

STATE OF MICHIGAN  
COURT OF APPEALS

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LAKEWOOD HILLS,

Plaintiff-Appellee,

v

JADE PIG VENTURES–EGR, L.L.C., and JADE  
PIG VENTURES–RAMONA, L.L.C.,

Defendants-Appellants.

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UNPUBLISHED

March 29, 2007

No. 271197

Kent Circuit Court

LC No. 04-012561-CH

Before: Sawyer, P.J., and Neff and White, JJ.

WHITE, J. (*concurring in part and dissenting in part.*)

I agree that the circuit court erred in concluding that the easement terminated upon the demolition of the shopping center. I also agree that the uses deemed permitted by the majority are within the grant. I write separately because I do not agree with some of the majority's additional observations.

Plaintiff commenced this action asserting that the easement had terminated because it was no longer being used for ingress and egress to and from the Jacobson's shopping center. Also at issue was whether, if the easement had not terminated, the proposed uses for the rezoned property are permitted under the easement, and whether if permitted, the uses would overburden the easement. The circuit court answered the first question in the affirmative and did not reach the second and third questions. The court erred in concluding that the easement had terminated. The easement is broad in its grant of ingress and egress to and from the parcel forever. At best, the easement is limited to ingress and egress to and from a shopping center. Because "shopping center" is not limited to the shopping center originally built for Jacobson's, the easement did not terminate due to its purpose ceasing to exist, being abandoned or being impossible to accomplish. Nor would a misuse of the easement result in its automatic termination. Rather, an injunction limiting its use to its permissible scope would, if possible, be appropriate.

I would remand to the circuit court to determine the scope of the permissible use under the easement. Although the parties both asserted that the easement is unambiguous, they argued for differing interpretations. I conclude that the easement is ambiguous with regard to its scope. The grant is broad, providing for a driveway over plaintiff's premises for ingress and egress between Lakeside Drive and defendant's parcel, forever. The limiting language shows that the parties to the easement agreement contemplated that a shopping center would be built on

defendant's parcel. The limiting language further states that the easement is "for pedestrian and vehicular traffic to and from Second Party's Shopping Center only. No through traffic shall be allowed." Plaintiff asserts that the plain language provides that the easement can only be used to access and leave the shopping center built on defendant's property, and that it does not allow ingress and egress to and from any other structures on, or portion of, the Jacobson's parcel. Defendant argues that the limiting language is clearly focused on the use of the easement -- for ingress and egress to the contemplated shopping center only, and not for through traffic -- and that it was not intended to limit ingress and egress to and from other structures that might later be built on the property. Both interpretations are reasonable. Under the circumstances, I would remand with instructions to allow testimony, and to address the second and third issues as identified by the circuit court in its opinion.

/s/ Helene N. White