FOURTH DIVISION
December 3, 2015

1-15-0787



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| HIGHLAND WOODS NEIGHBORHOOD ASSOCIATION, an Illinois not-for-profit corporation, ROBERT L. BACON as Trustee of the Robert L. Bacon Declaration of Trust Dated November 16, 1999, RONALD J. SILVERMAN, NANCY B. SILVERMAN, JEFFREY CZACH, KATHY CZACH, and MARCELLA SWANSON, | ) | Appeal from the Circuit Court of Cook County. |
| Plaintiffs-Appellants, | ) | |
| v. | ) | No. 14 CH 992 |
| KSD, INC., an Illinois corporation, and MOLOOD NAGHIBZADEH-MOTLAGH, | ) | Honorable Franklin Ulyses Valderrama, Judge Presiding. |
| Defendants-Appellees. | ) | |

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JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court of Cook County's judgment denying plaintiffs' motion for preliminary injunction is affirmed; plaintiffs failed to prove defendants' proposed

construction on plaintiffs' easement for ingress and egress would interfere with their use of the easement for that purpose, therefore the trial court's finding that plaintiffs would not suffer irreparable harm without an injunction against that construction was not an abuse of discretion.

¶ 2 Plaintiffs are homeowners on Hickory Lane, a private road intersecting Ela Road in Schaumburg. Defendants acquired a parcel along Hickory Lane in 2007. Currently, only residential parcels line the north and south sides of Hickory Lane and all are subject to a 33-foot easement on the south and north sides of their parcels, respectively, for purposes of ingress and egress to Ela Road. Defendants' parcel is south of Hickory Lane and adjacent to Ela Road. No part of Hickory Lane is upon the easement on the north side of defendants' parcel. Defendants proposed to build a school on the parcel which would include a drainage swale, retaining wall, and parking lot on the easement on the north side of the parcel. Plaintiffs sought an injunction to prevent defendants' construction asserting the improvements would interfere with their use of the easement on defendants' parcel. The trial court disagreed and denied plaintiffs' motion.

¶ 3 For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 Defendant KSD, Inc. is a not-for-profit corporation currently operating two Montessori schools in Hoffman Estates. Defendant Molood Naghibzadeh-Hotlagh (Molood) founded KSD and is its executive director and a member of its board of directors. Each individual plaintiff owns a parcel on Hickory Lane. The earliest a plaintiff acquired a parcel was 1955. In 2008, the individual plaintiffs herein incorporated plaintiff Highland Woods Neighborhood Association. The land on which both plaintiffs' and defendants' parcels are located once belonged to Fred and Grace Schurecht. The Schurechts divided their land into

individual residential parcels. The Schurechts transferred the parcel defendants now own by deed in 1952. The 1952 deed contains the following language:

> " 'Parcel A' shall become subject to the following easements Right of the Public for ingress and egress over the North 33' and the east 40' and public utilities, installation, operation and maintenance of electric and telephone lines or other public utilities over the south 10', of said premises. If property is subdivided, the aforementioned parcel shall become part of the subdivision and the owner hereby agrees to sign all plats and documents as required for this purpose."

¶ 6 What is now defendants' parcel (the aforementioned "Parcel A") remained subject to the restrictions in the 1952 deed through subsequent transfers up to and including defendants' acquisition of the parcel in 2007. Defendants acquired the parcel for the purpose of constructing a school thereon. When defendants closed on the property they received a survey (2007 survey). The 2007 survey included a surveyor's note recommending a search be made for easements over the north 33 feet of the parcel. Defendants' architect for the school testified he did not investigate the surveyor's note. Molood testified she was not aware the parcel might be subject to an easement in 2007.

¶ 7 In 2011, defendants removed the residence that had been on the parcel and, in December, applied to Cook County for a permit to build a school. In February 2012 Highland Woods Neighborhood Association objected to the application based on defendants' proposed use of the easement.

