easement at issue, see *Lakeside Associates v Toski Sands*, 131 Mich App 292, 299-300; 346 NW2d 92 (1983), defendant is similarly entitled to use of the land for any purpose not inconsistent with that right, *Morrow v Boldt*, 203 Mich App 324, 329; 512 NW2d 83 (1994), and this Court has previously construed gated access not to be inconsistent with the right of unobstructed passage. For example, in *Nicholls v Healy*, 37 Mich App 348, 349-350; 194 NW2d 727 (1971), after noting that the defendant landowner had a right to make any use of the premises not inconsistent with the plaintiff's use of his easement, the panel held that maintenance of a gate across the right of way, if it permitted use of the way, would not constitute an obstruction of the way. See also, *Greve v* Caron, 233 Mich 261, 266-267; 206 NW2d 334 (1925) ("maintenance of a gate across the way at the street, . . . would not constitute an obstruction of the way"). Accordingly, because maintenance of a gate is not, in and of itself, inconsistent with plaintiff's right to unobstructed use, and considering the trial court's requirement that, should the gate be locked plaintiff be provided a key, we find no error in the trial court's decision to allow gated access to the easement. The trial court properly balanced plaintiff's right of unobstructed access against defendant's right to protect its land from trespassers. Accordingly, we conclude that the challenged relief was warranted by the circumstances. *Three Lakes Ass'n, supra*.

We affirm.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell