

NOTICE

Decision filed 03/30/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0005

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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KINKAID-REED'S CREEK CONSERVANCY DISTRICT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 09-CH-43
	)	
EDWARD KINDLE,	)	Honorable
	)	Kimberly L. Dahlen,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE DONOVAN delivered the judgment of the court.  
Presiding Justice Chapman and Justice Welch concurred in the judgment.

**R U L E 2 3 O R D E R**

*Held:* The trial court properly entered a permanent injunction when defendant failed to rebut plaintiff's evidence proving a clear and ascertainable right in need of protection with respect to the location of one of its water mains.

Edward Kindle, defendant, appeals *pro se* the issuance of a permanent injunction, rendered after a hearing in the circuit court of Jackson County, that prohibits him from disrupting or interfering with a water main owned by plaintiff, Kinkaid-Reed's Creek Conservancy District. We affirm.

Plaintiff is a special district which has as its purpose the purification of water from Kinkaid Lake and the distribution of that water throughout a large portion of Jackson County utilizing a system of underground water main pipes and valves. As a part of the system, a 10-inch underground water main with an above-ground valve is located in land adjacent to property now owned by Kindle. The water line was installed prior to 1977.

In 1981, Kindle acquired, with his siblings, the land adjacent to the water line from

his parents. Over the years, his siblings turned over their interests to the property to Kindle as well. In October of 2008, Kindle began asserting ownership of the land where Kinkaid's water main is located and began threatening to remove or disrupt the water line if he was not compensated for the use of the land. In May of 2009, Kindle distributed a flyer to the public giving notice that he was going to disrupt the water source on or about June 5, 2009. Plaintiff filed a complaint for a declaratory judgment and injunction on June 4, 2009. A temporary restraining order without notice was entered on June 4, 2009, followed by a temporary restraining order with notice on June 9, 2009, and a preliminary injunction on August 19, 2009. An evidentiary hearing was held on June 25, 2009, at which time numerous surveys were presented depicting the water line and Kindle's property. These surveys show a gap of 48.14 feet between the parcels of land that Kindle owns. The water line and the valve rest within this gap. Kindle testified that the water line crosses a corner of his property just north of the gap, based on the location of a valve on his property. An employee for the engineering company who participated in the design and installation of the water system in 1972 identified project plans from the initial construction and uncertified as-built drawings of the area. He testified that if the drawings were accurate, then there was a possibility that the water main could cross the corner of Kindle's land, but the drawings were not surveyed and represented only a depiction of the general area. He further testified that the known location of the above-ground valve, at a location different than that depicted in the drawings and taking into account the known tolerance for curvature in 10-inch diameter pipe, caused him to conclude that the 10-inch water main could not cross any portion of Kindle's land. The water system superintendent concurred with his opinion and further testified that the water line has never been dug up at that location. He further stated that plaintiff has no water valve in the location Kindle marked on the surveys which would have put the line on Kindle's property. Plaintiff did, however, request leave to amend its

complaint, which was granted, to add a count for a prescriptive easement in the event it were to be determined that any part of plaintiff's water main did cross Kindle's property. The court subsequently entered a permanent injunction in favor of plaintiff on December 3, 2009.

Kindle argues on appeal that the court erred in granting a permanent injunction in favor of plaintiff. Plaintiff counters that Kindle's failure to file a complete report of the proceedings requires the denial of his appeal. Plaintiff points out that for a reviewing court to properly determine whether the lower court's ruling is contrary to the manifest weight of the evidence, the reviewing court must have available the entire record of the evidence presented, and it is the appellant's burden to present to the reviewing court a sufficient record on appeal to permit appropriate review and support any claim of error. See *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462, 610 N.E.2d 769, 770 (1993). In the absence of that record, plaintiff further points out, the reviewing court is to presume that the trial court's order was in conformity with established legal principles and had a sufficient factual basis. *Landau & Associates, P.C. v. Kennedy*, 262 Ill. App. 3d 89, 92, 634 N.E.2d 373, 375 (1994); *Rock Island County*, 242 Ill. App. 3d at 462, 610 N.E.2d at 771. We agree with plaintiff's argument in general, but we conclude that in this instance, the record is sufficient for us to review Kindle's appeal. The failure to present a report of the proceedings does not automatically require a dismissal or summary affirmance, provided that the issues can be resolved on the record as it stands. *Landau & Associates, P.C.*, 262 Ill. App. 3d at 92, 634 N.E.2d at 375. The problem in this instance is not an incomplete record. The real problem for Kindle is that he failed to introduce sufficient evidence to overcome plaintiff's rights to use the land in which its water main is buried or to stop the issuance of a permanent injunction against him preventing him from disrupting or interfering with those rights. The trial court determined that the water main at issue runs in the gap between Kindle's parcels of land and that he has no ownership interest in that land. If the water main does not cross

Kindle's land, there is no basis for compensation to Kindle and Kindle has no right to interfere with plaintiff's use, operation, or maintenance of the water main.

We begin by noting that a party seeking a permanent injunction must demonstrate a clear and ascertainable right in need of protection, irreparable harm if injunctive relief is not granted, and no adequate remedy at law. See *Sparks v. Gray*, 334 Ill. App. 3d 390, 395, 777 N.E.2d 1026, 1030 (2002). The issuance of a permanent injunction will not be reversed on appeal unless the court's findings in support of the issuance of the injunction are contrary to the manifest weight of the evidence. *Harper v. Missouri Pacific R.R. Co.*, 282 Ill. App. 3d 19, 25, 667 N.E.2d 1382, 1386 (1996). For a finding to be contrary to the manifest weight of the evidence, an opposite result must be clearly evident. *Harper*, 282 Ill. App. 3d at 25, 667 N.E.2d at 1386. Because an opposite result is not clearly evident in this instance, we must affirm the issuance of the permanent injunction against Kindle.

Turning to the issue of the injunction itself, our review of the record reveals that no witness who testified in this proceeding has actually seen the buried water line. Those who did testify all agree, however, that the water line has never been dug up or moved since it was installed. The surveys all depict the water main and the valve being in the 48-foot-wide gap of property between Kindle's parcels of land. Kindle has no ownership interest in this gap, the portion of land through which plaintiff's water main runs. Plaintiff's witnesses further testified that the line could not be on Kindle's land given the location of the above-ground water valve and the curvature tolerances of water pipes. All of this evidence that is in the record supports the issuance of the injunction against Kindle to prevent him from disrupting or interfering with plaintiff's water main. Even if the line does actually cross a corner of Kindles' property, as depicted in the as-built drawings and as supported by Kindle's testimony, the line has been there for more than 37 years. The court could properly determine that plaintiff had openly, hostilely, and under a claim of right maintained and

serviced the line for more than the required number of years to satisfy the requirements for a prescriptive easement, should the line cross Kindle's land. Under either theory, the evidence supports the issuance of the permanent injunction in favor of plaintiff. It is also clear that plaintiff would suffer irreparable injury if its water main were to be removed or otherwise disrupted, given that plaintiff would suffer a loss of its water and the ability to provide water service to those customers serviced by the water main. Accordingly, we find no error.

For the aforementioned reasons, we affirm the judgment of the circuit court of Jackson County.

Affirmed.