

NOTICE

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2015 IL App (4th) 131059-U

Order filed November 25, 2014

NO. 4-13-1059

Modified on Den. of rehearing
January 12, 2015

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE LESTER EUGENE KENADY REVOCABLE)	Appeal from
LIVING TRUST, Dated 11/15/93, Lester)	Circuit Court of
Eugene Kenady, Trustee,)	Pike County
Plaintiff-Appellant,)	No. 12SC93
v.)	
MICHAEL BAKER,)	Honorable
Defendant-Appellee.)	J. Frank McCartney,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court erred in finding no drainage easement exists by operation of law from plaintiff's farmland across defendant's property.

(2) The ditch through defendant's yard constitutes a natural watercourse and therefore defendant must remove all obstructions and plaintiff has a right of access to make reasonable repairs.

(3) Defendant forfeited his right to have this court review plaintiff's use of the dominant land because he failed to file a cross-appeal.

¶ 2 Plaintiff filed a small-claims complaint against defendant alleging water damage to his crops in 2009, 2010, and 2011. Defendant filed a counterclaim alleging continued trespass and nuisance caused by plaintiff's wrongful diversion of surface water drainage upon defendant's property through the construction of ditches. The trial court denied both claims, ruling (1) even if defendant's actions had caused drainage problems, plaintiff failed to provide sufficient evidence to quantify an amount for damages; and (2) plaintiff's construction of ditches on his

dominant property did not cause an increase in the natural flow of water upon defendant's servient property.

¶ 3 Plaintiff filed a motion to reconsider, requesting the trial court modify its order to reflect whether a drainage easement exists and what the parties' rights are with regard to making reasonable repairs to facilitate the natural flow of water. The trial court denied plaintiff's motion, finding no natural watercourse flows from plaintiff's dominant property across defendant's servient property, and therefore, no drainage easement exists by operation of law.

¶ 4 Plaintiff appeals the trial court's order denying his motion to reconsider whether a drainage easement exists across defendant's property by operation of law and the consequences of the finding. In particular, plaintiff argues he has an easement across defendant's property by virtue of his property being the dominant (higher) tract of land. Plaintiff claims the finding of an easement (1) gives plaintiff a right of access to defendant's servient property to make reasonable repairs to maintain the natural flow of water; and (2) requires defendant to remove the field post and four-inch drainage pipe which are obstructing the flow of water.

¶ 5 Defendant argues no drainage easement exists by operation of law because no natural watercourse flows from plaintiff's dominant property across defendant's servient property. Defendant further argues if this court finds a drainage easement exists, we should then balance the hardships between the parties. We find defendant's alternative argument essentially asks this court to reconsider his counterclaim. Because defendant failed to file a cross-appeal, he has forfeited this issue.

¶ 6 We find an easement exists and reverse the trial court's denial of plaintiff's motion to reconsider.

¶ 7

I. BACKGROUND

¶ 8 Plaintiff, the Lester Eugene Kenady Revocable Living Trust, Dated 11/15/93, Lester Eugene Kenady, Trustee (the Trust), owns a parcel of land (the Kenady farm) east of the village of Hull, Illinois, farmed by Lester Kenady's son, Michael Kenady. Defendant, Michael Baker, owns a parcel of land lying immediately west of the Kenady farm, just east of East Street in Hull, Illinois. No geographical or topographical specificity can be established upon review of the record, but it is undisputed the elevation of the Kenady farm is higher than that of all neighboring parcels situated to the west, including the Baker property.

¶ 9 On May 10, 2012, the Trust filed a small-claims complaint against Baker, alleging \$5,300.08 in water damage to crops on the Kenady farm in 2009, 2010, and 2011 as a result of water backup from the Baker property. On August 30, 2012, Baker filed an answer denying liability for the water damage and asserted a counterclaim for continued trespass and nuisance caused by the Trust's wrongful diversion of surface-water drainage upon and through his property by Kenady's construction of ditches. A bench trial was held on August 15, 2013.

¶ 10 At the time Baker purchased his property in 1994, it was improved with an open ditch (the east-west ditch) directly south of a concrete pad near the southern border of the property that runs east to west from the Kenady farm to an open ditch located on the east side of East Street. It is uncontroverted Baker's predecessor in title constructed this open ditch in April 1992 to "relieve the water from the field and from his backyard." There is no dispute that prior to the construction of the east-west ditch, water naturally flowed from the Kenady farm, across the Baker property, and into the village of Hull.

