2019 IL App (2d) 180717-U
No. 2-18-0717
Order filed May 8, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JOHN H. BRYAN, JR. and NEVILLE BRYAN, as Beneficiaries of Chicago Title Land Trust Company Trust No. 67464 and Chicago Title Land Trust Company Trust No. 67465; NEVILLE F. BRYAN and JOHN H. BRYAN, III, not Individually, but Solely as Executors of the Estate of John H. Bryan, Jr., Deceased, and EDWARD M. BLAIR, JR., FRANCIS I. BLAIR and WALTER W. BELL, not Individually, but Solely as Executors of the Estate of Edward McCormick Blair, Deceased, Plaintiffs-Appellees, v. CHICAGO TITLE LAND TRUST COMPANY, as Successor Trustee Under Trust No. RV-011643, LISA ZENNI, as Beneficiary of Chicago Title Land Trust Company No. RV-011643, JAMES J. ZENNI, JR., and NKJ ZENNI, LLC, Defendants-Appellants.	)	Appeal from the Circuit Court of Lake County. No. 16-CH-0758 Honorable Margaret A. Marcouiller, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment for plaintiffs regarding the continued existence of an easement on defendants' property, nor in denying defendants' cross-motion for summary judgment claiming adverse possession. The trial court also did not err in granting plaintiffs summary judgment on their request for a permanent injunction. Therefore, we affirmed.

¶ 2 This case involves a dispute about a roadway easement in the Crab Tree Farm development, located in the Village of Lake Bluff. Defendants, Chicago Title Land Trust Company, as successor trustee under trust no. RV-011643, Lisa Zenni, as beneficiary of that trust, James J. Zenni, Jr., and NKJ Zenni, LLC, appeal from the trial court's denial of their motion for summary judgment on their claim of adverse possession, and its grant of summary judgment for plaintiffs, John H. Bryan, Jr. and Neville Bryan, as beneficiaries of Chicago Title Land Trust Company trusts nos. 67464 and 67465, Neville F. Bryan and John H. Bryan, III, not individually but solely as executors of the estate of John H. Bryan Jr., deceased, and Edward M. Blair, Jr., Francis I. Blair, and Walter W. Bell, not individually, but solely as executors of the estate of Edward McCormick Blair, deceased. The trial court ruled that the easement remained in effect as to plaintiffs' properties, that plaintiffs had not abandoned their rights in the easement, and that defendants could not obstruct or interfere with plaintiffs' rights to use the easement. The trial court also granted plaintiffs summary judgment on their request for a permanent injunction. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Crab Tree Farm is a 240-acre property that is bordered by Lake Michigan to the east, Sheridan Road to the west, Arbor Drive to the north, and Blodgett Avenue to the south. Crab Tree Farm Lane roughly divides part of the property in half, beginning at Sheridan Road and going east to about the middle of the property.

¶ 5 Crab Tree Farm was at one time split into three parcels. The first, located in the northeast corner and bordered by Arbor Drive and Lake Michigan, was sold to William McCormick Blair (Blair Property). The second, which was immediately south of the Blair Property, was sold to Clive and John S. Runnells (Runnells Property). The remaining land was held in trust by the Northern Trust Company, as trustee (Trust Property).

¶ 6 On February 7, 1955, the owners of the three properties, which consisted of the entirety of Crab Tree Farm, entered an agreement (1955 Agreement) that created the easement at issue. It stated:

> "All the parties to this agreement desire to create an easement for road purposes and utility purposes, subject to the terms and conditions hereinafter set forth.
>
> NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:
>
> 1. Trustee hereby grants to Blair and Runnells, as an appurtenance to the Blair Property and to the Runnells Property, respectively, an easement in perpetuity, *in common with the owners from time to time of the Trust Property* for the construction, maintenance, repair and use of:
>
> (a) A road for ingress and egress of persons and vehicles;
>
> (b) Sewers for the disposal of storm water and sewage; and
>
> (c) Underground utility facilities ***
>
> Over, under and through the forty (40) foot private roadway as shown upon the plat ***
>
> 2. The cost of paving the road shall be paid by the parties desiring such paving in the proportions as those parties may agree. ***

> The cost of maintaining and repairing the road shall be borne in equitable proportions by the parties entitled to use the road. ***
>
> * * *
>
> The provisions of this agreement shall be construed as covenants running with the land, and shall inure to the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the respective parties hereto." (Emphasis added.)

The easement ran from the eastern terminus of Crab Tree Farm Lane, in a southerly direction, to Blodgett Avenue (Blodgett Easement).

¶ 7 Within days after the 1955 Agreement was signed, the Trust Property was subdivided, and parcels were conveyed to William McCormick Blair and the Runnells. Blair and the Runnells then immediately conveyed those parcels to Edward McCormick Blair and his wife (Blair Estate). The Blair Estate is south of the Runnells Property, bordering Lake Michigan. The transferring documents included all appurtenances to the land, and they explicitly listed the Blodgett Easement.

¶ 8 William McCormick Blair later bought the Runnells Property. He passed away in 1982. On June 15, 1984, the executors of his estate signed a release (1984 Release) to any rights the owners of the Blair and Runnells Properties had in the Blodgett Easement.[1]

¶ 9 In 1986, plaintiffs John and Neville Bryan[2] purchased the Blair Property. The same year, John Bryan became the owner of a large portion of the Trust Property, both in his own name and

[1] Defendants state that the release likely occurred in connection with the sale of the Blair and Runnells Properties.

[2] John Bryan passed away on October 1, 2018, and the executors of his estate took his place as party plaintiffs.

through his trust. He also purchased an interest in Lot 5 (now known as Crab Tree Farm Subdivision), which likewise constituted former Trust Property. The Blodgett Easement formed the eastern boundary of Lot 5. The following year, Jack Schuler, who is not a party to this litigation, purchased the Runnells Property.

¶ 10 On April 24, 1992, Lisa Zenni purchased land immediately south of the Blair Estate, bordered on the east by Lake Michigan, on the south by Blodgett Avenue, and on the west by the Blodgett Easement. Lisa and her husband, James Zenni, moved to the property (Zenni Estate) in 1995.

¶ 11 In 2007, Lot 5 was divided into Lots 1, 2, and 3. That year, defendant NKJ Zenni, LLC, bought property from John Bryan bordering the easement (Lot 3). John Bryan acquired Lot 2 and Schuler acquired Lot 1. At the time of the division, an access easement was created running along the northern border of Lot 3 (Lot 3 Access Easement). It connects Lot 1 to the Blodgett Easement. The Zennis built an equestrian complex on Lot 3.