¶ 8 Defendants' plans include a five-foot wide and three-foot deep drainage swale along the entire northern border of defendants' parcel. At the westernmost end of defendants' parcel extending approximately one-quarter the length of the parcel from west to east, the drainage swale would be adjacent to Hickory Lane. The distance between Hickory Lane and the drainage swale would gradually expand to 10 feet at the easternmost edge of defendants' parcel, at Ela Road. Hickory Lane and the drainage swale would be separated by 10 feet of grass at the eastern edge of the parcel closest to Ela Road. Defendants would build a retaining wall south of the drainage swale and a paved parking lot south of the retaining wall. The retaining wall and the parking lot would be separated by a landscaped area. Defendants would also build a retaining wall along the western border of defendants' parcel extending south from the northern border of defendants' parcel extending across the entire parcel. The east-west retaining wall would be level with Hickory Lane and the paved parking lot would be sunken from the level of Hickory Lane. The drainage swale, retaining walls, and a portion of the parking lot would be built on the north easement on defendants' parcel south of Hickory Lane.

¶ 9 The county sent defendants' architect the objection letter from the neighborhood association's attorney with a copy of the 1952 deed attached. The architect informed Molood. Molood testified this was the first time she learned of the easement. She directed her attorney and her architect to work with the county regarding the easement.

¶ 10 In 2012 plaintiffs hired a civil engineer to review defendants' application for a permit to construct the school. In December 2012 and January 2013 the neighborhood association applied for permits to widen Hickory Lane onto the easement on the north side of

defendants' parcel near Ela Road. In January 2014 plaintiffs filed their complaint for injunctive and declaratory relief. Plaintiffs sought to enjoin defendants from building a school because the school would interfere with plaintiffs' easement rights. Plaintiffs also sought a declaration of their rights under the easement. In February 2014 the county issued defendants a permit to build the school. The county did not issue any permits to widen Hickory Lane.

¶ 11 In March 2014 plaintiffs filed a motion for a temporary restraining order (TRO). The trial court denied plaintiffs' motion for a TRO based on its finding that the easement at issue in this case was contingent on future events and was ineffective and, therefore, plaintiffs failed to meet their burden to establish a right in need of protection. Plaintiffs appealed and this court reversed. We found the 1952 deed created an easement. This court ordered the TRO to remain in effect until the trial court ruled on plaintiffs' motion for a preliminary injunction. In the trial court, defendants moved to dissolve the TRO and dismiss plaintiffs' complaint. On July 18, 2014, the trial court denied defendants' motions to dissolve the TRO and to dismiss plaintiffs' complaint. On July 31, 2014, plaintiffs filed an amended complaint for injunctive and declaratory relief and a motion for a preliminary injunction. The trial court conducted an evidentiary hearing and several witnesses testified, including expert witnesses for plaintiffs and defendants. Following the hearing, the trial court denied plaintiffs' motion for a preliminary injunction.

¶ 12 This appeal followed.

¶ 13 ANALYSIS

¶ 14 Plaintiffs appeal the trial court's judgment denying their motion for a preliminary injunction. "The function of a preliminary injunction is not merely to contain ongoing

damage but to prevent prospective damage." *County of DuPage v. Gavrilos*, 359 Ill. App. 3d 629, 638 (2005).

> "To be entitled to preliminary injunctive relief, a plaintiff must demonstrate that she (1) possesses a protectable right; (2) will suffer irreparable harm without the protection of an injunction; (3) has no adequate remedy at law; and (4) is likely to be successful on the merits of her action. [Citation.] While the plaintiff is not required to make out a case which would entitle her to judgment at trial, she must establish a 'fair question' as to each of the elements. [Citation.]" (Internal quotation marks omitted.) *Rodrigues v. Quinn*, 2013 IL App (1st) 121196, ¶ 4.

¶ 15 "The failure to establish any one of these elements requires the denial of the preliminary injunction." *Yellow Cab Co. v. Production Workers Union of Chicago & Vicinity, Local 707*, 92 Ill. App. 3d 355, 356 (1980). The trial court found plaintiffs failed to establish a fair question they will suffer irreparable harm without the protection of an injunction. "An alleged injury is defined as irreparable when it is of such nature that the injured party cannot be adequately compensated therefor in damages or when damages cannot be measured by any certain pecuniary standard. [Citation.]" (Internal quotation marks omitted.) *Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit School No. 4*, 396 Ill. App. 3d 1105, 1116 (2009). "To show irreparable injury, the plaintiff *** need show only transgressions of a continuing nature. [Citation.]" *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1096 (2007). Plaintiffs allege injury in that the construction would (1) restrict their and the

public's rights of ingress and egress, (2) destroy the uniformity of appearance on their block and the easement of unobstructed air, light, and vision for their and the public's benefit, and (3) destroy their right to enlarge Hickory Lane for ingress and egress and to improve safety.

