COURT OF APPEALS
DECISION
DATED AND FILED

May 5, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP650 **Cir. Ct. No. 2003CV46**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

LINDA LYNCH,

PLAINTIFF-APPELLANT,

V.

DONALD PARKS AND CHERYL PARKS,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Iowa County: WILLIAM D. DYKE, Judge. *Affirmed in part; reversed in part and cause remanded with directions*.

Before Deininger, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Linda Lynch appeals from a judgment relating to an easement. The issues relate to interpretation of the easement document and whether construction of a gravel driveway was appropriate. We affirm those

issues. However, we reverse and remand as to restrictions placed on use of the land by the owner.

¶2 Lynch filed a complaint against respondents Donald Parks and Cheryl Parks. The complaint alleged they hold an easement across part of Lynch's land, and they constructed a gravel driveway and made other uses of the easement property not permitted under the terms of the easement. Lynch sought injunctive and monetary relief. Issues related to the driveway are primarily involved in this appeal. After a trial to the court, the court held that the gravel driveway was proper.

¶3 The grant of easement was recorded in 1992 by predecessors in interest to Lynch and the Parks. It provides, in the first numbered section, that the grantees shall have an easement "for the purpose of ingress and egress from their property" and provides a legal description. In the second numbered section it provides the grantees "shall have an easement for the personal use of the lawn area located within the above-described boundaries lying north of the existing driveway" and that the "driveway itself shall be used only for ingress and egress." It is this lawn area across which the disputed gravel driveway exists. It is undisputed that the easement allows the Parks to use a different and previously existing gravel driveway on Lynch's land to arrive at the spot where the lawn and the disputed gravel driveway. The Parks' property lies across the lawn area from the previously existing driveway, so that one must cross the lawn area to reach the Parks' property.

¶4 The grant of easement further provides the grantees "shall not construct or place any obstacles within the boundaries of the above-described easement, nor take any other action which would impede or prevent the use of the

property by emergency or other vehicles. No buildings[,] fences, trees, or other improvements or fixtures shall be placed on the property."

¶5 Lynch first argues that a driveway across the lawn area is not permitted because the grant of easement consists of two separate and distinct easements. The first, for ingress and egress, relates to the previously existing driveway, while the second, covering the lawn, permits only "personal use." The meaning and scope of language created in a deed is reviewed as a matter of law without deference to the trial court's determination. ***Hunter v. Keys***, 229 Wis. 2d 710, 715, 600 N.W.2d 269 (Ct. App. 1999).

¶6 We disagree with Lynch's interpretation. We read the document to grant one combined easement, at least for the purpose of ingress and egress. This reading is compelled by the fact that, to actually enter or exit the Parks' property, it is necessary to cross the lawn in some manner, whether on foot or by some transportation device. Therefore, it appears that the "personal use" of the lawn allowed by the easement necessarily included ingress and egress across the lawn. If the document is not read in this manner, the easement to use the previously existing driveway would not serve its stated purpose of ingress and egress. Instead, it would only allow the Parks to arrive at a location on Lynch's property from which they would have a good view of their own property across the lawn and from which they could also use the lawn for "personal use," but it would not allow them to step from the lawn onto their own property.

¶7 However, to say that the easement entitles the Parks to use the lawn area for ingress and egress is not to say the Parks can do whatever they choose on the easement land. Lynch next argues the disputed gravel driveway was not permitted because the easement-granting document expressly states the grantees

can make no "improvements" on the easement property. The use of the easement must be in accordance with and confined to the terms of the grant. ***Id***. at 714. The question thus becomes whether the placing of gravel across a portion of the lawn was an improvement. We conclude it was not. We read this provision in light of the other items the grantee is specifically prohibited from installing, such as buildings, fences, and trees. These are objects that would physically obstruct the use of the lawn area whereas a gravel driveway would not.

¶8 Having concluded the gravel driveway is not expressly barred by the grant, it remains to apply the usual common law test for unrestricted easements. An unrestricted grant of an easement gives the grantee all rights incident or necessary to the reasonable and proper enjoyment of the easement. ***Id.*** at 715. The owner of an easement may make changes in the easement for the purpose specified in the grant so long as the changes are reasonably related to the easement holder's right and do not unreasonably burden the servient estate. ***Id.*** Given the purposes of the easement in this case, we agree with the circuit court's conclusion that the driveway is reasonably related to the purpose of ingress and egress and does not unreasonably burden Lynch's property, when the rural nature and size of the property are considered.

¶9 Lynch's final argument is that the circuit court erred by imposing certain conditions on her own use of the lawn area, specifically that it "shall be established as an area covered by fine grass which is to be kept closely mown and shall remain vacant, unimproved, and free of all obstacles." Lynch argues the granting of an easement does not mean the owner of the servient estate has lost rights to use the easement property in a manner not inconsistent with the easement. She notes in her testimony that she had sometimes used the lawn area to park farm implements and place hay. The Parks have not responded to this argument. A

respondent cannot complain if propositions of appellant are taken as confessed when not refuted by respondent. ***Charolais Breeding Ranches, Ltd. v. FPC Secs.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). Therefore, we reverse in part and remand with directions for the circuit court to enter an amended judgment that deletes the above language.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.