¶ 12 Plaintiffs filed an initial complaint on May 17, 2016. Plaintiffs were given leave to file a first amended complaint on September 22, 2016, and a second amended complaint on July 6, 2017. Their two-count second amended complaint sought declaratory and injunctive relief. In count I, plaintiffs requested a declaratory judgment that the Blodgett Easement remained in full force and effect; that plaintiffs had not abandoned their rights in the easement; and that defendants could not block, obstruct, or interfere with plaintiffs' use of the easement. In count II, plaintiffs sought an injunction ordering defendants to remove any obstructions blocking the easement and permanently enjoining defendants from blocking or preventing access to the easement by plaintiffs and all property owners within Crab Tree Farm.

¶ 13 A. Plaintiffs' Motion for Summary Judgment

¶ 14 On September 28, 2017, plaintiffs filed a motion for summary judgment on count I, arguing as follows.[3] At issue was the portion of the Blodgett Easement that crossed defendants' property, as defendants did not dispute plaintiffs' rights to use the remaining portion of the easement, north of defendants' property. Plaintiff John Bryan bought about 110 acres of Crab Tree Farm in 1986 (Bryan Parcels) and had managed them since then. He and his employees had continuously used the Blodgett Easement for maintenance and construction on his land, including after the Zennis purchased property in 1992. He had personally used the easement as recently as 2016. Further, from 1986 to 2007, Bryan owned a one-third interest in Lot 5. During this period of time, Bryan and his employees used the Blodgett Easement extensively to access that property. Until 2007, Bryan stored dead trees, lumber, and trimming from operations on the Bryan Parcels on the eastern portion of Lot 5. When Crab Tree Farm Subdivision was created in 2007, it was created with the Lot 3 Access Easement, which is 20 feet wide. That easement is used for ingress and egress between Lot 1 and Lot 2 in the Crab Tree Farm Subdivision and the Blodgett Easement. This route has been routinely used since 2007 by Bryan, Bryan's employees, and the owner of Lot 1.

¶ 15 Michael Jarvi worked for William McCormick Blair before working for Bryan. He managed operations for Bryan until about 1996, took two brief hiatuses until 2000, and has worked for Bryan since that time doing maintenance and woodworking. He used the Blodgett Easement about 50 times during his employment. He used it 35 to 40 times from 1980 to 1996 for ingress and egress to the hay operations and wood stockpile located on the property now known as Crab Tree Farm Subdivision. During this period, there was a light-duty gate with a chain at the entrance between Blodgett Avenue and the Blodgett Easement. From 2000 to the

[3] Plaintiffs' factual allegations come from attached depositions.

present, Jarvi had used the route about 10 to 15 times to transport logs for a wood milling operation on property now known as Crab Tree Farm Subdivision.

¶ 16 Aleksy Kasprzak had worked for Bryan since 1996 and for the last 20 years had been the manager of Bryan's land, during which time he used the Blodgett Easement many times to enter or exit Crab Tree Farm. He used the route about forty times each hay season, which ran from July through September, until hay operations ceased in 1999. From 1999 until 2007, he used the route to access farming equipment stored on the property now known as Crab Tree Farm Subdivision. He entered the Blodgett Easement from Blodgett Avenue when moving heavy equipment such as bulldozers, which would not have fit through the Sheridan Road entrance to Crab Tree Farm Lane. James Zenni installed an electric gate between the Blodgett Easement and Blodgett Avenue in 2004, and afterwards Kasprzak still exited through that gate, which opened automatically, about once per week. On some of these occasions, Kasprzak spoke with Zenni's employee, Paulo Benitez, who never advised him to discontinue his use of the Blodgett Easement.

¶ 17 Michael H. Allen, an attorney for the owners of the Blair Estate, visited the Blair Estate in the summer of 2011. He traveled to and from the property using the Blodgett Easement; the gate was unlocked and open.

¶ 18 From 1995 until 2012, James Zenni was present at the Zenni Estate and able to monitor the Blodgett Easement about two out of every three weeks. From 1995 to 2007, Lisa Zenni did not pay attention to the activities on the Blodgett Easement because the Zennis did not own any part of the property now known as Crab Tree Farm Subdivision. She did not know that the Blodgett Easement existed until this lawsuit arose.

¶ 19 B. Defendants' Motion for Summary Judgment

¶ 20 Defendants filed a cross-motion for summary judgment on September 29, 2017, arguing as follows. The portion of the Blodgett Easement that ran across the Zennis' property was extinguished in 2012 by adverse possession, after they had exercised exclusive possession and control over the easement for 20 years. By 1992, when they purchased the property, a fence ran along the property line at Blodgett Avenue, and access to the easement from the street was possible only by opening a single locked gate in the fence. The easement was a "hardly visible muddy little path." The gate was padlocked and no one had a key, so James Zenni had the existing padlock cut off and installed a new padlock to which only the Zennis had a key.

¶ 21 In the early 2000s, the Zennis purchased Lot 3, on which they constructed an equestrian facility. They also improved the easement by laying a roadbed and constructing a driveway. They further improved the gate by substituting an automatic gate controlled by entering a combination on a keypad. All persons entering or exiting Crab Tree Farm to Blodgett Avenue since 1992 had done so through the locked gate and therefore only with the Zennis' express permission.

¶ 22 In 2014, the owners of the Blair Estate decided to demolish structures on their property. They proposed to use Crab Tree Farm Lane to bring in the heavy demolition equipment, but Bryan and Schuler objected due to concerns about damage to the road. The owners then approached James Zenni to ask for permission to enter his gate from Blodgett Avenue, but he refused. They therefore ended up using Crab Tree Farm Lane.

¶ 23 C. Trial Court's Rulings

¶ 24 The trial court issued a memorandum opinion and order on April 18, 2018, which we summarize. The parties' initial dispute was whether the Blodgett Easement benefitted the owners of the divisions of the original Trust Property, which included plaintiffs. The Blair and Runnells

Properties were dominant estates with the easement appurtenant to them, and the Trust Property was the servient estate. The dominant estates had not been divided, but the servient estate had been. The language in the 1955 Agreement creating the Blodgett Easement was substantially similar to language of the agreement in *Ellis v. McClung*, 291 Ill. App. 3d 448 (1997), and the logical interpretation of the plain language was that the parties, anticipating that the original Trust Property might be divided in the future, agreed that the Trust and any successors to part of its land could use the Blodgett Easement to access their parcels. As successors in ownership to the original trust, plaintiffs obtained a right to the easement when they purchased their property.