¶ 16 1. Trial Court's Judgment

¶ 17 The trial court found plaintiffs failed to show they would be irreparably harmed by defendants' proposed use of the easement. First, the trial court found that "[p]laintiffs' right to the easement is limited to the purpose for which the easement was created." The court found that the purpose of the easement was for "ingress and egress and access to utilities." The court concluded that "[p]laintiffs, therefore, must show that [defendants'] proposed plans interfere with their right of ingress and egress over the easement."

¶ 18 The trial court then found that neither side argued that defendants' plans would hinder plaintiffs' rights to utilities. The court found that plaintiffs would still be able to walk along the easement, plaintiffs did not show they would be prevented from riding bikes or walking their dogs across the easement, and plaintiffs did not show how defendants' proposed plans would prevent them from using the easement for snow removal. (The court found that snow removal was necessary for ingress and egress and therefore within the scope of the easement.)

¶ 19 Finally, the trial court rejected plaintiffs' argument defendants' plans would irreparably harm them by preventing them from expanding Hickory Lane. The court found that plaintiffs' argument Hickory Lane needed widening, but only at the intersection with Ela Road onto the easement on defendants' parcel, undermined their argument that widening Hickory Lane was necessary to allow two cars to pass each other on Hickory Lane and further noted that plaintiffs' expert conceded Hickory Lane is "up to Code." The court found

plaintiffs "presented no reliable evidence that [defendants'] proposed plans will necessitate the widening of the Hickory Lane."

¶ 20 2. Standard of Review

¶ 21 The parties dispute what level of deference we should give the trial court's judgment. Plaintiffs claim the denial of a preliminary injunction raises a question of law subject to *de novo* review. Defendants argue the decision to grant a preliminary injunction lies within the sound discretion of the trial court and where, as here, the court's judgment is based on a factual issue this court may only review that judgment for an abuse of discretion. "This court generally reviews a trial court's grant or denial of a preliminary injunction for an abuse of discretion. [Citation.]" *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378 (2010). "A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view. [Citation.]" (Internal quotation marks omitted.) *Id.* "On appeal from the grant [or denial] of a preliminary injunction, a reviewing court is to examine only whether [the plaintiff] demonstrated a *prima facie* case that there is a fair question concerning the existence of the claimed rights." (Internal quotation marks omitted.) *Caro ex rel. State v. Blagojevich*, 385 Ill. App. 3d 704, 708-09 (2008). We will only review a trial court's grant or denial of a preliminary injunction *de novo* when the court does not make any factual findings and rules based on a question of law. *Clinton Landfill, Inc.*, 406 Ill. App. 3d at 378-79. For example, the construction of a deed normally presents a question of law. *Diaz v. Home Federal Savings and Loan Ass'n of Elgin*, 337 Ill. App. 3d 722, 725 (2002). Thus, when the question was whether plaintiffs raised a fair question regarding the existence of their right to the easement and that

the court should preserve the status quo until this case could be decided on the merits (*Stanton v. City of Chicago*, 177 Ill. App. 3d 519, 524 (1988)), the answer lie in the construction of the 1952 deed and, therefore, raised a question of law.

¶ 22 In denying plaintiffs' motion for a preliminary injunction, the trial court made extensive findings of fact and determined, based on its factual findings, that defendants' proposed use of the easement did not interfere with plaintiffs' use and enjoyment of the easement. Therefore, we will review the trial court's factual findings under the manifest weight of the evidence standard. *Hensley Construction, LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184, 190 (2010) ("Our role regarding the trial court's factual findings is limited to determining whether they are against the manifest weight of the evidence. [Citation.] A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented."). We will review the trial court's ultimate determination that defendants' proposed use of the easement will not interfere with plaintiffs' use under the abuse of discretion standard. *Clinton Landfill, Inc.*, 406 Ill. App. 3d at 378. Plaintiffs argue the trial court failed to grant them the presumption that irreparable harm would follow absent an injunction once plaintiffs established plaintiffs' ascertainable right to enforce the easement. We disagree. The question for this court is whether the trial court abused its discretion in finding plaintiffs failed to make a *prima facie* case that a fair question exists as to whether plaintiffs will suffer irreparable harm without the protection of an injunction. *Rodrigues*, 2013 IL App (1st) 121196, ¶ 4 (the plaintiff has the burden to establish a fair question it will

