STATE OF MICHIGAN

COURT OF APPEALS

JOHN T. RUDY and ANN LIZETTE RUDY,

Plaintiffs-Appellees,

v

DAN LINTS and VICKI LINTS,

Defendants-Appellants,

and

TREVOR LINTS/ESTATE OF TREVOR LINTS,

Defendant.

UNPUBLISHED
February 22, 2011

No. 293501
Cass Circuit Court
LC No. 08-000138-CZ

Before: OWENS, P.J., and MARKEY and METER, JJ.

PER CURIAM.

Defendants Dan and Vicki Lints[1] appeal as of right from a judgment wherein the trial court ordered, following a bench trial, that defendants' lake-access easement over plaintiffs' property was limited to pedestrian access only and that defendants did not have a right to maintain the easement. The trial court awarded plaintiffs treble damages of $30,300 for damage defendants caused to two trees located on the easement. We affirm in part and reverse in part.

The parties own residential properties in the Cavin Cove Subdivision in Cass County. Plaintiffs own a parcel of property that abuts Eagle Lake (Lot 9). Defendants own two parcels of property located directly behind plaintiffs' property (Lots 19 and 20). In a 1970 circuit court case, the trial court described the easement as follows:

[1] Not all the defendants joined the appeal in this case, but for ease of reference we will simply use the term "defendants" in this opinion.

> The westerly 9 ½ feet of Lot number 9 as the said Lot is known and designated on the recorded plat of Cavin Cove, Eagle Lake . . . according to the recorded plat thereof.
>
> That this adjudication relates to and affects the parcel of land . . . which parcel and easement is described as follows:
>
> Lot No. 19, Kytes' Addition to Cavin Cove . . . according to the recorded plat thereof, *together with a right-of-way to the lake, said right-of-way being over a strip of ground along the west side of Lot no. 9 of Cavin Cove* . . . . [Emphasis added.]

Neither party disputes that this language accurately reflects the language of conveyance.

Many months after acquiring their property, defendants drove a pickup truck onto the easement to install a dock on the waterfront. Plaintiffs informed defendants that they did not have the right to drive on the easement. Defendants disagreed with this assertion. It subsequently became apparent that one could not drive to the steps leading to the lake without also partially leaving the easement and partially driving on plaintiff's property. Therefore, defendants threatened to remove trees located on the easement so that a vehicle could traverse the easement without going onto plaintiff's property. Plaintiffs objected, and their attorney informed defendants that they did not have the right to remove trees. Nevertheless, while plaintiffs were away from home, defendants hired a tree company to cut down an ash tree. Defendants also attempted to have an oak tree removed, but a tree company only removed several large limbs in preparation to remove the tree before police arrived and halted the process. This trimming of the oak tree damaged it substantially. Plaintiffs obtained a temporary restraining order to prevent the additional removal of trees, and they brought suit, requesting that the trial court determine the scope of defendants' easement rights and award treble damages to compensate for the loss of the trees. The trial court ruled that defendants' easement rights were limited to pedestrian use only and that defendants did not have a right to maintain the easement or remove trees from the easement. The trial court also awarded plaintiffs treble damages in connection with the two trees.

Defendants argue that the trial court erred in determining that the scope of their easement rights did not include the right to use motorized vehicles on the easement. "The extent of a party's rights under an easement is a question of fact, and a trial court's determination of those facts is reviewed for clear error." *Blackhawk Dev'l Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). However, we review de novo a trial court's ruling on equitable issues, such as the grant of injunctive relief. *Little v Kin*, 249 Mich App 502, 507; 644 NW2d 375 (2002).

"An easement is a right to use the land burdened by the easement rather than a right to occupy and possess [the land] as does an estate owner." *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 130; 737 NW2d 782 (2007) (internal citations, quotation marks, and emphasis omitted). "The use of an easement must be confined to the purposes for which it

was granted, including any rights incident to or necessary for the reasonable and proper enjoyment of the easement, which are exercised with as little burden as possible to the fee owner of the land." *Id*. at 131. A party's easement rights are governed by the language in the granting instrument; however, where the language in the granting instrument is ambiguous, consideration of extrinsic evidence is proper. *Blackhawk Dev'l Corp*, 473 Mich at 42.

The original granting language describes defendants' easement as "a right-of-way to the lake, said right-of-way being over a strip of ground along the west side of Lot no. 9 of Cavin Cove . . . ." This language is plain and unambiguous in that it simply conveys the right to access Eagle Lake; it does not include general riparian rights. See *Dyball v Lennox*, 260 Mich App 698, 705-706; 680 NW2d 522 (2003) (discussing riparian rights). The right to build a dock is "a right typically reserved to riparian owners." *Id*. at 708. Because defendants do not have general riparian rights, it necessarily follows that they do not have the right to use a motorized vehicle on the easement to install and uninstall a dock. See, generally, *id*. at 708-709. In sum, because the plain language of the granting instrument does not incorporate the right to install and maintain a dock, the language also does not incorporate the right to drive a vehicle onto the easement in order to construct or install or otherwise deal with the dock. Thus, although the trial court's reasoning differed in part, the court did not err in interpreting the scope of the easement in this case. See *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001) (reversal is not warranted if a trial court reached the right result for the wrong reason).[2]

Moreover, even if the language of the grant were ambiguous and an analysis of extrinsic evidence was required, we disagree on this record that *the use of a motor vehicle* to facilitate the installation of, and removal of, a dock each year is necessary to the enjoyment of the easement rights that defendants have, which include access to the lake, sunbathing, installing a dock and mooring a boat.