¶ 25 Defendants' reliance on the 1984 Release was misplaced because they read it too broadly. At the time the release was signed, neither William McCormick Blair nor his heirs owned the Runnells property.[4] Thus, only the owners of the Blair Property (the heirs) were party to the 1984 Release, whereas the Blodgett Easement attached to both the Blair and Runnells Properties. The release of an easement as to one dominant tract did not terminate the rights of another dominant tract. Thus, although the Blair Property no longer enjoyed any right in the Blodgett Easement, the easement was still in effect as to the Runnells Property. The 1984 Release therefore did not completely extinguish the Blodgett Easement, and it still remained in effect as to those divisions of the original Trust Property now owned by plaintiffs.

¶ 26 Plaintiffs also sought a declaration that they had not abandoned the Blodgett Easement. To constitute abandonment of an easement by grant, there must be a showing of both non-use

[4] It is unclear what information the trial court relied on in making this statement. Both plaintiffs and defendants state in their briefs that William McCormick Blair purchased the Runnells property before the 1984 Release was signed, and the documents in the record support the parties' representation.

and of circumstances indicating that it was the intention of the dominant owner to abandon the use of the easement. Mere non-use will not constitute an abandonment of an easement created by grant. The undisputed evidence here showed that plaintiffs had not stopped using the easement, which precluded a finding of abandonment. Jarvi testified that he entered and exited Crab Tree Farm using the Blodgett Easement 35 to 40 times between 1980 and 1996 and 10 to 15 times from 2000 to the present. Kasprzak testified that before 2007, he used the easement to go " 'to the post office, church, town restaurant or have a coffee.' " Since 2007, Kasprzak has used the easement to exit the farm once per week. Allen testified that he entered and exited Crab Tree Farm in 2011 using the easement. Defendants' contention that these individuals used the easement with their permission did not change the fact that these individuals used the easement, and that Kasprzak still uses the easement. Accordingly, the required element of non-use for abandonment could not be met.

¶ 27 Defendants contended in their own motion for summary judgment that even if the Blodgett Easement benefitted plaintiffs when defendants acquired property in Crab Tree Farm, the easement had been extinguished by defendants' adverse possession. However, the evidence showed no 20-year period in which plaintiffs did not possess and use the Blodgett Easement. John Bryan owned, possessed, and used the lot directly west of the Zenni's property until 2007, and Bryan's lot included the western 20-feet of the Blodgett Easement. Bryan's right to ingress and egress Crab Tree Farm using the roadway easement derived not only from the Blodgett Easement but also from the fact that he owned the land underlying a portion of the easement. The parties did not dispute that Bryan, and his employees Kasprzak and Jarvi, entered and exited via the easement until 2007, when Bryan sold Lot 3 to defendant NKJ Zenni, LLC. As such, defendants could not claim that they wholly excluded plaintiffs from possession and use of the

Blodgett Easement before 2007. The earliest adverse possession could have begun to run was when NKJ Zenni, LLC, purchased Lot 3 from Bryan in 2007, which was a mere 11 years ago and well under the 20-year required time.

¶ 28 In their reply memo, defendants argued that they never claimed adverse possession of the entire Blodgett Easement, but just the portion of the easement running a short distance south of their northern property line to Blodgett Avenue. The depositions defeated the assertion that plaintiffs had been denied use of the southern portion of the easement since 1992. In addition to testifying to using the easement to access Blodgett Avenue, Kasprzak specifically testified that the gate was open most of the time and that at other times, the gate had a red button that would open it. Allen testified that he entered and exited Crab Tree Farm in 2011 via the Blodgett Easement, and that the gate was open when he arrived. Neither individual needed permission to travel through the open gate, and neither was denied use of the southern portion of the easement beginning at the gate. Each day the easement was used reset the 20-year adverse possession period. Even if defendants had some measure of control over access since 1992, they could not overcome their failure to satisfy the exclusivity requirement for adverse possession, as the uncontested facts reflected some degree of joint possession. Because plaintiffs had not been wholly excluded from possession of the easement or even the southern portion of the easement for 20 years, defendants could not establish the required elements of adverse possession as a matter of law, and their motion for summary judgment had to be denied.

¶ 29 The trial court granted plaintiffs' motion for summary judgment on count I of their second amended complaint and declared that: (1) the Blodgett Easement remained in full force and effect as to plaintiffs' properties; (2) plaintiffs had not abandoned their rights in the

easement; and (3) defendants could not obstruct or interfere with plaintiffs' rights to use the roadway as per the 1955 Agreement.

¶ 30 Subsequently, on August 9, 2018, the trial court granted plaintiffs' motion for summary judgment on count II of their complaint, limited to the benefitted properties that had not previously released their rights to the easement. It stated as follows. The record was clear that the gate remained locked. The parties disputed whether it was locked because defendants did not give plaintiffs the combination, or because plaintiffs had not asked for the combination. The court had entered its previous order about four months prior, ruling that plaintiffs had a right to access the easement, which would include entering from Blodgett Avenue. Thus, plaintiffs had established a right in need of protection. Irreparable harm was presumed where there was a transgression of a continuing nature. There was no adequate remedy at law for plaintiffs' inability to access the easement from the road, though this could have been made moot by defendants offering plaintiffs the combination to the gate. The trial court ordered defendants to remove any obstructions which blocked or prevented access to the easement, including a locked gate. However, it stated that the gate itself did not have to been taken down if defendants provided plaintiffs with the combination so that they could access the easement from Blodgett Avenue.

¶ 31 Defendants timely appealed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, defendants argue that the trial court erred in granting summary judgment for plaintiffs and in denying their cross-motion for summary judgment. Summary judgment is appropriate only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of

material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016); *Perry v. Department of Financial & Professional Regulation*, 2018 IL 122349, ¶ 30. "When parties file cross-motions for summary judgment, they mutually agree that there are no genuine issues of material fact and that the case may be resolved as a matter of law." *Oswald v. Hamer*, 2018 IL 133303, ¶ 9. However, despite the filing of cross-motions for summary judgment, a court may still determine that a factual issue exists sufficient to preclude the entry of summary judgment. *Ally Financial Inc. v. Pira*, 2017 IL App (2d) 170213, ¶ 38. We review *de novo* a trial court's ruling on a motion for summary judgment. *First Midwest Bank v. Cobo*, 2018 IL 123038, ¶ 16.

¶ 34 A. Release of Rights

¶ 35 Defendants first argue that plaintiffs have no rights in the Blodgett Easement because the grantees released their rights in the 1984 Release. Defendants point out that the Trust Property had granted the Blodgett Easement to William McCormick Blair, who owned the Blair Property, and Clive and John Runnells, who owned the Runnells Property. Defendants argue that, contrary to the trial court's findings, William McCormick Blair subsequently bought the Runnells Property, and in the 1984 Release, the executors of his estate released all right to use the easement. Defendants argue that, as a result, plaintiffs cannot claim to have rights in the easement as successors-in-interest to the original *grantees*. They maintain that plaintiffs therefore claimed that they retained rights in the Blodgett Easement as successors to the *grantor* of the easement.