suffer irreparable harm without the protection of an injunction). If not, then plaintiffs' request for a preliminary injunction must be denied.

¶ 23 3. Scope of the Easement

¶ 24 As previously noted, the trial court based its judgment on the limited scope of the easement for ingress and egress. On appeal, plaintiffs continue to argue that they "stand to suffer irreparable injury in that an encroachment upon the easement will destroy the degree of uniformity in appearance on the block and it's creation of an open and airy street." Plaintiffs cite *Hanna v. American National Bank & Trust Co. of Chicago*, 266 Ill. App. 3d 544, 554 (1994), for the proposition that "[t]he purpose of a setback line restriction is to create an easement of unobstructed air, light and vision for the benefit of the public owners of the property covered by the restriction and to insure a degree of uniformity in appearance." *Id.* In *Hanna*, the plaintiff sought to enjoin the defendants from constructing two towers on its property in violation of a 50-foot building setback line that was applicable when the property was created by a plat of subdivision. *Id.* at 545-46. The defendants' proposed construction in that case would have left no setback. *Id.* at 545. The trial court in *Hanna* entered a declaratory judgment that the setback line remained valid and enforceable and permanently enjoined the defendants from building on the property. *Id.* at 552.

¶ 25 We find *Hanna* inapposite. In that case, there was no discussion of the scope of the setback or the extent of the plaintiffs' rights in the setback. The only issues pertained to the enforceability of the setback. See generally *Hanna*, 266 Ill. App. 3d at 544. Moreover, a setback is different from an easement. A setback is "[t]he minimum amount of space required between a lot line and a building line" and is "designed to ensure that enough light and

ventilation reach the property and to keep buildings from being erected too close to property lines." Black's Law Dictionary (10th ed. 2014). An easement, differently, is "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, *for a specific limited purpose*." (Emphasis added.) Black's Law Dictionary (10th ed. 2014). This court has held that "[w]here an easement exists by express grant, and the language thereof is clear and free from doubt, the use of the easement must be confined to the terms and purposes of the grant. [Citation.]" *Bjork v. Draper*, 381 Ill. App. 3d 528, 538 (2008) (citing *Duresa v. Commonwealth Edison Co.*, 348 Ill. App. 3d 90, 101 (2004)). Here, the grant of the easement states the purpose of the easement is for the right of the public for ingress and egress and the installation, operation, and maintenance of public utilities. Plaintiffs have not argued the language of the easement is not clear and free from doubt. We find the language of the grant of an easement on defendants' parcel is clear and must be confined to its terms. The use of the easement for utilities is not at issue in this case. Therefore, we hold the trial court correctly found that plaintiffs had the burden to establish a fair question that defendants' proposed use of the easement would irreparably harm their use of the easement for ingress and egress, and we will not consider plaintiffs' argument defendants' proposed use would destroy the uniformity of Hickory Lane as an open and airy street.

¶ 26 4. Irreparable Harm to Use of the Easement for Ingress and Egress

¶ 27 In this appeal, plaintiffs argue they will be irreparably harmed by defendants' proposed use of the property because they have a right to the use of the full width of the easement area, and defendants' proposed use of the easement will hinder ingress and egress for the public, prevent future improvements, and create a new hazard (the drainage swale) on Hickory Lane.

¶ 28 Initially, we address defendants' argument plaintiffs waived their argument they would suffer irreparable harm by failing to support that argument with citations to the record. Defendants argue that plaintiffs' arguments concerning irreparable harm are "substantially" devoid of citations to the record. Defendants listed the portions of the record plaintiffs did cite and assert those citations do not support plaintiffs' conclusions, therefore plaintiffs waived their argument. "Failure to provide proper citations to the record is a violation of [Rule 341(h)(7)], the consequence of which is waiver of the facts or argument lacking such citation." *Engle v. Foley & Lardner, LLP*, 393 Ill. App. 3d 838, 854 (2009). Although a party may forfeit review if its citations do not represent a sincere attempt to comply with the rule (*Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010)), plaintiffs' citations to the record in its argument concerning irreparable harm accurately direct this court to the record evidence plaintiffs believe support their argument, and the facts cited are relevant to the arguments made. Defendants may contend plaintiffs' argument is insufficient to entitle plaintiffs to relief; but even an insufficient or incorrect argument can satisfy Rule 341(h)(7). We find plaintiffs complied with the rule and, regardless, "[w]here violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted. [Citation.]" *Gaston v. City of Danville*, 393 Ill. App. 3d 591, 601 (2009). Moreover, defendants did not move to strike any portion of plaintiffs' brief. We have not been hindered in our review and therefore conclude that finding plaintiffs' argument waived is unwarranted. Finally, "waiver is a limitation on the parties, not the reviewing court" and even if those arguments were waived we may address the merits of the appeal. *Johnson v. Johnson*, 386 Ill. App. 3d 522, 533-34 (2008).

¶ 29 a. Right to Use the Full Width of the Easement Area

¶ 30 Turning to the merits, plaintiffs argue that the owner of the easement has a right to the use of the full width of the easement area. Plaintiffs cite *Schaefer v. Burnstine*, 13 Ill. 2d 464 (1958), in which the plaintiff sought to enjoin the defendants from obstructing a right of way. *Id.* at 465. The defendants in *Burnstine* argued that "inasmuch as they own the fee interest in the right of way strip, they had the right to use the land for any proper interest, as long as such use is consistent with reasonable enjoyment of the easement by [the] plaintiff." *Id.* at 467-68. The *Burnstine* court found that the defendants' use of the easement "by permanent obstructions such as gates, posts, hitching posts, and fence is antagonistic to the right of ingress and egress over the right of way and alters or limits its use." *Id.* at 468. The court concluded that the defendants' use of the easement did "interfere with the reasonable use of a right of way for ingress and egress to residence property in our modern age." *Id.*

¶ 31 The *Burnstine* court based its holding on finding the defendants in that case interfered with the plaintiff's "reasonable use of a right of way for ingress and egress." *Id.* The *Burnstine* defendants maintained they had "the right to gate the right of way to restrain the public from entering and [their] livestock from escaping," and cited authorities in support. *Id.* at 468-69. The *Burnstine* court distinguished those authorities, noting that "[e]ach case [cited] depended upon the consideration of the great advantage to the owner of the fee and the slight inconvenience to the owner of the right of way." *Id.* at 469. The *Burnstine* court rejected the argument the defendants could fence the property in that case because "[t]he use which [the] defendants wish to make of this right of way *** is not a reasonable use, and obviously is of

great inconvenience to [the] plaintiff without a corresponding advantage to [the] defendants." *Id.*

¶ 32 To the extent plaintiffs in this case rely on *Burnstine* to suggest defendants may not alter the easement because plaintiffs have a right to its full use and enjoyment in its present state, or that any alteration to the easement by defendants that results in any minor change in plaintiffs' use of the easement is prohibited, that reliance is misplaced. Although the *Burnstine* court concluded by reiterating that "the owner of the right of way for ingress and egress has the right to use the full width of the area or strip having definite boundaries, unhampered by obstructions placed thereon" (*id.*), it is clear from the court's holding that the key determination is whether a plaintiff is unreasonably hampered in their use of the easement by the defendant's use of the property. In this case, the trial court found that with defendants' proposed use, plaintiffs will still be able to access their homes, walk dogs, and ride bikes on the easement, and remove snow from Hickory Lane. The court also found no reliable evidence plaintiffs needed to widen Hickory Lane to maintain a safe means of ingress and egress. As discussed in greater detail below, those findings are not against the manifest weight of the evidence, unreasonable, or arbitrary. Therefore, the trial court properly found that defendants' proposed use of the easement would not unreasonably hamper plaintiffs' use of the easement for its intended purpose.