Defendants also raise a great weight of the evidence challenge; however, their cursory treatment of the issue constitutes abandonment. See *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008) ("[a] party abandons a claim when it fails to make a meaningful argument in support of its position").

Next, defendants contend that the trial court erred when it held that they did not have the right to maintain the easement or remove a tree and obstacles from the easement. An easement holder may not "make improvements to the servient estate if such improvements are unnecessary for the effective use of the easement or they unreasonably burden the servient tenement." *Blackhawk Dev'l Corp*, 473 Mich at 41 (internal citation and quotation marks omitted). A two-step inquiry is involved in determining whether a proposed improvement falls within the scope of an easement right. *Id*. at 41-42. First, the proposed improvement must be necessary for the dominant estate's effective use of the easement. See *id*. at 42. Second, the improvement must

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[2] We note that defendants do have a right to a dock as the result of a prior court judgment. Nevertheless, the prior judgment did not address the use of motor vehicles on the easement.

not "unreasonably burden" the servient estate. *Id*. "Of course, the need to answer the second question is obviated where the first question is answered in the negative." *Id*.

As discussed above, defendants' easement rights do not include the right to traverse the easement with a motor vehicle in order to install or maintain a dock. Therefore, defendants' claim that they need to cut down a 21-inch oak tree so that they can access the easement with a motor vehicle fails because vehicular access is not necessary for their effective use of the easement. *Id*.; see also *Schadewald v Brule*, 225 Mich App 26, 40; 570 NW2d 788 (1997) ("[a]ctivities by the owner of the dominant estate that go beyond the reasonable exercise of the use granted by the easement may constitute a trespass to the owner of the servient estate"). Here, defendants can enjoy their easement rights without the need to cut down trees. In fact, Vicki admitted that defendants could access the lake, sunbathe, access their pier and moor a boat without cutting down trees. To the extent the trial court ruled that defendants had no right at all to maintain the easement, however, the trial court clearly erred. See *Blackhawk Dev'l Corp*, 473 Mich at 41 ("[i]t is an established principle that the conveyance of an easement gives to the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement" [internal citations and quotation marks omitted]).

Next, defendants argue that the trial court erred in awarding plaintiffs treble damages under MCL 600.2919(1)(a) as compensation for the trees that defendants cut. We review issues involving statutory construction de novo. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003).

MCL 600.2919 provides, in relevant part:

> (1) **Treble and single damages.** Any person who:
>
> (a) cuts down or carries off any wood, underwood, trees, or timber or despoils or injures any trees on another's lands . . .
>
> (c) . . . without the permission of the owner of the lands . . . is liable to the owner of the land . . . for 3 times the amount of actual damages. If upon the trial of an action under this provision or any other action for trespass on lands it appears that the trespass was casual and involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was his own, or that the wood, trees, or timber taken were taken for the purpose of making or repairing any public road or bridge judgment shall be given for the amount of single damages only.

Defendants contend that the trial court erred in finding them liable under the statute. Defendants assert that the statute was inapplicable because they owned the easement, and because they had probable cause to believe that they owned the land and had the right to cut the trees. We disagree.

The trial court properly found that defendants were liable for treble damages under the statute. It is undisputed that defendants hired a tree company to cut down an ash tree on the easement, and defendants also "despoiled or injured" a large oak tree on the easement. Defendants did not own the land underlying the easement. An easement is not a possessory

right, and an owner of an easement "cannot displace the possessor or the owner of the land . . . ." *Terlecki v Stewart*, 278 Mich App 644, 659-660; 754 NW2d 899 (2008). Instead, an easement right is "a right to use the land burdened by the easement rather than a right to occupy and use the land as an owner." *Id*. (internal citations and quotations marks omitted). Plaintiffs owned the land where the trees stood and they did not give defendants permission to cut the trees. Defendants were aware that they did not have permission to cut the trees. They received a letter from plaintiffs' attorney informing them that they did not have the right to cut the trees and plaintiffs posted signs on the trees warning defendants not to cut the trees. Plaintiffs introduced an expert who testified about the amount of actual damages that defendants inflicted on the trees, and the trial court properly trebled this amount pursuant to the statute.

Finally, defendants argue that the trial court abused its discretion in denying their post-judgment motions for reconsideration and for a new trial. We review a trial court's denial of a motion for reconsideration and motion for a new trial for an abuse of discretion. *Allard v State Farm Ins Co*, 271 Mich App 394, 406; 722 NW2d 268 (2006); *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). A trial court abuses its discretion when its decision falls outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Defendants brought a motion for reconsideration under MCR 2.119(F). The trial court did not abuse its discretion when it denied this motion because MCR 2.119 governs the reconsideration of a trial court's decision concerning a motion as opposed to a final judgment. Similarly, the trial court did not abuse its discretion in denying defendants' motion for a new trial under MCR 2.611 because defendants failed to timely file the motion pursuant to MCR 2.611(B).

Affirmed in part and reversed in part.

/s/ Donald S. Owens
/s/ Jane E. Markey
/s/ Patrick M. Meter