¶ 36 Defendants maintain that the key to determining whether plaintiffs derived any rights from the grantor is one phrase in the granting clause of the 1955 Agreement. Specifically, the agreement conveyed "an easement in perpetuity, in common with the owners from time to time

of the Trust Property ***." Defendants argue that the language shows that the grantees of the easement received rights in the easement that were shared with the rights of the owner—the Trust—to use its property. Defendants argue that the owner simply retained its pre-existing ownership rights to use the property over which the easement ran, so when plaintiffs purchased the grantor's ownership interest in the property, there were no accompanying easement rights to which plaintiffs could have succeeded. Defendants maintain that this result is consistent with the principle that "a person cannot claim an easement over his own land." *Beloit Foundry Co. v. Ryan*, 28 Ill. 2d 379, 389 (1963).

¶ 37 Defendants contend that plaintiffs also have not succeeded to the owner's right to use the easement, at least with respect to the portion of the easement at issue here, because none of the plaintiffs own the property over which the portion of the easement runs. Defendants argue that plaintiffs may have had rights to the easement as an owner if the 1955 Agreement had specifically provided that an owner of any part of the former Trust Property had a right to use the easement. They cite *Ellis*, 291 Ill. App. 3d 448. There, three contiguous easements were created by deed when a portion of land owned by the Smiths was sold to a buyer named Hixon. *Id.* at 450. The deed stated that the easements ran with the land and were for the purpose of passage to and from the dominant estate. *Id.* One easement ran through Hixon's property (Yellow Easement), and two easements ran through the Smiths' property (Blue and Green Easements). *Id.* The deed specifically provided that the latter easements were to be used " '*in common, however, with* the Grantors herein [the Smiths] as owners of said benefitted real estate *** and such of their grantees, successors in title, devisees, heirs and assigns as shall hereafter from time to time be or become owners of some, or of some part, of said benefitted ownerships ***." (Emphasis in original.) *Id.* at 452. Various parts of both properties were subsequently sold. *Id.* at 45. Owners

of parts of the property brought suit against another owner, arguing that the Blue and Green Easements were no longer valid as to former portions of the Smith property which the defendant owned. *Id.* at 455. The plaintiffs argued that the easements were created for the benefit of the Hixon property, and the Smiths, who owned the underlying land, could not create an easement on their own property. *Id.* The appellate court cited the previously-quoted portion of the deed and stated that the "common use clause" showed that the Smiths retained, both for themselves and the successors to all or any part of their land, the right to use the Blue and Green Easements in common with Hixon. *Id.* at 459. The court stated: "[A] logical interpretation of this common use clause is that the Smiths and Hixon, anticipating that the land might be divided in the future, agreed that the Smiths and any successors to part of their land (i.e., defendant) could use the Blue and Green Easements to access their part of such land ***." *Id.*

¶ 38 In the instant case, defendants argue that, unlike *Ellis*, which specifically stated that easement rights extended to successors who "become owners of some, or some part, of" the grantor's property, the 1955 Agreement said nothing about divisions of the Trust Property and did not mention successors at all. It stated only that the easement was granted "in common with the owners from time to time of the Trust Property," meaning owners of the entire Trust Property, which was defined as a whole in the agreement. Defendants maintain that if the parties intended that the clause would apply to divisions of the property, they would have spelled that out, just as the parties did in *Ellis*. Defendants cite *Thompson v. Gordon*, 241 Ill. 2d 428, 449 (2011), where the supreme court stated that "there is a presumption against provisions that easily could have been included in a contract but were not."

¶ 39 Plaintiffs, on the other hand, assert that the 1955 Agreement's plain language clearly grants easement rights to successors of the grantor, in that it grants "an easement in perpetuity, in

common with the owners from time to time of the Trust Property ***." They also cite the 1955 Agreement's clause that "[t]he provisions of this agreement shall be construed as covenants running with the land, and shall inure to the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the respective parties hereto." They argue that each plaintiff is an owner of a part of the former Trust Property, *i.e.*, a successor of the grantor, and therefore entitled to the rights in the Blodgett Easement granted by the 1955 Agreement "in common with" the Blair and Runnells Property owners.[5]

¶ 40 Plaintiffs argue that defendants provide an incomplete picture of Illinois law in citing *Beloit Foundry Co.* for the proposition that a person cannot claim an easement on his own land. Plaintiffs argue that this statement is subject to an exception, which is applicable to this case:

> "Of course, a person cannot claim an easement over his own land [citation], but he may arrange his property in such a manner that one portion thereof derives a benefit from another, and upon the severance of such common ownership, easements and servitudes arise which correspond with the benefits and burdens existing at time of sale." *Beloit Foundry Co.*, 28 Ill. 2d at 389.

Plaintiffs further point out that *Beloit Foundry Co.* held that all subsequently divided portions of the original dominant parcel retained rights to use the easement, including parcels that were not contiguous to the easement. *Id.* at 390. They argue that, likewise, owners of land that was originally part of the Trust Property have the benefit of the Blodgett Easement even if the land is

[5] Therefore, even though the Bryan plaintiffs own the Blair Property, they do not claim the Blodgett Easement is appurtenant to their ownership of that land, but rather that they have easement rights through their separate ownership of former Trust property. See *supra* ¶ 9.

not contiguous to the easement. Plaintiffs argue that both *Beloit Foundry Co.* and *Ellis* show that an owner of a property can retain rights in an easement that it grants to another over its own property, and that the benefit of that easement runs to the successor owners of not only the dominant property, but also all, or any part of, the grantor's property.

¶ 41 Plaintiffs maintain that defendants' argument, that only a successor to the Trust Property who owned all approximately 200 acres of the Trust Property would retain rights in the Blodgett Easement, is nonsensical, as the successor owner of the entire property would necessarily own the property underlying the easement and would not need the "in common" language to retain the right to use his own property within the easement. Plaintiffs cite *Kurz v. Blume*, 407 Ill. 383, 389 (1950), where our supreme court stated that the "owner of the servient estate has the right to use the land for any purpose he may deem proper so long as such use does not interfere with the proper enjoyment of the easement." See also *Village of Round Lake v. Amann*, 311 Ill. App. 3d 705, 718 (2000) ("law of easements is based on a principle of concurrent rather than exclusive use"). Plaintiffs contend that, therefore, the Trust did not need to include any language in the 1955 Agreement in order to retain its right to use its own property subject to the Blodgett Easement. Plaintiffs argue that defendants' position is further contradicted by the deed, dated four days after the 1955 Agreement, which conveyed part of the Trust Property, being the Blair Estate, and specifically included with that conveyance easement rights in the Blodgett Easement. Plaintiffs argue that the deed is further evidence of the intent of the grantor of the 1955 Agreement to "arrange its property" such that future owners of any part of the Trust Property retained the right to all easements granted therein, including the Blodgett Easement.