¶ 33 b. Use for Ingress and Egress

¶ 34 In further support of their arguments concerning their use of Hickory Lane for ingress and egress, plaintiffs assert that without the injunction the community will not be able to safely use Hickory Lane because the drainage swale "could not possibly be used for walking or

biking." Plaintiffs claim defendants' architect "admitted that he really didn't know if it would be suitable for a person to walk in [the drainage swale.]" One plaintiff testified that he could walk his dog in the 8 to 15 feet of cleared area on the easement on defendants' parcel between the lane and the drainage swale "[i]f I have to." Plaintiffs also rely on testimony that snow must be plowed onto the easement south of Hickory Lane to avoid blocking the driveway of the property north of Hickory Lane, which belongs to a plaintiff. Plaintiffs further assert defendants' proposed use will "make it impossible to widen Hickory Lane, as is needed for safety reasons and to bring the Lane up to current standards" or to "pull over to avoid oncoming traffic." Plaintiffs rely on testimony that Hickory Lane is not wide enough for two cars to pass each other and their experts' testimony that sight lines at the intersection of Hickory Lane and Ela Road are inadequate and, therefore, the intersection needs to be widened and moved south.

¶ 35 i. Walking and Biking

¶ 36 The trial court found that "[a]s the drainage swale has a gradual slope, residents would be able to walk or ride bikes along the drainage swale." The court relied on testimony from defendants' architect and the building plans. The court found that the western quarter of the parcel is the only area where plaintiffs would have to walk on the drainage swale and that they will be able to do so because of the gradual slope of the drainage swale. The court also noted that plaintiffs did not testify they would not be able to walk along the gradual slope of the drainage swale, and plaintiffs did not show how they would be prevented from riding bikes or walking dogs across the easement. Plaintiffs' argument concerning defendants' architect's testimony is based on plaintiffs' counsel asking defendants' architect if he knew

what the condition of the drainage swale would be after a rainfall and the architect's reply he did not. Plaintiffs' counsel then asked the architect if he knew if the drainage swale would be suitable for walking in and the architect responded he did not know if the drainage swale would be suitable for walking on any given day.

¶ 37 Plaintiffs' burden is to establish a fair question that defendants' proposed use of the easement--in this instance particularly as a five-foot wide grassy drainage swale with a gradual slope to a depth of three feet--would unreasonably hinder their use of the easement for walking or biking. Plaintiffs do not argue that the grassy area between Hickory Lane and the drainage swale that covers three-quarters of the length of defendants' parcel is not suitable for that purpose and if they meant to convey that argument it lacks any merit. Plaintiffs' counsel's question to defendants' architect sought an opinion as to whether the drainage swale would be suitable for walking after a rainfall. Plaintiffs point to no evidence on appeal about the suitability of the easement for walking after a rainfall in its current state. The current state of the easement on defendants' parcel is that the land is overgrown with trees and brush and weeds. Defendants' drainage swale would remove those and put grass down. The architect also testified that the purpose of the drainage swale is to carry water away so that hopefully most of the time it would be dry. Defendants' architect's admission he did not know if rain might change the suitability of a quarter of the length of the easement on defendants' parcel does not raise a fair question as to that point because it is not evidence of a hindrance to plaintiffs' use from defendants' proposed construction and, moreover, the evidence overall is that defendants' proposed use would facilitate plaintiffs' use by providing a grassy area on which to walk where currently there are trees and overgrown brush.

¶ 38 The trial court correctly determined that "it is unreasonable to say that the drainage swale will somehow prevent bike riding or dog walking across the easement considering [defendants'] plans will actually clear the easement of brush and weeds." On appeal plaintiffs cite to no evidence to establish the opposite conclusion is clearly evident or that the court's findings are unreasonable, arbitrary, or not based on the evidence presented. *Hensley Construction, LLC*, 399 Ill. App. 3d at 190.

¶ 39 ii. Snow Removal

¶ 40 Similarly, plaintiffs point to no evidence that defendants' proposed use of the easement would prevent snow removal from Hickory Lane onto the easement. Plaintiffs only cite to testimony by one plaintiff that snow must be plowed onto the easement south of Hickory Lane because otherwise there is nowhere for snow to be placed that does not block his driveway. That plaintiff testified that snow is plowed to both sides of Hickory Lane and "when the plow plows my driveway in and doesn't push the snow to the [south] side I can't get into my driveway." Plaintiffs point to no testimony from this or any other witness that snow cannot be pushed into the drainage swale in the western quarter or onto the grassy area between Hickory Road and the drainage swale on the eastern three-fourths of the easement on defendants' parcel. The trial court relied on defendants' architect's testimony that snow can be placed within the drainage swale in the western quarter of the property and that there is sufficient room between Hickory Lane and the drainage swale on the remainder of the easement across defendants' parcel for snow removal. The trial court's finding that defendants' proposed use of the easement would not unreasonably hinder plaintiffs' use of the

easement for snow removal—which is necessary for ingress and egress—is not against the manifest weight of the evidence.

¶ 41 iii. Future Improvements

¶ 42 Plaintiffs raise two concerns they argue necessitate Hickory Lane be widened: cars entering and exiting Hickory Lane from Ela Road and cars traversing Hickory Lane in opposite directions simultaneously. Plaintiffs' expert testified that as a result of his evaluation of defendants' proposed improvements and their impact on the public ingress and egress to the subdivision he made suggestions to improve the safety of the roadway. Plaintiffs' expert testified that southbound traffic on Ela Road is not visible to traffic exiting Hickory Lane for a sufficient distance to make a safe maneuver. He suggested left and right turn lanes for Hickory Lane and put together a design "to bring that up to current standards with respect to width and turning radiuses." Plaintiffs' expert testified that with the entrance to the school being south of Hickory Lane, the sight line from Hickory Lane north on Ela Road will be the same sight line that has always existed on Hickory Lane, but increased traffic affects the amount of sight line that is needed.

¶ 43 Luay Aboona, a licensed professional engineer, performed a traffic study for defendants' proposed school and opined defendants' "development will not have a detrimental impact on Ela Road or its intersection with Hickory." He found the school would generate an insignificant amount of additional traffic on Ela Road. Mr. Aboona agreed that the additional traffic on Ela Road would impact people making a left or right turn onto Ela Road from Hickory Lane; but he testified that his analysis shows that the impact is very minimal.

The trial court found that defendants' expert's[1] rating of the safety of the intersection of Hickory Lane and Ela Road as very good shows that defendants' proposed plans will not necessitate the expansion of Hickory Lane.

¶ 44 Plaintiffs complain the intersection is unsafe because of a hill north of Hickory Lane on Ela Road that obscures oncoming traffic from drivers exiting Hickory Lane. The evidence was that there have been very few accidents at the intersection and that the school would not significantly increase traffic. Further, defendants were required to change the grading north of Hickory Lane to accommodate the entrance to the school on Ela Road. The trial court could reasonably find this will make it easier to see north onto Ela Road. The trial court found defendants' expert's findings more conclusive that plaintiffs' expert's findings. "The weight to be given to expert testimony is for the trier of fact." *Dienstag v. Margolies*, 396 Ill. App. 3d 25, 36 (2009). We do not find the trial court's finding that defendants' expert's findings were more conclusive than plaintiffs' was against the manifest weight of the evidence. *City of Highland Park v. Kane*, 2013 IL App (2d) 120788, ¶ 11 ("credibility determinations are 'against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' [Citation.]"). Therefore, the trial court did not abuse its discretion in finding plaintiffs will not suffer irreparable harm if they cannot widen the intersection of Hickory Lane and Ela Road.

¶ 45 Plaintiffs' expert stated the width of Hickory Lane varies greatly along the length of defendants' parcel but there were "portions" of the road that are so narrow "you have to pull

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[1] Defendants called Luay Aboona, a traffic engineer, as a witness; but defendants did not retain Mr. Aboona for this litigation and he was only paid a $35 witness fee for his testimony.

