

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

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JAMES A. WAKEFORD,

Plaintiff-Appellee

and

R. JEAN WAKEFORD,

Plaintiff,

v

CRAIG P. MCCOLLISTER,

Defendant-Appellant.

UNPUBLISHED

August 16, 2012

No. 305211

Ogemaw Circuit Court

LC No. 05-655615-CH

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Before: TALBOT, P.J., AND WILDER AND RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order instructing him to remove two structures from his property that infringed upon plaintiffs' easement. We affirm.

**I. FACTUAL BACKGROUND**

Plaintiffs' purchased their property in Ogemaw County, Michigan with a deed that contained the grant of 66-foot easement over defendant's property for ingress and egress. Plaintiffs sought to improve the easement by installing a culvert and straightening the driveway. Plaintiffs sued defendant, alleging that he had obstructed their improvement efforts and otherwise interfered with their use and enjoyment of the right-of-way. Defendant denied that he obstructed plaintiffs' use of the easement.

The trial court acknowledged that there appeared to be "at least three encroachments" on the easement, "none of which right now are a problem." The court recommended that defendant consider removing the encroachments "because they really don't belong in an easement" and "sooner or later" they would interfere with plaintiffs' use. The parties entered into consent judgment that provided:

1. That Plaintiffs shall have the right to add a 35-foot extension to the culvert currently existing on the easterly side of the right-of-way over Defendant's property along the southerly right-of-way line of Rose City Road;

2. That Plaintiffs shall have the right to grade the access to the right-of-way over the culvert so installed as to provide reasonable access to the surface of the right-of-way provided, however, that Plaintiffs shall make every effort to preserve the two (2) pine trees currently existing at the northerly end of the right-of-way;

3. That Plaintiffs shall have the right to place gravel and such other aggregate over the culvert and the grade constituting the new access to the right-of-way as shall be reasonable and necessary to facilitate reasonable access to the surface of the right-of-way;

4. That this Judgment does not limit the rights of Plaintiffs, their heirs, successors and assigns, to the future use, development and maintenance of the right-of-way as may be reasonable and necessary to the future development, use and enjoyment of the property of Plaintiffs' access to which said right-of-way provides and does not vest in the Defendant, any prescriptive rights to the maintenance of buildings, improvements, personal property or other impediments to the future use of the right-of-way by Plaintiffs.

5. That this Court shall maintain jurisdiction over this matter to implement the terms hereof.

However, defendant and plaintiffs continued to have difficulties. Plaintiffs wrote to the trial court, claiming that defendant had failed to comply with the court order and had erected signs facing plaintiffs' property that contained profane language. There were also structures on the easement that belonged to defendant and that existed before the consent judgment, including a shed and a lean-to. The court ordered defendant to remove a fence he had built subsequent to the consent judgment and cease parking vehicles on the easement. Plaintiffs again contacted the trial court in an attempt to enforce the judgment, alleging that while the fence had been moved and the signs painted over, there were still buildings, vehicles, and other property on the easement. Plaintiffs alleged that they could not list their property for sale until defendant cleared the easement. Plaintiffs admitted that they had yet to install the culvert, but blamed the failure on the constant litigation with defendant. The trial court ordered defendant to remove the shed and lean-to that existed at the entry of the consent judgment. Defendant now appeals.

## II. STANDARD OF REVIEW

"The scope and extent of an easement is generally a question of fact that is reviewed for clear error on appeal." *Wiggins v City of Burton*, 291 Mich App 532, 550; 805 NW2d 517 (2011). "The clear error standard provides that factual findings are clearly erroneous where there is no evidentiary support for them or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake." *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

### III. ANALYSIS

The “easement holder’s rights are ultimately paramount . . . to those of the owner of the soil” to the extent indicated in the easement grant. *Blackhawk Dev Corp v Vill of Dexter*, 473 Mich 33, 41; 700 NW2d 364 (2005) (internal quotations and citation omitted). Thus, to the extent indicated in the deed, plaintiffs’ rights to the easement are paramount to defendant’s rights. While defendant insists that the trial court erred in ordering him to remove the structures that obstructed the easement, he admitted in the lower court and on appeal that at least a portion of the structures physically infringed upon the easement. He also failed to cite any relevant caselaw suggesting that a servient tenement owner has the right to place physical structures on an easement as long as the dominant tenement owner can technically find a way to still use the easement. Thus, since plaintiffs had the right to reasonable use and enjoyment of the easement, the trial court did not clearly err in finding that the structures interfered with plaintiffs’ rights and necessitated removal.<sup>1</sup>

Defendant also argues that the trial court exceeded its authority in granting plaintiffs relief not contemplated in the parties’ original agreement. Defendant posits that the trial court’s original order contemplated only the installation of a culvert, not the removal of structures. This statement misconstrues the order, which provided that the order “does not limit” plaintiffs’ rights to challenge “other impediments to the future use of the right-of-way by Plaintiffs.” The trial court also expressly maintained jurisdiction to enforce the terms of the order. Hence, the trial court’s order to remove the structures was an exercise of power consistent with the original order.<sup>2</sup>

### IV. CONCLUSION

Upon review of the record, we are not “left with a definite and firm conviction that the trial court made a mistake.” *Hill*, 276 Mich App at 308. Thus, the trial court did not clearly err in ordering defendant to remove the structures that obstructed plaintiffs’ reasonable use of the easement. We affirm the trial court’s order.

/s/ Michael J. Talbot  
/s/ Kurtis T. Wilder  
/s/ Michael J. Riordan

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<sup>1</sup> While defendant challenges the trial court’s reliance on plaintiffs’ desire to sell the property as a reason for ordering the removal of the structures, the trial court also referenced the physical infringement on the easement and the fact that the encroachments were a blight, which were proper considerations. Moreover, defendant fails to cite any caselaw suggesting that a desire to sell the property is not a relevant consideration.

<sup>2</sup> We decline to address any issue relating to res judicata, as such a claim was not properly preserved. See *Gen Motors Corp v Dep’t of Treasury*, 290 Mich App 355, 386-387; 803 NW2d 698 (2010).