¶ 42 We briefly discuss the nature of easements. An easement is a right or privilege in the real estate of another. *Nationwide Financial, LP v. Pobuda*, 2014 IL 116717, ¶ 29. The land

benefitted by the easement is called the dominant estate, and the land burdened by the easement is called the servient estate. *Hahn v. County of Kane*, 2012 IL App (2d) 110060, ¶ 10. An easement provides use rights in the land, as opposed to providing ownership rights or an ownership interest in the land. *Id.* When the easement is exercised in connection with the occupancy of other land, the easement is said to be appurtenant thereto. *Beloit Foundry Co.*, 28 Ill. 2d at 388. An easement appurtenant runs with the land, and the servient estate continues to be subject to the easement after the land is conveyed, even without express mention, until the right to the easement is terminated or abandoned. *Id.*

¶ 43 For the reasons previously mentioned (see *supra* ¶ 25 n.4), we agree with defendants that the trial court erred in stating that the 1984 Release applied to the Blair Property but not the Runnells Property; rather, it applied to both properties. Thus, any rights plaintiffs had in the Blodgett Easement would have to come from being successors-in-interest to the original grantor Trust, which owned the servient estate, as opposed to successors-in-interest to the original grantees, who owned the dominant estates. However, contrary to defendants' statement that an owner cannot claim an easement in his own land, plaintiffs rightly point out that an exception exists. An owner may "arrange his property in such a manner that one portion thereof derives a benefit from another, and upon the severance of such common ownership, easements and servitudes arise which correspond with the benefits and burdens existing at time of sale." *Beloit Foundry Co.*, 28 Ill. 2d at 389. In their reply brief, defendants argue that *Beloit Foundry Co.* is inapplicable because it relates to implied easements as opposed to the express easement at issue in the 1955 Agreement. However, the same argument was made in *Ellis*, and the court deemed it "unavailing," stating that the supreme court explicitly found in *Beloit Foundry Co.* that express statements in the 1925 deed created the easement. *Ellis*, 291 Ill. App. 3d at 457.

¶ 44 In any event, defendants do recognize that, pursuant to *Ellis*, a grantor may grant himself an easement over his own land such that successive owners of portions of the grantor's property retain the easement rights. The easements in *Ellis* were to be used:

> " '*in common, however, with* the Grantors herein [the Smiths] as owners of said benefitted real estate *** and such of their grantees, successors in title, devisees, heirs and assigns as shall hereafter from time to time be or become owners of some, or of some part, of said benefitted ownerships ***." (Emphasis in original.) *Id.* at 452.

As a comparison, the 1955 Agreement creating the Blodgett Easement stated that the parties agreed to the trustee granting "an easement in perpetuity, in common with the owners from time to time of the Trust Property for the construction, maintenance, repair and use of *** [a] road for ingress and egress of persons and vehicles."

¶ 45 Courts construe a grant of an easement using the same rules applied to deeds and other written instruments or agreements. *527 S. Clinton, LLC. V. Westloop Equities, LLC*, 2014 IL App (1st) 131401, ¶ 28. We construe the easement in accordance with the parties' intent, which we ascertain from the instrument's words and the circumstances contemporaneous to the transaction. *Id.* We strictly construe easement agreements to permit the greatest possible use of the property by its owner. *Id.* If the agreement is facially unambiguous, we interpret it as a matter of law, without using extrinsic evidence. *Id.*

¶ 46 We agree with the trial court and plaintiffs that the 1955 Agreement, which created the Blodgett Easement "in perpetuity, in common with the owners from time to time of the Trust Property" unambiguously allows use of the Blodgett Easement for successors to any part of the Trust Property. Although, unlike *Ellis*, the language does not specifically refer to "some part" of the Trust Property, it is clear that the reference to "in common *** with *** owners from time to

time of the Trust Property" encompasses divisions of the Trust Property. As plaintiffs point out, defendants' interpretation—that rights to the easement can pass only to an owner of the original entire Trust Property—would not make sense, in that such an owner would also own the property underlying the easement and would not need such language to retain the right to use his own land. See *Kurz*, 407 Ill. at 389; *Amann*, 311 Ill. App. 3d at 718. In other words, defendants' interpretation renders the disputed language superfluous, contrary to the principles by which we construe contracts. See *Salce v. Saracco*, 409 Ill. App. 3d 977, 982 (2011) (we construe contracts such that no terms are rendered meaningless or superfluous); *Cress v. Recreation Services, Inc.*, 341 Ill. App. 3d 149, 169 (2003) (we presume that all contract provisions were inserted for a purpose).

¶ 47 Circumstances surrounding the conveyance of the Blair Estate confirm our interpretation of the 1955 Agreement. As stated, within days after the 1955 Agreement was signed, the Trust Property was subdivided, with part of the land being conveyed to William McCormick Blair and the Runnells. These parties were also parties to the 1955 Agreement. Blair and the Runnells then immediately conveyed this land, being the Blair Estate, to Edward McCormick Blair and his wife. The transferring documents stated that the land is transferred "together with all and singular the hereditaments and appurtenances thereto belonging," including:

> "an easement in perpetuity for Grantees, their heirs and assigns, in common with others, for the construction, maintenance, repair and use of:
>
> (a) a road for ingress and egress or persons and vehicles,
>
> (b) sewers for the disposal of storm water and sewage, and
>
> (c) underground utility facilities ***

over, under and through the forty (40) foot private road-way described in the agreement dated February 7, 1955."

Thus, consistent with our analysis that the parties to the 1955 Agreement intended that the Blodgett Easement be accessible to any successor to part of the Trust Property, William McCormick Blair and the Runnells explicitly referenced rights to the Blodgett Easement in conveying a portion of the Trust Property. We recognize that the Trust was not a party to the conveyance of the Blair Estate to Edward McCormick Blair, a criticism defendants raise in their reply brief, but the remaining parties were, and the agreement conveying the Blair Estate reinforces our interpretation of the plain language of the 1955 Agreement.

¶ 48 B. Abandonment

¶ 49 We next address defendants' argument that the trial court erred in ruling that plaintiffs had not abandoned their rights in the Blodgett Easement. Simple non-use will not constitute abandonment of an easement. *Gacki v. Bartels*, 369 Ill. App. 3d 284, 292 (2006). Instead, in addition to non-use of the easement, there must be circumstances showing the dominant owner's intent to relinquish his rights. *Id.* "An easement is abandoned 'when nonuse is accompanied by acts which manifest an intention to abandon and which destroy either the object for which the easement was established or the means of its enjoyment.' " *Diaz v. Home Federal Savings & Loan Ass'n of Elgin*, 337 Ill. App. 3d 722, 731 (2003) (quoting *Schnabel v. County of Du Page*, 101 Ill. App. 3d 553, 558 (1981)).

¶ 50 Defendants argue that the trial court incorrectly focused on the 20-year period required for adverse possession, even though abandonment does not require any specific period of non-use. Defendants argue that Bryan and his employees used Lot 5 for farming activities from 1980 until 2005. In 2007, Lot 5 was subdivided, and the property bordering the easement became Lot

3, which NKJ Zenni purchased. Defendants argue that, at the time of the purchase, Bryan removed all of his equipment and materials from Lot 3. Defendants claim that this emphatically showed that plaintiffs abandoned the easement. Defendants argue that the "incidental and accidental" use of the easement in the years after 2007, cited by the trial court, were all with the Zennis' permission and did not undo the abandonment that had already occurred. Defendants maintain that the trial court also failed to consider the following information, which supports the conclusion that plaintiffs intended to abandon the easement: (1) an alternative route exists, in that plaintiffs built a new road to the west of the Blodgett Easement; (2) Schuler physically obstructed the right of way at the northern end of the easement by planting large trees separating plaintiffs' homes from the easement, and the road leading from plaintiffs' homes was not even connected to the easement until 2015; (3) plaintiffs neglected the condition of the easement; and (4) plaintiffs acquiesced in the Zennis' assertion of control over the easement by not complaining when James Zenni replaced the gate or built his equestrian facility.

¶ 51 Plaintiffs respond that their alleged intent to abandon the easement is belied by the undisputed facts that they have used the easement for ingress and egress from 1980 to the present and are able to do so because the gate opens automatically from the inside and is often left open, permitting free access. Plaintiffs analogize this case to *Flower v. Valentine*, 135 Ill. App. 3d 1034, 1039 (1985). There, the owners of the servient estate that contained an easement to the beach put plants and obstructions on portions of the easement, and they also installed a gate. *Id.* at 1036-37. The court held that because an owner of the dominant estate testified that he was able to go through the gate, and the plaintiff stated that she believed he had used the easement when she was not present, the plaintiff did not establish abandonment or adverse possession. *Id.* at 1043. Plaintiffs here argue that, as in *Flower*, the presence of the gate is not dispositive of their

use of the easement, especially considering that the gate opens automatically as vehicles approach it from within Crab Tree Farm. Plaintiffs also point out that the easement is located on the west end of the Zenni Estate, whereas the Zennis' home is located on the east side, and plaintiffs argue that they (plaintiffs) have used the easement many times without defendants' awareness. Plaintiffs additionally point out that Lisa Zenni testified in her deposition that she did not pay attention to the Blodgett Easement before purchasing Lot 3 in 2007. Plaintiffs also point to testimony that James Zenni was only present at the Zenni Estate about two out of every three weeks.

¶ 52 Plaintiffs argue that Bryan's removal of farming equipment from Lot 3 in 2007 is not indicative of abandoning the easement, as he was removing his belongings from land that he had sold. They maintain that Bryan and his employees continued to use the easement even after the sale of Lot 3. Contrary to defendants' assertion that plaintiffs built a road west of the Blodgett Easement, plaintiffs argue that it is actually a private driveway built by Tanya Schuler, a non-party, entirely on her property on Lot 1.

¶ 53 We conclude that the trial court correctly granted summary judgment for plaintiffs on the issue of abandonment. "[M]ere nonuse for a fixed period is not of itself sufficient to establish abandonment." *Schnabel*, 101 Ill. App. 3d at 558. Rather, as stated, there must be a showing that the easement owners manifested an intent to abandon the easement and performed acts which destroyed either the object for which the easement was established or the means of its enjoyment. *Diaz*, 337 Ill. App. 3d at 731. Plaintiffs' alleged neglect of the easement and their alleged failure to object to the Zennis' gate would not meet this standard, especially considering that the gate opened automatically when exiting the easement.[6] That plaintiffs did not complain

[6] Defendants stated in an answer to interrogatories that the gate had a sensor that, when

of the Zennis' equestrian facility is also not sufficient, as the Zennis built the facility on their own property and did not obstruct the easement. Also, the named plaintiffs in this action did not build the road/driveway on Lot 1, nor did they physically obstruct the right of way to the easement. Defendants largely rely on Bryan's relocation of his farming equipment from Lot 3, but, as plaintiffs highlight, such actions were logical considering that he had sold Lot 3. Thus, even putting aside the question of whether there was a period of time in which plaintiffs did not use the easement, the evidence does not indicate that plaintiffs manifested an intent to abandon the easement and additionally took actions which destroyed either the object for which the easement was established or the means of its enjoyment. *Cf. id.* (railroad intended to abandon easement where it ceased operating trains on it, removed its tracks from the easement, and attempted to convey a portion of the easement to the bank).

¶ 54 C. Adverse Possession

¶ 55 We now address defendants' argument that the trial court erred in denying their cross-motion for summary judgment claiming adverse possession. An easement may be extinguished by adverse possession. *Gacki v. Bartels*, 369 Ill. App. 3d 284, 292 (2006). To establish adverse possession, the party must possess the disputed property for 20 years and prove that the possession was: (1) continuous; (2) hostile or adverse; (3) actual; (4) open, notorious, and exclusive; and (5) under claim of title inconsistent with that of the true owner. *Id.*; see also 735 ILCS 5/13-101 (West 2016) (incorporating common-law doctrine of adverse possession). "Even a one-day lapse in the concurrent existence of all five elements resets the 20-year period." *Gacki*, 369 Ill. App. 3d at 292. Hostile or adverse means an assertion of ownership incompatible with any other claim of right. *In re Estate of Cargola*, 2017 IL App (1st) 151823, ¶ 19. Exclusivity

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activated by vehicles approaching from the easement, automatically opened the gate.

requires that the rightful owner be entirely deprived of possession. *Illinois District of American Turners, Inc. v. Rieger*, 329 Ill. App. 3d 1063, 1073 (2002). " 'All presumptions are in favor of the title owner, and the party claiming title by adverse possession must prove each element by clear and unequivocal evidence.' " *Davidson v. Perry*, 386 Ill. App. 3d 821, 825 (2008) (quoting *Knauf v. Ryan*, 338 Ill. App. 3d 265, 269 (2003)). Courts have equated clear and unequivocal evidence with clear and convincing evidence. *Hoch v. Boehme*, 2013 IL App (2d) 120664, ¶ 37.

