

STATE OF MICHIGAN
IN THE SUPREME COURT

JEFFREY S. MANIACI,
Plaintiff/Appellant,

Supreme Court Case No. 158005

Appeal No: 333952

v.

Lower Court No. 14-7559-CH

THOMAS DIROFF and MANDY DIROFF,

Defendants/Appellees

and

KENNETH G. SILER and TONYA L. SILER
REVOCABLE TRUST DATED APR 3, 2013,

Appellee.

PHILIP L. ELLISON (P74117)
OUTSIDE LEGAL COUNSEL PLC
Attorney for Appellant
PO Box 107
Hemlock, MI 48626
(989) 642-0055
(888) 398-7003 – fax

BOMMARITO LAW OFFICES, PLLC
BY: ALEXANDER D. BOMMARITO (P62704)
Attorney for Appellee KENNETH G. SILER and TONYA L.
SILER REVOCABLE TRUST DATED APR 3, 2013
180 E. Washington Road
P.O. Box 189
Freeland, Michigan 48623
Telephone: 989-573-5300

APPELLEE SILER TRUST'S SUPPLEMENTAL BRIEF

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STATEMENT OF QUESTION PRESENTED

- I. WHETHER APPELLANT/PLAINTIFF JEFFREY MANIAC'S PROPOSED ALTERATIONS TO PARCEL B FALL WITHIN THE SCOPE OF THE EASEMENT CREATED BY THE 2015 CONSENT JUDGMENT?

Appellee SILER TRUST answers: No.

AUTHORITY: *Little v Kin*, 468 Mich 699; 664 NW2d 749 (2003)

I. INTRODUCTION

The SILER TRUST was brought into this appeal on motion by Plaintiff/Appellant JEFFERY MANIACI as KENNETH and TONYA SILER purchased the property in question, inclusive of Parcel B adjacent to Vonda Lane on or about June 17, 2016, and subsequently transferred the property into their Trust on July 21, 2016. The action involves the interpretation of the Consent Judgment entered into by Plaintiff/Appellant and the DIROFFS dated June 18, 2015, resolving their legal dispute, subsequent to placing a settlement on the record on April 28, 2015, the scheduled Trial date in the underlying Circuit Court action. In particular, the language within the Consent Judgment that is in dispute is the provision of an easement by the DIROFFS in favor of the lot owners of the Supervisor's Plat of Baker's Resort, including Mr. MANIACI as set forth within the Consent Judgment.

Contrary to Plaintiff/Appellant's argument, the easement as currently situated allows for the launching of "watercraft" into the Tittabawassee River via boat trailer, and Plaintiff/Appellant seeks this Court's intervention in expanding the terms of the Consent Judgment, which appears to have been hammered out at length and signed by the parties prior to its entry by the Court. It is the SILER TRUST's position that Plaintiff/Appellant should not be allowed to amend and expand the rights provided by the Easement contained within the Consent Judgment.

II. ARGUMENT

I. REGRADING VONDA LANE WITHIN PARCEL B IS OUTSIDE OF THE SCOPE OF THE EASEMENT CREATED BY THE 2015 CONSENT JUDGMENT.

Under well-established easement jurisprudence in Michigan, the dominant estate 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. *Little v Kin*, 468 Mich 699, 701; 664 NW2d 749 (2003). As this Court set forth in *Little*, a trial court must first decide whether the easement allows for the proposed improvement by analyzing the plain language of the agreement, if unambiguous, or by referring to extrinsic evidence in the event of ambiguous language. Then, if the easement does allow for such, the court must then determine (1) whether the proposed improvement is necessary for the grantee's effective use of their easement and (2) whether the proposed improvement unreasonably burdens the grantor's servient estate. See *Id.*, 468 Mich at 700-701.

At issue in this lawsuit is the Easement that was provided within the June 18, 2015 Consent Judgment which was agreed to by the parties after initial settlement was reached on the day of trial, April 28, 2015. The Easement language provides:

. . . an appurtenant non-recreational easement for ingress and egress access to and from the Tittabawassee River (a/k/a Secord Lake) across Parcel B to and from Vonda Lane (hereinafter the "Easement"). The Easement shall hereafter run to and with each and every lot of the Supervisor's Plat of Baker's Resort, in perpetuity, for use by those within the Supervisor's Plat of Baker's Resort. The Easement may also be used for the temporary mooring and launching of watercraft, including by boat trailer, but may not be used for non-temporary mooring, docks and/or wharfs.

The Consent Judgment also provides for additional terms related to the Easement granted including maintenance of the Easement land area, as set forth within Paragraph 4 of the Consent Judgment, which states:

4. Routine maintenance of the Easement will be both the right and the responsibility of Diroff. However, to the extent that any usage of the Easement creates damage to the surface of the Easement, the person(s) creating that damage shall be responsible for restoring the Easement to its pre-damaged state.

Applying these principles to the Easement involved demonstrates that regrading the end of Vonda Lane where it intersects the Tittabawassee River is not within the scope of the Easement created by the June 18, 2015 Consent Judgment. The Easement set forth within the Consent Judgment is unambiguous and provides no basis or support for the Appellant's argument that he should be allowed to regrade the Easement area. To the contrary, the Easement area as it has existed throughout the pendency of this litigation, allows for the ingress and egress access to and from the Tittabawassee River (a/k/a Secord Lake) from Vonda Lane, as well as temporary mooring and launching of watercraft, including by boat trailer. This is indisputable.

