

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

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LORAYNE F. SINCLAIR,

Plaintiff-Appellant,

v

DOUGLAS J. HARDING and VALERIE A.  
HARDING,

Defendants-Appellees.

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UNPUBLISHED

March 16, 2006

No. 258978

Newaygo Circuit Court

LC No. 04-010701-CH

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's order that granted defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of a dispute over an easement. Plaintiff filed a complaint that sought to quiet title and enjoin defendants from using an easement across plaintiff's property for ingress and egress. Plaintiff purchased her property in 1966, property that was burdened by an easement that had been in existence since 1951. Defendants purchased a parcel of land in 1997 that required them to use the easement through plaintiff's land and that of another landowner in order to reach their property. A declaration of the easement in issue was recorded in 1991, prior to defendants' 1997 purchase.

Defendants filed a motion for summary disposition asking the trial court to rule that the easement was valid. The trial court had previously ruled, in a case filed in 1999, that the other landowner's property was burdened by the easement for defendants' benefit. Plaintiff had attempted to intervene in the 1999 lawsuit and had averred in her motion to intervene that the easement had existed since 1951. No appeal was ever taken from the trial court's earlier ruling.

After a hearing, the trial court dismissed plaintiff's claim. In its ruling, the court stated that the easement across plaintiff's property had been in existence since 1951 and that it had been used by defendants and their predecessors for over fifty years. Without the easement, defendants' property was landlocked. The court also ruled, consistent with its 1999 ruling, that the easement benefited defendants' property and burdened plaintiff's property, along with the property of the other landowner.

Plaintiff argues that her pleadings raised a genuine issue of material fact by calling into question the declaration of easement that had been filed in 1991 by defendants' predecessors. Plaintiff further claims that the court erred in incorporating its ruling from a previous case filed by the other landowner against defendants.

While the trial court did not state the subsection of the court rule on which it relied, it did rule that there was no genuine issue of material fact with regard to the existence or validity of the easement. MCR 2.116(C)(10) provides that summary disposition is proper when "there is no genuine issue of material fact" and that the moving party is entitled to judgment as a matter of law. Therefore, this Court will review this issue pursuant to MCR 2.116(C)(10).

This Court reviews the trial court's ruling on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 59; 680 NW2d 50 (2004). Under MCR 2.116(C)(10), the court considers not only the pleadings, but affidavits, depositions, and any other documentary evidence to determine whether a genuine issue of material fact exists which would require a trial. MCR 2.116(G)(5); *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). While the court should look at evidence submitted in the light most favorable to party opposing the motion, when the party opposing the motion fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

This Court also reviews the trial court's rulings on equitable issues de novo. *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002), aff'd 468 Mich 699; 664 NW2d 749 (2003); *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 9; 596 NW2d 620 (1999). However, the extent of a party's rights under an easement is a question of fact for the trial court, which this Court reviews for clear error. *Little, supra*; *Blackhawk Development Corp v Village of Dexter*, 473 Mich 33, 49; 700 NW2d 364 (2005). The trial court's findings will, therefore, be reviewed for clear error. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003).

An easement may be created by express grant, by reservation or exception, or by covenant or agreement. *Rossow v Brentwood Farms Development, Inc*, 251 Mich App 652, 661; 651 NW2d 458 (2002).

Plaintiff admitted in her pleadings in the 1999 case, that the easement existed since 1951, before the time she purchased the land in 1966. The trial court also had in its possession the documentation from its prior ruling, including maps of the easement and the deed and declaration of easement granting land to the defendants. Plaintiff's sworn statements in her own pleadings supported the trial court's finding that a valid easement existed, which burdened plaintiff's land.<sup>1</sup> *Higgins Lake Prop Owners Ass'n, supra*.

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<sup>1</sup> Plaintiff also claims that the trial court erred by incorporating its prior ruling from a case filed in 2001 by the other landowner against defendants. The trial court was, in fact, referring to the case filed in 1999 when it ruled that a valid easement existed for the benefit of defendants. The ruling in the 2001 case concerned the other landowner's standing only and did not address the

Affirmed.

/s/ Janet T. Neff  
/s/ Henry William Saad  
/s/ Richard A. Bandstra

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easement. Because the trial court reviewed the pleadings and documentation in this case and based its decision on the pleadings and documentation before it, the court's observation that its ruling was consistent with its ruling in 1999 is not error.