STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF NATURAL RESOURCES, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED April 27, 2004
v	No. 242695 Ingham Circuit Court
LOUIS LECUREUX and BARBARA DAVIS, Defendants/Counter-Plaintiffs-Appellees.	LC No. 01-093468-CZ

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order denying its motion for summary disposition and granting summary disposition to defendants. In its ruling, the trial court held that defendants had an implied easement across an abandoned rail line that crosses their property, which is now owned and managed by plaintiff. We reverse and remand.

I. Material Facts

This case involves a dispute over whether an implied easement exists over a one hundred foot wide strip of land (an abandoned rail line) owned by plaintiff and which bisects a parcel of land owned by defendants. Plaintiff currently maintains the abandoned rail line for recreational use by pedestrians and snowmobilers.

A chain of title dating from 1869 to defendants' purchase of the property in 1993 was established through documentary evidence submitted with plaintiff's motion. Specifically, John Massier, Sr. received eighty acres of land in Cheboygan County by patent from Michigan's governor in 1869. In 1880, Massier, Sr. sold a one hundred-foot wide strip of land that traversed the eighty acres to the Jackson, Lansing, and Saginaw Railroad Company. Massier, Sr. did not expressly reserve an easement across the transferred property. In 1881, Massier, Sr. transferred a twelve-acre parcel out of the eighty acres to his son, John Massier, Jr. The parcel was located in the western portion of the eighty-acre property, and the one hundred-foot strip traversed the smaller parcel. The assignment expressly excepted the strip Massier, Sr. had transferred to the railroad. Although the deed indicated the railroad had a right-of-way, neither party produced documents indicating the railroad's interest in the property had changed from the original transfer a year earlier.

In 1882, Massier Jr. transferred by warranty deed the twelve-acre parcel to Mary Sutton. In 1893, Mary Sutton transferred the parcel to Bessie Sutton by quitclaim deed. Both of these transfers specifically noted the railroad's right to the one hundred-foot strip.

In 1993, defendants purchased the twelve-acre parcel for $4,800 by quitclaim deed. Defendants built a house on the eastern portion of their twelve-acre parcel. Defendants wish to drive wheeled motorized vehicles over the one hundred-foot strip to access the western portion of the parcel, and they intend to harvest timber from the parcel's western portion and then build a single-family residence there.

Plaintiff produced evidence indicating road access to the original eighty acres and/or the twelve-acre parcel in 1902 and 1956. Also, plaintiff provided an affidavit from Steve Palmer, a Michigan Department of Transportation development engineer, indicating the state built US 23[1] parallel to and directly east of the hundred-foot strip in 1927.

II. The Trial Court's Decision

Plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that no genuine issue of material fact existed and that, pursuant to the undisputed material facts, defendants had not demonstrated the existence of an implied easement. Defendants answered the motion, agreeing that the material facts were undisputed, but requesting judgment be summarily entered in their favor. MCR 2.116(I)(2).

During oral argument, plaintiff argued that because no evidence existed showing that the parcel was landlocked at the time the strip of land was transferred to the railroad, defendants could not establish an implied easement by necessity. In making the argument that there was no showing that the railroad ever allowed access over the land, plaintiff stated the following:

> I think it's unreasonable to assume that the railroad would have anticipated a driveway or some other crossing across what would be tracks that were to be traveled by railcars. *The only concession I made in the brief is there may have been an implied reservation of the right to maybe cross the tracks on foot,* maybe to go hunting back on the west end of the property, *but I think the evidence of the road access to the west also would negate that*.

The trial court ruled from the bench, holding that there was an implied easement. The trial court's reasoning seemed to be two-fold. First, the court concluded that "the parcel was landlocked at the time of the critical transfer," even though no evidence existed regarding the accessibility of the land in 1880:

> The parcel was landlocked at the time of the critical transfer. There is no evidence one way or the other. There's no evidence that there was access. I don't

---

[1] The parties explained at the motion hearing that *old* US 23, not the expressway, runs through the property.

> know how the defendant can be expected to prove a negative. I mean, there is some evidence that later on, some twenty-two years later there was a road or some kind of access to this property, but as of 1880, no one really knows today.

After making this conclusion, the trial court then concluded that the scope of the easement is not limited to the foot traffic conceded to by plaintiff. Instead, the court concluded that animal-pulled-buggies were the primary mode of transportation at that time and, therefore, the modern equivalent to buggies - automobiles – were permissible:

> And Mr. Reilly concedes, which I think any reasonable lawyer would, that at least there would have been access by foot in an implied easement at the time of the transfer to the railroad, but I agree with Mr. Lyon that an easement isn't frozen in time as to the mode of travel. I mean, in 1880 I guess automobiles were just beginning to be driven in a few places around the world by a few adventurous people, but people were driving buggies and other wheeled vehicles pulled by animals and, in fact, that was the prime mode of transportation of agricultural products from a farm field to market. I'll take judicial notice of that, so a wheeled vehicle powered by something other than a human being was at least to be expected as the mode of access at that time.

The Court thereafter denied plaintiff's motion for summary disposition, and summarily entered judgment in favor of defendants.

III. Easements

Plaintiff argues the trial court erred in entering summary disposition in favor of defendants regarding whether an easement existed going across the abandoned rail line. We agree.

We review a trial court's decision regarding summary disposition de novo. *Dressel v Ameribank,* 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether a claim has factual support. *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998). Because defendants conceded no genuine issue of material fact existed, the question on appeal is whether the trial court properly concluded defendants, and not plaintiff, were entitled to summary disposition based on the legal questions presented.