Moreover, the clear and unambiguous language of the Consent Judgment addressing routine maintenance of the Easement contradicts the Appellant's interpretation of the Easement and his argument that he is allowed to regrade the Easement slope. Paragraph 4 of the Consent Judgment clearly delineates that routine maintenance of the Easement is the responsibility of the SILERS' predecessors in interest, THOMAS and MANDY DIROFF. Additionally, to the extent that any usage of the Easement creates damage to the surface of the Easement, the person[s] creating that damage shall be responsible to restoring the Easement to its pre-damage state.

To conclude, as Mr. MANIACI suggests, that altering the grade of the end of Vonda Lane is allowed by the Easement contradicts the clear language of the Consent Judgment. The

maintenance language within paragraph 4 of the Consent Judgment would require Mr. MANIACI to essentially repair or replace the road end to its pre-altered condition each and every time he was to make his proposed alterations. Mr. MANIACI's interpretation would render the parties' agreement with respect to maintenance of the easement area nugatory which should not be allowed. *Klapp v United Insurance Group Agency Inc.*, 468 Mich 459, 467; 663 NW2d 447 (2003).

Plaintiff/Appellant argues that regrading the slope of the Easement adjacent to the Tittabawassee River is necessary for the effective enjoyment of the Easement. If such regrading was actually necessary, it is inconceivable that the agreement or understanding that the alteration of this property would not be found within the settlement agreement placed upon the record in the Trial Court, or within the Consent Judgment itself. Both the transcript of the Settlement Agreement and the Consent Judgment are silent on this issue. Contrary to the Plaintiff/Appellant's argument both of these documents demonstrate the complete opposite of his position.

As set forth above, Paragraph 4 of the Consent Judgment provides that the DIROFFs, and subsequently the SILER TRUST, is responsible for routine maintenance of the Easement, while anyone using the Easement is responsible for any damage such use may cause to the surface of the Easement. The transcript of the Settlement Agreement of the parties placed on the record on April 28, 2015 contains similar language:

With respect to that easement, routine maintenance of the easement will be both the right and the responsibility of the fee title holder Diroff. **However, the -- to the extent that any allowed usage of the easement created damage to the surface of the easement the party creating that damage is responsible for restoring the surface of the easement to its current status quo.** (April 28, 2015 Settlement transcript, Appellee's Appendix #6b, emphasis added.)

Despite the clear and unambiguous language of the Consent Judgment, as well as the transcript of the parties' Settlement Agreement placed upon the record, Mr. MANIACI asks this Court in essence to rewrite the Consent Judgment to include terms which were not bargained for or agreed upon. This request should be denied.

The language of the Consent Judgment unambiguously provides that the Easement granted does not allow for the proposed improvements or alterations requested by JEFFREY MANIACI. Even if the Easement allowed for regrading the road end, this Court should preclude such alteration as these proposed alterations unreasonably burden the SILER TRUST property rights. As the Court can appreciate, if the requested alterations to the Easement land area are allowed, both the volume and the size of boats being launched at the site will increase significantly, likely causing serious damage to the property contained within the Easement as well as that adjacent thereto. This additional burden on the SILER TRUST's property rights should not be allowed.

REQUEST FOR RELIEF

Based upon the foregoing, Defendant/Appellant KENNETH G. SILER and TONYA L. SILER REVOCABLE TRUST DATED APRIL 3, 2013, respectfully requests this Court find that based upon the clear and unambiguous language contained within the Easement provided in the June 18, 2015 Consent Judgment, Mr. MANIACI's proposed alterations to Parcel B do not fall within the scope of the Easement created by the Consent Judgment, and deny Plaintiff's/Appellant's Application for Leave to Appeal, and assess costs and attorney fees wrongfully incurred in furtherance of this appeal.

Dated this 1st day of August, 2019

BOMMARITO LAW OFFICES, PLLC

/s/ ALEXANDER D. BOMMARITO

Bommarito Law Offices, PLLC

Attorney for Appellee KENNETH G. SILER and TONYA L. SILER REVOCABLE TRUST DATED APR 3, 2013

BUSINESS ADDRESS:

143 S. 1st Street

P.O. Box 189

Freeland, Michigan 48623

Telephone: 989-573-5300

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PROOF OF SERVICE

FILING TYPE	DOCUMENT TITLE
Brief	Appellee Siler Trust's Supplemental Brief
Appendix	Appellee Siler Trust's Appendix

On August 1, 2019, I served the documents described above on:

Philip Ellison
Outside Legal Counsel PLC
P74117
pellison@olcplc.com
via eService

Alexander D. Bommarito
Bommarito Law Offices, PLLC
P62704
adb@freelandlaw.net
via eService

This Proof of Service was automatically created, submitted and signed on my behalf through agreements with TrueFiling, and its contents are true to the best of my information, knowledge and belief.

8/01/2019

Date

/s/ ALEXANDER D. BOMMARITO

Bommarito Law Offices, PLLC