over to let a car go by." He testified defendants' proposed use for the easement interfered with ingress and egress because the drainage swale "is right in where the proposed new roadway would be constructed" and vehicles were not protected "from the obstacle of the retaining wall." But plaintiffs' expert testified the homeowners on Hickory Lane had no affirmative obligation to widen Hickory Lane to meet current standards, and the entrance to the school and parking lot was moved to Ela Road. Plaintiffs' expert agreed that there are other roads in suburbs that are the same width as Hickory Lane and nowhere in his report of his evaluation of defendants' proposed improvements did plaintiffs' expert mention the need to widen Hickory Lane. The trial court also found plaintiffs' plan to expand Hickory Lane only onto the easement on defendants' parcel and nowhere else undercut their claim the lane needed to be widened to allow two cars to pass each other. The easement is covered by trees and brush and plaintiffs have successfully navigated the road. We cannot find that even for the western quarter of defendants' parcel the drainage swale would hinder plaintiffs' movement to any greater degree than already exists. We find no abuse of discretion in the trial court's judgment.

¶ 46 Finally, plaintiffs only speculate as to potential hazards from defendants' proposed use, including the possibility that someone might fall or accidentally drive into the drainage swale or that plaintiffs would be liable to defendants for blocking their parking lot with snow. Plaintiffs negate the latter argument themselves when they note that "the planned parking lot is at a lower elevation than the paved Hickory Lane and there is not easy access from one to the other." We find the former argument unpersuasive. "Injunctive relief should be granted sparingly, with judicial restraint, and only in a clear and plain case. [Citation.] Moreover,

equitable relief will not be granted where only a speculative possibility of injury is advanced and where injury is contingent upon uncertainties." *Bell Fuels, Inc. v. Butkovich*, 201 Ill. App. 3d 570, 572 (1990). Plaintiffs have not pointed to evidence that the types of occurrences it proposes from the presence of the drainage swale and retaining wall are even likely to occur in the future. See *Id.* at 573. The trial court did not abuse its discretion in denying plaintiffs' motion for a preliminary injunction based on possible hazards from defendants' proposed use of the property.

¶ 47 The trial court's findings regarding the need to expand Hickory Lane are based on the evidence and are reasonable. The trial court's findings are consistent with the manner in which easement agreements are to be construed. "Courts tend to strictly construe easement agreements so as to permit the greatest possible use of the property by its owner. [Citation.]" *527 S. Clinton, LLC v. Westloop Equities, LLC*, 2014 IL App (1st) 131401, ¶ 28 (citing *Duresa*, 348 Ill. App. 3d at 101). The trial court's judgment permits defendants' the greatest possible use of their property without unreasonably interfering with plaintiffs' rights to use the easement for ingress and egress. Therefore, plaintiffs' argument the drainage swale is of no utility to the homeowners on Hickory Lane for drainage purposes is unavailing and, regardless, is positively rebutted by the record for other purposes. The court did not abuse its discretion in finding plaintiffs failed to establish a fair question defendants' proposed use would irreparably harm use of the easement for ingress and egress.

¶ 48 5. Remaining Issues

¶ 49 Plaintiffs raised additional arguments concerning the factors the court considers in determining if a plaintiff is entitled to a preliminary injunction. Plaintiffs argued they have

standing to enforce the easement, lack an adequate remedy at law, and are likely to succeed on the merits. Plaintiffs also argued there is no need to balance the hardship to defendants from granting plaintiffs a preliminary injunction against the benefit to plaintiffs. See *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201, ¶ 47 ("The last factor for the trial court to consider before entering a preliminary injunction is whether the equities warrant the entry of such an order. In balancing the equities, the trial court must weigh the benefits of granting the injunction against the possible injury to the opposing party."). Plaintiffs argued a balancing of the equities is not necessary in this case because defendants intentionally ignored the easement. "It is well-settled that a court need not balance the equities before granting an injunction if the violation is intentional." *Reiter v. Neilis*, 125 Ill. App. 3d 774, 779 (1984). Plaintiffs argue that if this court were to balance the equities, then "the sole means of ingress and egress for multiple lots cannot be outweighed by a parking lot for a commercial building which has not yet been built."

¶ 50 Having determined plaintiffs failed to establish a fair question they would suffer irreparable harm without the protection of an injunction, we have no need to reach these additional arguments. *Yellow Cab Co.*, 92 Ill. App. 3d at 356 ("The failure to establish any one of these elements requires the denial of the preliminary injunction.").

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 53 Affirmed.