¶ 11 In 1998, Baker inserted a four-inch drainage pipe into the bottom of the open ditch and covered it with dirt in an attempt to alleviate problems with mosquitoes and standing water, and so he could mow his yard. Sometime thereafter, Kenady dug a ditch along the

western border of the Kenady farm that runs north to south (the north-south ditch) in an attempt to alleviate water backup he was experiencing near the Baker property. For several years, in addition to maintaining the ditches on the Trust's property, Kenady entered the Baker property with his equipment to clean out the entrance to the four-inch pipe. However, in 2010, Baker placed a field post directly in front of the entrance to the four-inch pipe because he felt Kenady was "digging up his yard."

¶ 12 At trial, Kenady testified water "drained naturally until the structures were put in." Upon being asked by opposing counsel if the Kenady farm had any drainage problems after the construction of the open ditch, Kenady testified that the open ditch was "okay" and he was "getting by with it." Kenady testified he did not begin having issues with drainage until Baker replaced the open ditch with the covered four-inch pipe. As evidence of this assertion, Kenady testified he had to construct the north-south ditch in order "to do something with the water after is [*sic*] started backing up," and "to keep the crop from being drowned out."

¶ 13 Kenady presented a photograph of the field post surrounded by standing water, and he testified because the field post is set directly in front of the pipe, "there's no way the water can get to the [four-inch pipe], and from there it backs up into the field." Baker admitted placing the field post in front of the four-inch pipe, but stated he did so because Kenady was coming in year after year digging up portions of his yard, not because he intended to obstruct any water from flowing through the four-inch pipe.

¶ 14 Steven Wavering, an engineer with Klingner & Associates Consulting Firm in Quincy, Illinois, testified as an expert witness on behalf of Baker. Wavering testified he reviewed prior topographical maps of the entire general area, which led him to determine "that

the general flow of water from the [Kenady farm] was from east to west and flowing *** into the village [of Hull]." When asked about riparian water rights, Wavering testified as follows:

"Q. *** Now, as an expert in water engineering, have you had any familiarity with what we call riparian water rights?

A. We have, or I have.

Q. And within that context—and if you know, that's fine, if you don't know, that's fine—would the property to the east, in other words, the farm property, be considered the dominant estate?

A. Yes.

Q. Okay. And the property to the west, Mr. Baker's property, would be considered the servient estate?

A. That's correct.

Q. As those terms are indicated?

A. Yes."

Although he never personally observed the ditch in an open state, Wavering further testified:

"[W]here you have surface water in shallow conditions [such as this], an open ditch would have more capacity than a pipe of the size of a four-inch pipe." Upon being asked on direct examination about the adequacy of the four-inch pipe, Wavering stated as follows:

"A. On a surface drain such as this, it would provide minimal, at best, drainage flow.

Q. Okay. Is it something that soil and other material may become—may invade the pipe?

A. Yes. The slope of the pipe is such that it would have a tendency to silt in relatively quick.

Q. And as far as a, I guess, a permanent solution for drainage of that field, what is there, the four-inch pipe, [is that] a viable, permanent solution?

A. Not without extensive maintenance."

¶ 15 At the conclusion of the proceedings, in addition to damages, the Trust asked the court to find (1) the dominant estate has a natural water easement across the Baker property; and (2) the Trust has the right to maintain that water-drainage easement to make sure everything drains properly.

¶ 16 On September 10, 2013, the trial court entered the following order:

"1. [Plaintiff] is the owner of farm land [*sic*] that would be considered the dominant land.

2. [Defendant] is the owner of ground that would be considered servient land as is other property owners who reside in Hull.

3. The owner of dominant land is not to construct channels or drains that divert the flow of water from one watershed to another and deposit it onto servient land that in the natural course of drainage that [*sic*] had not received the water previously.

4. The owner of servient land is not permitted to erect dams, levees, and/or embankments on his land if such work would

prevent or deter the natural flow of water from the dominant to the servient land.

5. According to the testimony, there did not appear to be an issue with drainage pre-1992.

6. *** The [c]ourt does not find [Kenady's] alteration of drainage on the dominant land was not within a range consistent with a policy of 'reasonable use' for the dominant property.

7. The Court does not find that any acts of Baker were sufficiently proven by [the Trust] to have caused damage to his crops as alleged in 2009, 2010, and 2011. Even if the acts of Baker had caused water damage issues for [the Trust] and subsequent damage, the [c]ourt does not find that damages were sufficiently proven. ***.