¶ 56 Defendants argue that the record is uncontroverted that no one used the easement without the Zennis' permission for a period of over 20 years. They argue as follows. The easement existed to allow for "ingress and egress" to Crab Tree Farm from the southern boundary. Photos from the 1980's show that the "path" along the easement was impassible; the ground was swampy and overgrown, making vehicular traffic impossible; and the southern border of Crab Tree Farm was blocked by a fence all along Blodgett Avenue. When the Zennis purchased the Zenni Estate on April 24, 1992, the fence along Blodgett Avenue contained a gate secured by a chain and padlock, to which no key could be found. Thus, it was evidence that residents and employees were not using this alternative form of access to Crab Tree Farm and had not done so for some time. James Zenni had the padlock cut off and replaced with a padlock to which only he had the key. In the early 2000s, the Zennis replaced the padlocked gate with an automatic gate controlled by entering a combination on a keypad.

¶ 57 Defendants argue that, therefore, the Zennis' actions frustrated the express and only purpose of the easement for a 20-year period. Defendants maintain that use of the easement by persons other than the Zennis could occur only with the Zennis' permission. Defendants argue that their exclusive control of access to and from Blodgett Avenue was recognized by residents

of Crab Tree Farm in that the Zennis alone laid a roadbed along the easement and maintained it, even though the 1955 Agreement obligated such costs to all parties in equal proportions.

¶ 58 Defendants assert that none of the trial court's findings provide a basis to conclude that the Zennis' possession of the Blodgett Easement for ingress and egress was interrupted at any time after 1992. They maintain that although John Bryan owned Lot 5 until 2007, which included the western 20 feet of the Blodgett Easement, the trial court confused the concept of a property owner's right to use the easement with Bryan's actual use of his own property covered by the easement. Defendants further argue that most of the travel of Bryan and his employees did not occur anywhere near the southern terminus or the gate, and that the locked gate required the Zennis' permission for any entries and exits to Blodgett Avenue. Defendants maintain that the employees were not using the easement for ingress and egress to Crab Tree Farm, but were instead traveling on property Bryan owned, thereby not implicating the easement or defeating the Zennis' claim of adverse possession.

¶ 59 Defendants argue that Kasprzak and Jarvi both testified that their access from the Blodgett Easement to Blodgett Avenue was always blocked by a gate. Defendants assert that Kasprzak knew that he had permission to leave the farm by pushing a red button on the gate in that he stated "Nobody mind [*sic*] that we did that." He also testified that the gate was open most of the time, which defendants state is not surprising and not inconsistent with the facts establishing the Zennis' control of the gate. They reason that because they operated an active equestrian facility on their property that involved frequent deliveries and other traffic moving through the gate, they left the gate open from time to time during the day in anticipation of deliveries by vendors and others who did not have the code to open the gate. Defendants state that the property was still maintained by a grounds supervisor and his staff. Defendants contend

that Bryan's testimony on the subject of the gate was contradictory and self-serving, and should not be read to create an issue of material fact on the motion for summary judgment. Defendants also argue that the trial court's reliance on attorney Allen's use of the easement in 2011 was misplaced, as Allen testified that a man, who he assumed worked for James Zenni, approached his car when he pulled in. Allen told the man that he was an attorney for the Blair Estate. Defendants assert that Allen's experience was just another example of their control over the gate and allowing the easement's use only with their permission.

¶ 60 Defendants argue that additional facts that the trial court ignored include that in a letter dated April 27, 2016, from an attorney for Jack Schuler to the Zennis' attorney, Schuler's attorney acknowledged that Schuler was given a passcode to the gate that Zenni installed and used the gate frequently with Zenni's "permission." Defendants also argue that plaintiffs did not contribute to the maintenance of the roadway, as would have been required under the 1955 Agreement, and that plaintiffs built a "new road" to access Blodgett Avenue when they subdivided Lot 5.

¶ 61 Defendants maintain that the law supports their adverse possession of the easement. First, they assert that erection of a physical barrier restricting access to an easement or land is generally determinative of control over property. See *Chicago Title & Trust v. Darley*, 363 Ill. 197, 201-02 (1917) (acts of dominion over land, such as fencing, will indicate to neighbors who has exclusive management and control of the land, and are sufficient to constitute possession); *Dwyer v. Love*, 346 Ill. App. 3d 734, 739 (2004) (fence and hedgerow created a clearly discernible boundary line supporting adverse possession). Defendants argue that the Restatement of Property provides an example showing that a barrier can work to extinguish an easement created for the ingress and egress to a public road or other property:

> "Blackacre is burdened by an easement appurtenant to Whiteacre for ingress and egress to a public road. Without permission from the owner of Whiteacre, O, the owner of Blackacre, constructed a fence along the boundary between Blackacre and Whiteacre. The fence completely blocked entrance to the easement. In the absence of other facts or circumstances, maintenance of the fence in its current location for the prescriptive period will terminate the easement." Restatement (Third) of Property (Servitudes) § 7.7, Illus. 1 (2000).

Citing cases from other jurisdictions, defendants assert that courts have reached the same conclusion where ingress and egress were barred by a gate. Defendants argue that no one disputed that the locked gate here constituted a similar barrier, and the only remaining question was whether possession was exclusive. Defendants answer this question in the affirmative. They argue that in each instance of "use" of the easement by plaintiffs, they traveled over Bryan's "own land," did not use the easement for ingress or egress, or used the easement with the Zennis' permission.

¶ 62 Plaintiffs respond that the Blodgett Easement not only provides for ingress and egress from Crab Tree Farm to Blodgett Avenue, but it also allows for internal circulation, from one farm property to another. Plaintiffs argue that, prior to 2007, Bryan and his employees used the Blodgett Easement in this way to access farming operations on the property now known as Lot 3. They maintain that after 2007, he used the Blodgett Easement to travel to Lot 2 from other properties within Crab Tree Farm, as the Blodgett Easement connected to the Lot 3 access easement. Plaintiffs maintain that James Zenni was a party to the creation of the Crab Tree Farm Subdivision and thus the Lot 3 access easement.

