

STATE OF MICHIGAN
COURT OF APPEALS

ANDREW W. BOCHI, BETTY JANE BOCHI,
RAY J. WEST, JUDITH A. WEST, WILFRED D.
JACKSON, PETER TOMA, JR., ELSIE TOMA,
RAY FARHAT, JOYCE E. FARHAT, EDWARD
J. LEPLER, MABEL M. LEPLER, DONALD
E. CLOSSER, and DORIS J. CLOSSER,

UNPUBLISHED
January 3, 2003

Plaintiffs-Appellants,

V

DOUGLAS L. SHAFFER and CINDA A.
SHAFFER,

No. 233187
Cheboygan Circuit Court
LC No. 95-005366

Defendants-Appellees.

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In this action asserting the right to an easement across defendants' land, plaintiffs appeal as of right the trial court's order implementing the prior decision of this Court in this matter. We affirm the trial court's order but remand for clarification.

I. Facts and Proceedings

Plaintiffs and defendants own property in Cheboygan County. A public highway is not directly accessible from plaintiffs' properties, but access to plaintiffs' properties may be gained by way of two roadways commonly known as Bluffs Road and Closser Road. Plaintiffs claimed that they had an express easement, an implied easement, a prescriptive easement, or an easement by necessity over defendants' property to reach Closser Road. The evidence presented during the four-day bench trial showed that Bluffs Road becomes impassable at times because of snow and washouts. During such times, access to plaintiffs' properties can be gained only by way of defendants' property and Closser Road. At the conclusion of the trial, the trial court ruled that plaintiffs had a prescriptive easement over defendants' property for pedestrian traffic and emergency vehicles, but not for non-emergency vehicles. The trial court did not expressly restrict the time frame in which this easement is available to plaintiffs. The trial court also ruled that plaintiffs had an easement by necessity for emergency vehicles when Bluffs Road is impassable.

In *Bochi v Shaffer*, unpublished opinion per curiam of the Court of Appeals, issued July 9, 1999 (Docket No. 201553), another panel of this Court affirmed with modification the trial court's judgment. The *Bochi* Court held that the trial court did not err in finding that plaintiffs had a prescriptive easement for pedestrian and emergency vehicular traffic and an easement by necessity when Bluffs Road is impassable. *Id.* at 2, 3. However, the Court found that the trial court erred in concluding that the prescriptive easement did not also extend to non-emergency vehicles. *Id.* at 2. Accordingly, the *Bochi* Court modified the judgment to state that the easement may be used by emergency and non-emergency vehicles alike. *Id.* at 4.

After this Court's first opinion was issued, the trial court entered an order holding that plaintiffs had "acquired a prescriptive easement and an easement implied by necessity for pedestrian and general vehicular traffic for ingress and egress to their respective premises which they may own over the property of the Defendants only when Bluffs Road is impassible [sic]."

Plaintiffs appeal the trial court's order, claiming it is inconsistent with this Court's prior opinion because, according to plaintiffs, the trial court drafted a more restrictive order than this Court required. Plaintiffs claim that by restricting use of the prescriptive easement to periods when Bluffs Road is impassable, the trial court violated the law of the case doctrine.

II. Standard of Review

The issue whether a trial court erred by failing to follow an appellate ruling on remand presents a question of law that we review de novo. *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 133-135; 580 NW2d 475 (1998). Pursuant to the law of the case doctrine, a ruling on a question of law in a first appeal is binding on all lower tribunals and in subsequent appeals. A lower court may not take an action on remand that is inconsistent with the judgment of an appellate court. *Id.*

III. Analysis

Plaintiffs argue that the trial court failed to follow this Court's ruling since the trial court held that plaintiffs had a prescriptive easement for pedestrian traffic and non-emergency vehicles only when Bluffs Road is impassable. We disagree. We first note that the trial court's order does not expressly state that plaintiffs' easement for pedestrian traffic is limited to periods when Bluffs Road is impassable, but the order is ambiguous and could be understood that way, given the construction of the order. We therefore remand this matter to the trial court to clarify that plaintiffs' easement for pedestrian traffic is not restricted to periods when Bluffs Road is impassable. The parties do not dispute that plaintiffs may access the easement as pedestrians year round.

We also disagree with plaintiffs' assertion that the trial court failed to abide by this Court's prior opinion because we find that the trial court implemented a legitimate interpretation of the opinion. As plaintiffs state, in the section of the prior opinion analyzing the prescriptive easement issue (Section I), the Court stated, "We find no error in the trial court's ruling regarding emergency vehicles and pedestrian traffic." *Bochi, supra* at 2. Additionally, plaintiffs correctly point out that the Court did not state in Section I that the trial court had improperly

designated the prescriptive easement for year round use.¹ Nevertheless, in the final paragraph of the majority opinion, the Court stated:

In sum, we affirm the trial court's findings regarding the existence of an easement by prescription and an easement implied by necessity, but modify the trial court's judgment to provide that the scope of the easement includes general vehicular traffic when Bluffs Road is inaccessible. We also affirm the trial court's holdings regarding the existence of an easement for pedestrian traffic, and the absence of any express easement. [*Bochi, supra* at 4.]

Admittedly, this paragraph is not totally consistent with the language used in Section I because it implies that the prescriptive easement is available only when Bluffs Road is inaccessible. We decline plaintiffs' request to give Section I greater force than the concluding paragraph. The fact that the language plaintiffs dispute appears in the summary of the Court's opinion does not render it mere surplus. Accordingly, we find that the opinion can legitimately be read in multiple ways. Because the trial court's order complies with the concluding paragraph of the prior opinion, we find that the trial court did not err by restricting use of vehicles on the easement to periods when Bluffs Road is impassable.

Affirmed but remanded for clarification. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra

¹ We note, however, that this section of the prior opinion does not mention that the trial court found that the prescriptive easement was for year round use.