8. The [c]ourt does not find that the construction of ditches by Kenady has caused an increase in the natural flow of water upon Baker's property and thus the [c]ourt is denying the Counterclaim."

¶ 17 On September 13, 2013, the Trust filed a motion to reconsider, alleging the September 10, 2013, order "did not address a central issue regarding the parties' rights, to wit: does a drainage easement exist and what are the parties' rights as to making reasonable repairs to facilitate the natural flow of water[?]" At the hearing on the motion to reconsider, the Trust's attorney referenced section 9.5 of the Illinois Institute of Continuing Legal Education article, Drainage and Water Rights (IICLE article), which states: "The owner of servient land is under no

duty to maintain any watercourse, natural or artificial, that flows across his or her land. Since the owner of the dominant land has an easement, he or she has the right to go on the servient land for the purpose of making reasonable repairs to the watercourse. [Citations.]"

¶ 18 Defense counsel latched onto the word "watercourse" and argued there is no drainage easement to maintain because no natural watercourse flows from the Kenady farm across the Baker property. He pointed to the testimony of Wavering, which was that the natural flow of water is a "sheeting action" from east to west. He further argued that any "low point" the court might consider to be a natural watercourse near the Baker property was actually a result of Kenady digging the north-south ditch 0.1 inch deeper there than in any other area, which he argued was reflected on a ditch survey entered into evidence by the Trust at trial. The trial court agreed with Baker and denied Kenady's motion on the basis that no natural watercourse exists from the Kenady farm to the Baker property. In an order dated November 1, 2013, the trial court stated:

"The [c]ourt specifically finds that even though water flows across [Baker's] property, no natural watercourse flows from the dominant farm land [*sic*] across [Baker's] property and; therefore, no drainage easement exists by operation of law. Consequently, [Kenady] shall not enter [Baker's] property to make any repairs to facilitate the flow of water and [Baker] shall not place any further obstructions that would alter the flow of water."

¶ 19 This appeal followed.

¶ 20

II. ANALYSIS

¶ 21 Kenady argues the trial court erred in finding that no drainage easement exists by operation of law across the Baker property. For the reasons that follow, we agree.

¶ 22 A. Standard of Review

¶ 23 The parties disagree as to the standard of review. Kenady maintains, because there was a bench trial, the standard of review is solely whether the trial court's November 1, 2013, order is against the manifest weight of the evidence (citing *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12, 965 N.E.2d 393). Relying on the two-part standard of review utilized in *Shulte v. Flowers*, 2013 IL App (4th) 120132, 983 N.E.2d 1124, Baker maintains the proper question is whether the trial judge abused his discretion. We believe Baker has stated the more appropriate standard.

¶ 24 As we explained in *Shulte*, " 'Abuse of discretion' is a versatile standard of review in that, depending on what the underlying issue is, it can lead to other standards of review." *Id.* ¶ 22, 983 N.E.2d 1124. "[A] trial court can abuse its discretion not only by making, or adhering to, factual findings that are against the manifest weight of the evidence but also by applying the wrong legal standard [citation] or by using the wrong legal criteria [citation]. '[T]he question of whether the circuit court applied the correct legal standard is one of law, which we review *de novo*. [Citation.]" *Id.* ¶ 23, 983 N.E.2d 1124. Moreover, "[w]here a trial court's exercise of discretion has been frustrated by an erroneous rule of law, appellate review is required to permit the exercise of discretion consistent with the law." *People v. Williams*, 188 Ill. 2d 365, 369, 721 N.E.2d 539, 542 (1999). Therefore, if the underlying issue is factual, we will give due deference to the finding of the trial court, which was "in a position superior to a court of review *** to weigh the evidence and determine the preponderance thereof." *Callahan v. Rickey*, 93 Ill. App.

3d 916, 919, 418 N.E.2d 167, 170 (1981). If the underlying issue is legal, however, we will proceed *de novo*. *Shulte*, 2013 IL App (4th) 120132, ¶ 24, 983 N.E.2d 1124.

¶ 25

B. Existence of an Easement

¶ 26

The trial court's September 10, 2013, order reflects and Baker's brief concedes the Kenady farm is the dominant land and the Baker property is the servient land. This ends our inquiry into whether a drainage easement exists. It is well settled in Illinois, "[w]here, as alleged here, two adjoining parcels of land are situated such that surface water falling or coming onto one naturally descends upon the other, the owner of the higher (dominant) land has a natural easement in the lower (servient) tract to allow the surface water to flow naturally off the dominant land upon or over the servient land." *Mileur v. McBride*, 147 Ill. App. 3d 755, 758, 498 N.E.2d 581, 583 (1986) (citing *Peck v. Herrington*, 109 Ill. 611, 621 (1884)). As our supreme court stated in *Gormley v. Sanford*, 52 Ill. 158, 162 (1869), "[t]here is no surprise or hardship in this, for each successive owner takes with whatever advantages or inconveniences nature has stamped upon his land." There is no dispute the Baker property is servient. We find the trial court's denial of plaintiff's motion to reconsider on the grounds that no drainage easement exists by operation of law to be in error. Though our inquiry into the existence of an easement need not continue, we write further to clarify several misconceptions regarding the law of drainage.

¶ 27

1. *A Watercourse Is Not Required*

¶ 28

On appeal, Baker argues no easement exists because no natural watercourse exists. Relying on section 9.5 of the IICLE article, which references the maintenance of a natural watercourse, he maintains a sheet flow toward the entire village cannot be the basis for a drainage easement. As an initial matter, we note the case law cited in the IICLE article regarding

the maintenance of a natural watercourse does not enter the equation until *after* an easement by operation of law has been established. In any event, the law of drainage makes no distinction between a natural watercourse, such as a well-defined creek or stream, and a blanket flow of surface water (which only exists after a heavy rain) for the purpose of determining whether a dominant landowner has an easement to allow water to flow as it would naturally flow off the dominant land. *Id.*; *Gillham v. Madison County R.R. Co.*, 49 Ill. 484, 486-87 (1869). In *Gormley*, our supreme court considered the precise issue of whether surface water, consisting entirely of rain and snow, is subject to the same law of drainage which applies to well-defined watercourses. *Gormley*, 52 Ill. at 161. In answering the question affirmatively, the court explained:

"The right of the owner of the superior heritage to drainage is based simply on the principle that nature has ordained such drainage, and it is but plain and natural justice that the individual ownership arising from social laws should be held in accordance with pre-existing laws and arrangements of nature. As water must flow, and some rule in regard to it must be established where land is held under the artificial titles created by human law, there can clearly be no other rule at once so equitable and so easy of application as that which enforces natural laws." *Id.* at 162.

Even if this case had been brought in 1992, before the construction of any ditches—when both parties agree surface water naturally flowed from the Kenady farm through the Baker property into the village of Hull—the Trust would still have had an easement based simply upon the fact that its land is positioned higher than Baker's land.

¶ 29

2. A Natural Watercourse Exists

¶ 30 Baker's next argument on appeal is that no natural watercourse exists because any "low point" near the Baker property was a result of ditching done by Kenady on the dominant land. While it is true that the record contains a ditch survey completed by Wavering in 2010 which indicated the north-south ditch was then 0.1 inch lower near the border of the Baker property, Baker's argument completely ignores the fact his predecessor in title constructed the east-west ditch through the servient property in 1992 to facilitate the natural flow of water. The question before us is not whether the north-south ditch—a ditch located entirely upon the dominant land—created a watercourse by way of an incidental low point, but whether the east-west ditch through the servient land constitutes a natural watercourse for purposes of the law of drainage. We find that it does.

¶ 31 As our supreme court stated in *Saelens v. Pollentier*, 7 Ill. 2d 556, 561, 131 N.E.2d 479, 482 (1956):

"It is immaterial that this ditch in question is an artificial ditch rather than a natural stream. We believe that the correct applicable law is stated in 56 Am. Jur. p. 621, sec. 151, to-wit: 'An artificial waterway or stream may, under some circumstances, have the characteristics and incidents of a natural watercourse. In determining the question, three things seem generally to be taken into consideration by the courts: (1) whether the way or stream is temporary or permanent; (2) the circumstances under which it was created; and, (3) the mode in which it has been used and enjoyed. Where the way is of a permanent character, and is created under

circumstances indicating an intention that it shall become permanent, and it has been used consistently with such intention for a considerable period, it is generally regarded as stamped with the character of a natural watercourse, and treated, so far as the rules of law and the rights of the public or of individuals are concerned, as if it were of natural origin. ' "

Applying this rule, we find the east-west ditch through the servient property is a natural watercourse. Kenady provided un rebutted testimony that Baker's predecessor constructed the east-west ditch to relieve the flow of surface water from the Kenady farm and his backyard. Moreover, the record reflects that the east-west ditch has continuously been used by all parties as if it were the natural flow of surface water since the time of its creation in 1992. It is true Baker placed the field post in front of the four-inch pipe in 2010. However, Baker testified his reason for doing so was to prevent Kenady from digging up his yard; he did not testify he placed the post to stop the flow of water.

¶ 32 In any event, neither Baker's conversion of the east-west ditch from an open to a closed state in 1998 nor his placement of the field post in 2010 changes the fact the east-west ditch remained the only route by which water traveled across the servient land for more than 18 years. Our examination is not into whether Kenady acquired a prescriptive easement to use the east-west ditch, but whether the east-west ditch has been used in a consistent way for a considerable period. See *id.* We find the east-west ditch not only to have been created under circumstances indicating an intention that it shall become permanent but also that it has been used consistent with such an intention for a sufficient period of time such that it should be treated

as if it were of natural origin for purposes of this action. The trial court's finding that no natural watercourse exists was in error, and our analysis continues.

¶ 33 C. Obstruction and Maintenance of the Easement

¶ 34 Upon our finding of an easement, the Trust makes two additional arguments. First, it argues Baker is not allowed to obstruct the natural flow of water and should be ordered to remove both the field post and the four-inch pipe. Next, it argues an easement grants Kenady access to the servient land to make reasonable repairs to the watercourse. We agree.

¶ 35 1. *Obstruction*

¶ 36 In its November 1, 2013, order denying the Trust's motion to reconsider, the trial court stated: "Defendant shall not place any further obstructions that would alter the flow of water." However, because the court ultimately found no natural watercourse or easement exists, it failed to address whether the field post and four-inch pipe interfere with the Trust's rights as the dominant landowner.

¶ 37 "Where water from one tract of land falls naturally upon the land of another, the owner of the lower land must suffer the water to be discharged upon his land and has no right to stop or impede the natural flow of the surface water." *Gough v. Goble*, 2 Ill. 2d 577, 580, 119 N.E.2d 252, 254 (1954). Correspondingly, the servient owner "cannot, by an embankment *or other artificial means*, obstruct the water in its natural flow, and thus throw it back upon the upper proprietor." (Emphasis added.) *Gillham*, 49 Ill. at 487. The question before us is whether Baker has obstructed the natural flow of water. Based on the evidence presented, we find he has.

¶ 38 At trial, Kenady testified his drainage problems did not begin until Baker replaced the open ditch with the covered four-inch pipe in 1998. Kenady further testified he had to dig multiple ditches on his own property after the four-inch pipe was put in place to give the excess

water somewhere to go when it started backing up. Baker's own expert witness testified a four-inch pipe would not work as well as an open ditch in that location because a four-inch pipe would easily fill up with silt and other debris. Moreover, there was photographic evidence the Kenady farm's drainage problems were further exacerbated when Baker placed a field post directly in front of the entrance to the pipe in 2010.

¶ 39 We recognize excess rain may have been a contributing factor to the Kenady farm's drainage problems which led to the trial court's rejection of the Trust's small-claims complaint. We also understand it may not have been Baker's intention to obstruct the flow of water. Our sole inquiry at this stage, however, is whether the flow of water has been obstructed. We find placing a field post directly in front of the entrance to the only natural watercourse flowing through the servient land inevitably obstructs the flow of water. We agree replacing an open ditch with a pipe only four inches in diameter is simply not a viable permanent alternative. We agree with the trial court Baker must do nothing further to obstruct the flow of water, but we additionally find Baker must remove the post and restore the east-west ditch to its original open state as put in place by his predecessor in title.

¶ 40 Baker argues this court should not find a drainage easement or order the ditch reopened because to do so would have the effect of dividing his property in half, thereby reducing the value of his property. He asserts this argument in an attempt to get this court to "balance the hardships." However, a "balancing of the hardships" approach only comes into play when the *dominant* landowner has altered the flow of water through a change in the dominant land. *Dessen v. Jones*, 194 Ill. App. 3d 869, 877, 551 N.E.2d 782, 787 (1990). We reject his argument. A decrease in the property value of servient land is a wholly irrelevant consideration for both the issue of whether a drainage easement exists and whether a servient landowner has

obstructed the natural flow of water. Even if we were to consider the value of the Baker property, the record shows the open ditch was in existence at the time Baker purchased the parcel of land from his predecessor in 1994. Baker cannot now argue our holding would result in a loss in the value of his property when his purchase price undoubtedly reflected the existence of the open ditch in 1994.