Easements may be created either by an express grant or conveyance, or by operation of law. See generally, *Chapdelaine v Sochocki*, 247 Mich App 167, 172; 635 NW2d 339 (2001). Defendants conceded that no express easement exists; therefore, the issue before this Court is whether an easement was created by operation of law. Specifically, this case involves two types of such easements: (1) by necessity, or (2) by quasi-easement.[2] *Schmidt v Eger,* 94 Mich App

---

[2] Much of the confusion regarding easements may arise from the similarities in the terminology utilized in such cases. For example, case law regarding both quasi-easements and easements by

(continued…)

728, 732-733; 289 NW2d 851 (1980). A party claiming a right to an easement has the burden of proving the claim by a preponderance of the evidence. *Id*. at 731.

A. Easement by Necessity

An easement by necessity may be implied by law where an owner of land splits his property so that one of the resulting parcels is landlocked except for access across the other parcel. *Schmidt*, *supra* at 732. An easement by necessity may arise either by grant, where the grantor created a landlocked parcel in his grantee, or it may arise by reservation, where the grantor splits his property and leaves himself landlocked. *Goodman v Brenner*, 219 Mich 55, 59;188 NW 377 (1922). "This sort of easement is not dependent on the existence of any established route or quasi-easement prior to the severance of the estate by the common grantor; it is first established after the severance." *Schmidt*, *supra* at 733. Further, "[e]asements implied from necessity have been recognized in Michigan as requiring a showing of strict necessity." *Id*. at 732-733; see also *Waubun Beach Ass'n v Wilson*, 274 Mich 598, 611-612; 265 NW 474 (1936); *Goodman*, *supra* at 59; *Moore v White*, 159 Mich 460, 463-464; 124 NW 62 (1909).

B. Quasi-easement/Easement by Implication

In order to demonstrate that a quasi-easement exists, three things must be shown: (1) that during the unity of title an apparently permanent and obvious servitude was imposed on one part of an estate in favor of another; (2) continuity; and (3) that the easement is reasonably necessary for the fair enjoyment of the property it benefits. *Schmidt*, *supra* at 731-735; see also *Rannels v Marx*, 357 Mich 453, 458; 98 NW2d 583 (1959). As explained by our Supreme Court, "an easement is held to exist by implication because of the obvious intention of the parties." *Rannels*, *supra* at 458. Unlike easements by necessity, however, the party asserting the right to a quasi-easement need only show that the easement is reasonably necessary, not strictly necessary to the enjoyment of the benefited property. *Schmidt, supra* at 735 ("[w]e thus view *Harrison* as controlling, and as requiring only a showing of reasonable necessity, regardless of whether a grant or reservation is sought to be implied.").

C. Application of Law

Defendants asserted they have a right to either type of implied easement because their parcel is landlocked. As noted, the trial court concluded defendants had a right to an "implied easement" because "the critical transfer" left the parcel landlocked. However, immediately after stating such a conclusion, the court indicated that the evidence *did not* demonstrate that access either existed or did not exist when the property was conveyed:

(…continued)

necessity utilize terms such as reservation or grant. *Goodman v Brenner*, 219 Mich 55, 59; 188 NW 377 (1922); *Schmidt v Eger,* 94 Mich App 728, 731; 289 NW2d 851 (1980). Further, both easements by necessity and quasi-easements have also been designated as implied easements. *Schmidt*, *supra*. Despite the overly broad usage of these terms, the elements necessary to demonstrating a quasi-easement are absolutely distinct from those necessary to demonstrating an easement by necessity.

> Well, the Colonel made his share of mistakes, but I agree with his theory that there's an implied easement. *The parcel was landlocked at the time of the critical transfer*. *There is no evidence one way or the other. There's no evidence that there was access. I don't know how the defendant can be expected to prove a negative.* [Emphasis added.]

We find that defendants have failed to present sufficient evidence in support of their motion for summary disposition that demonstrates a quasi-easement or easement by implication. As previously stated, in order to demonstrate a quasi-easement, an obvious and permanent servitude must be imposed on one part of the estate in favor of the other, it must be continuous, and it must be reasonably necessary. Defendants presented no evidence in support of their motion for summary disposition demonstrating that an easement was previously established and continuously utilized that could give rise to a finding that a quasi-easement existed.

The only remaining theory is whether summary disposition was proper regarding defendants' claim that an easement by necessity existed. Regarding the issue of whether the property was landlocked at the time of the essential transfer, i.e., the date of transfer from Massier to the railroad company, the trial court conceded that there was "no evidence one way or the other." Indeed, defendants did not dispute the statement of facts set forth by plaintiffs in either their motion for summary disposition or in their brief on appeal. Plaintiffs presented no evidence regarding the nature of the property at the time of the transfer to the railroad company. Instead, plaintiffs relied only on a 1994 survey to demonstrate that their property was "effectively landlocked" at the time it was initially divided in 1880. Since defendants failed to present any evidence regarding the issue of whether the property was landlocked at the time the property was transferred to the railroad company, they failed to meet their burden of proof by a preponderance of the evidence. *Schmidt*, *supra*. Accordingly, the trial court erred in granting summary disposition in favor of defendants.

Given our disposition, it is unnecessary to address plaintiff's remaining claims regarding the proper scope of the easement and the separation of powers doctrine.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray