

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS TUTTLE and JANET TUTTLE,

Plaintiffs-Appellees,

v

LAKE LEANN PROPERTY OWNERS
ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
December 27, 2002

No. 233173
Hillsdale Circuit Court
LC No. 00-000793

BRUCE A. HILDENBRAND, DEBRA L.
HILDENBRAND, JAMES D. GOULD, and
TERESA J. GOULD,

Plaintiffs-Appellees,

v

LAKE LEANN PROPERTY OWNERS
ASSOCIATION,

Defendant-Appellant.

No. 233174
Hillsdale Circuit Court
LC No. 00-000624

Before: Sawyer, P.J., and Gage and Talbot, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals as of right from a declaratory judgment granting plaintiffs an easement by necessity following a bench trial. We reverse.

Plaintiffs own property on Little Mackinac Island (the island) in Lake Leann (the lake). Defendant controls access to boat mooring sites in the subdivisions surrounding the lake. Before 1999, sufficient mooring sites were available to any member of the association who desired one, and defendant assigned yearly rights to mooring sites on a first-come, first-served basis. Recently, the demand for these sites has exceeded the supply, prompting defendant to implement a new policy for the allocation of the mooring sites. The new policy gives priority to applicants on the basis of their length of time owning property at the lake and does not distinguish between

island property owners and mainland property owners. Plaintiffs became concerned that their seniority might not entitle them to a mooring site.

Plaintiffs brought this declaratory judgment action to establish an easement by necessity in the mooring sites. Plaintiffs claimed that because their island lots are effectively landlocked, defendant's policy of assigning mooring sites on the basis of seniority denies them "reasonable access to their lots and any homes which may exist on those lots." Although plaintiffs acknowledged that "various launch sites exist where a boat can be dropped in the water," they alleged that "it would be unreasonable for Plaintiffs and others similarly situated to find a location to store a motor vehicle with a boat trailer as those items are necessary for reasonable access to the island." The trial court agreed, and found that plaintiffs had established an easement by necessity.¹

We review a trial court's findings of fact in a bench trial for clear error. MCR 2.613(C); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake occurred, even though evidence may exist to support the finding. *Walters v Snyder (After Remand)*, 239 Mich App 453, 456; 608 NW2d 97 (2000). We review de novo the court's conclusions of law. *Chapdelaine, supra*.

A party claiming an easement bears the burden of proving it by a preponderance of the evidence. *Schmidt v Eger*, 94 Mich App 728, 731; 289 NW2d 851 (1980). Plaintiffs were required to show strict necessity, as distinct from mere convenience. *Id.* at 732.² We hold that the trial court erred in finding that plaintiffs demonstrated the requisite necessity.

Access to the lake is available through a public boat launch.³ The trial court based its ruling on the relative ease of accessing the lake at these mooring sites as compared with using the boat launch, as well as on the probable impact on island property values. Despite the attendant difficulties and inconvenience associated with using the boat launch, this is not a matter of necessity. See *Schmidt, supra* at 732 (Mere convenience, or even reasonable necessity,

¹ We tend to agree with defendant's argument on appeal that declaratory relief was not warranted because no case or controversy exists. Plaintiffs acknowledge in their complaint that "access now exists" and merely speculate that "it may in the future not be available if the property is sold and new landowners do not have sufficient seniority among property owners in the Association so as to obtain a mooring site." Although it is regrettable that defendant did not raise this issue below, because the trial court addressed the merits of plaintiffs' claim, we do so as well.

² Plaintiffs acknowledged at oral argument that this is a strict necessity case.

³ Strictly speaking, it is the means of facilitating access to the island, not the access itself, that is at issue here. Plaintiffs claim an easement by necessity in the mooring sites, not in the lake itself. The cases that have addressed easements by necessity involved rights of way. See *Douglas v Jordan*, 232 Mich 283; 205 NW 52 (1925); *Schmidt, supra*. Defendant poses the legitimate question whether such mooring sites are properly the subject of an easement by necessity.

will not be sufficient if there are alternative routes, even if these alternatives prove more difficult or more expensive.”). Indeed, the very existence of the boat launch, albeit inconvenient to use, negates plaintiffs’ claim that rights to the mooring sites are necessary in order to access their property. We conclude that the trial court clearly erred in finding that plaintiffs demonstrated an easement by necessity.

In light of our resolution of this issue, we need not address defendant’s remaining issues on appeal.

Reversed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Michael J. Talbot