¶ 41

2. Maintenance

¶ 42 While a servient landowner is under a duty not to obstruct the natural flow of water from the dominant land, he is under no obligation to maintain any watercourse which flows across his land. *Savoie v. Town of Bourbonnais*, 339 Ill. App. 551, 559, 90 N.E.2d 645, 650 (1950). Rather, because the dominant landowner has an easement, "the common law annexes to the easement of a drain in another's land the right to go upon such land and clean out or repair such drain without doing unnecessary injury to the land." *Wessels v. Colebank*, 174 Ill. 618, 625, 51 N.E. 639, 641 (1898). Therefore, because we find Kenady has an easement over the Baker property, we also find he has the right to enter the property to make reasonable repairs to facilitate the natural flow of water.

¶ 43

The record indicates Kenady entered the Baker property with his equipment for several years in an attempt to clear the east-west ditch and facilitate the flow of water. However, the record also indicates the reason Baker placed the field post in front of the four-inch pipe was because he believed Kenady was digging up his land. Given these limited facts, we caution, although a dominant landowner does have the right to clear obstructions, that right is not unlimited. *Id.* at 626-27, 51 N.E. at 642. The law provides a dominant landowner with the right to make *reasonable* repairs. Abuse of that right will not be tolerated. *Id.*

¶ 44

D. Baker's Alternative Argument Forfeited by Failure To Cross-Appeal

¶ 45 The issue before this court involves the existence of an easement and the rights of the parties with respect to the servient land. However, Baker focuses the majority of his appellate argument on the low point in the north-south ditch on the dominant land and asks this court to balance the hardships between the parties if we find the low point to be a natural watercourse.

¶ 46 In support of his argument, Baker cites to the Second District's decision in *Bollweg v. Richard Marker Associates, Inc.*, 353 Ill. App. 3d 560, 574, 818 N.E.2d 873, 885 (2004), where the court found it was required to balance the benefit to the dominant estate against any harm caused to the servient estate. However, as we have explained in detail, "*Bollweg* does not stand for the proposition that the court must balance the hardships when a *servient* landowner alters the natural flow of water. Rather, *Bollweg* merely reiterated and applied the long-standing principle that where a dominant estate alters the flow of water to a servient estate, the court should apply a reasonable-use rule." (Emphasis in original.) *Swigert v. Gillespie*, 2012 IL App (4th) 120043, ¶ 36, 976 N.E.2d 1176.

¶ 47 The record before us shows that is precisely what the trial court did with regard to Baker's counterclaim. In its September 10, 2013 order, the trial court found:

"6. *** The [c]ourt does not find that [Kenady's] alteration of drainage on the dominant land was not within a range consistent with a policy of 'reasonable use' for the dominant property.

8. The [c]ourt does not find that the construction of ditches by Kenady has caused an increase in the natural flow of water

upon Baker's property and thus the [c]ourt is denying the Counterclaim."

¶ 48 Baker failed to file a cross-appeal on this portion of the trial court's judgment pursuant to Illinois Supreme Court Rule 303(a)(3) (eff. May 30, 2008) and has forfeited the issue before this court.

¶ 49 We conclude the trial court's decision was against the manifest weight of the evidence, and the failure to provide plaintiff a remedy was an abuse of discretion.

¶ 50 E. A Final Note

¶ 51 Both the expert testimony presented in this case and the trial court's September 10, 2013, order indicate potential solutions exist that might fix the Kenady farm's water-drainage issues. The trial court explicitly stated its hope the parties could work together to reach a solution that minimizes or eliminates damage to both properties. This sentiment bears repeating. Our ruling today does not prevent the parties from coming to an alternative arrangement in the future. We find Baker's actions thus far have interfered with the Trust's natural easement for the unobstructed flow of water off the dominant property. We reverse and remand for the trial court to enter a judgment requiring defendant to remove the field post and the four inch pipe; restore the east-west ditch; and permit plaintiff reasonable access to make reasonable repairs to the drainage easement.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we reverse the trial court's judgment and remand with directions.

¶ 54 Reversed and remanded with directions.