¶ 63 Plaintiffs argue that they also used the Blodgett Easement for ingress and egress to Blodgett Avenue. They point to Bryan's, Jarvi's, and Kasprzak's testimony that they had used the easement to enter and exit Crab Tree Farm from Blodgett Avenue on many occasions over the years. They maintain that from 1980 to 1996, there was a light-duty gate with a chain that was often open, and Bryan's farm workers frequently passed through it. They also point out that the Zennis did not move onto the property until 1995, and they argue that they therefore were not there to "police" it during that time. They again highlight testimony that even after that, James Zenni was only present two out of every three weeks, and that Lisa Zenni paid no attention to the easement until 2007. Plaintiffs assert that James Zenni installed the electric gate in 2004, that it opens automatically for exiting vehicles, and that it was also frequently left open.

¶ 64 Plaintiffs further cite the Zennis' testimony that the Zennis routinely use the Blodgett Easement, including the portion north of their property line, to access Sheridan Road by way of Crab Tree Lane. Plaintiffs argue that the Zennis' use of the easement is appropriate as owners of properties within Crab Tree Farm and therefore beneficiaries of the easement. Plaintiffs emphasize that defendants do not assert that their use of the easement north of their property line has been extinguished, but rather only the portion of the easement that crosses their property.

¶ 65 Plaintiffs argue that, under the facts of the case, the trial court properly found that defendants failed to establish the required elements of adverse possession of the Blodgett Easement. They argue that defendants cannot demonstrate that plaintiffs have been wholly excluded from possession of the easement for 20 years, especially considering that Bryan owned the western twenty feet of the southern half of the easement until 2007, and considering the aforementioned use of the easement. Plaintiffs maintain that the cases defendants cite regarding gates are distinguishable because there, fences created a boundary on the property over which the

party claiming adverse possession exercised exclusive control and dominion. Plaintiffs argue that here, the gate does not create a boundary around the easement because it exists only at the southernmost portion of the easement, and the gate automatically opens for exiting vehicles.

¶ 66 Regarding the Zennis' contention that they have allowed permissive use, plaintiffs argue that such alleged control by permission is not exclusive possession. They argue that the claim of control is contradicted by testimony in the record that the gate was left open, and plaintiffs were able to pass through unimpeded. They maintain that the record does not support defendants' position that each time plaintiffs or their employees accessed the easement, it was done solely with the Zennis' permission. Plaintiffs argue that even use by permission defeats adverse possession, which at its core requires non-use by the dominant tenant. See *Davidson*, 386 Ill. App. 3d at 825 (exclusivity means depriving the rightful owner of all possession); *Rieger*, 329 Ill. App. 3d at 1073 (same).

¶ 67 Plaintiffs argue that defendants also did not satisfy the remaining elements of adverse possession, in that they did not show hostility or a claim of title inconsistent with the true owners, as they cannot demonstrate that their use of the easement was incompatible with that of plaintiffs for 20 years. Plaintiffs argue that they have been routinely using the easement from 1992 to the present and that defendants' improvements to the road enhanced plaintiffs' use of it and corresponded to common usage. Plaintiffs assert that defendants also cannot show that they were in actual possession of the entire disputed area for 20 years, as Bryan owned the land underlying the western 20 feet of the easement until 2007.

¶ 68 We hold that the trial court did not err in granting summary judgment for plaintiffs on defendants' claim of adverse possession, because under the facts of this case, defendants could not have met their burden of showing that they adversely possessed the Blodgett Easement. This

is especially true considering that all presumptions are in favor of the title owner (plaintiffs) and that the burden of proof is clear and convincing evidence. *Davidson*, 386 Ill. App. 3d at 825.

¶ 69 Defendants focus on the 20-year period of 1992 to 2012. Defendants primarily rely on their alleged control of the gate at the southern terminus of the Blodgett Easement, asserting that the purpose of the easement was ingress and egress to Blodgett Avenue, so control over access to Blodgett Avenue from the easement equates to control over the entire disputed portion of the easement. However, the 1955 agreement simply states that the easement is "[a] road for ingress and egress of persons and vehicles." Because a "court cannot alter, change or modify existing terms of a contract, or add new terms or conditions to which the parties do not appear to have assented" (*Leak v. Board of Education of Rich Township High School District 227*, 2015 IL App (1st) 143202, ¶ 14), we agree with plaintiffs that the 1955 Agreement cannot be interpreted to be limiting the scope of the easement as ingress and egress to Blodgett Avenue only. Instead, it extends to ingress and egress of any type, including to Crab Tree Farm Lane, for which purpose the parties, including the Zennis, have repeatedly used it over the years, and to other properties within Crab Tree Farm Lane.

¶ 70 Moreover, it is undisputed that John Bryan owned Lot 5 until 2007, which included the western 20 feet of the easement, and that he continuously used the path to access his land. Defendants assert that he could only have been using the path as a landowner and not an easement owner, but they cite no authority in support. Additionally, the easement also extended 20 feet onto the Zenni estate, so Bryan's travel onto that portion of the easement would be based on his rights as an easement-holder, rather than a landowner. In other words, there is no evidence in the record that Bryan's use of the path was entirely upon his own land, nor does it seem likely given that he and his employees traveled the path for many years with farming equipment. This

is especially true considering that the Zennis did not even move onto the Zenni Estate until 1995, that the easement is located a great distance away from the Zennis' home, and that Lisa Zenni admittedly did not pay attention to the easement until 2007, all meaning that they would not have been continuously monitoring Bryan's use of the easement from 1992 to 2007.

¶ 71 Defendants' assertion that Bryan's and his employee's use of the easement was always "blocked" by a gate is also unavailing. Defendants describe installing an electric gate in the early 2000's, whereas plaintiffs state that it was installed in 2004. Regardless, and even setting aside the use of the padlocked gate in the 1990's and early 2000's, the record shows that the subsequently-installed electric gate opened automatically when exiting Crab Tree Farm. Thus, the Zennis' permission was not necessary to use the Blodgett Easement to exit onto Blodgett Avenue. Defendants also admittedly left the gate open on a frequent basis. The gate therefore did not constitute a physical barrier to easement, unlike the cases relied on by defendants, but rather plaintiffs were able to and did travel along the easement and exit onto Blodgett Avenue without defendants' involvement or explicit permission.

¶ 72 That Schuler's attorney characterized Schuler's use of the easement as permissive is not relevant, as he is not a plaintiff. That plaintiffs did not contribute to the easement's maintenance or expansion is not dispositive, as there is no evidence that defendants requested such a contribution, the 1955 Agreement did not make the easement's continued existence contingent on sharing expenses, and the Zennis' improvements of the path were consistent with plaintiffs' use of the easement. The "new road" to Blodgett Avenue that defendants assert plaintiffs built is located entirely on the property of a non-party, and it does not equate to adverse possession of the Blodgett Easement.

¶ 73 For these varied and independent reasons, defendants cannot show that they possessed the Blodgett Easement for a period of 20 years in a manner that was continuous; hostile or adverse; actual; open, notorious, and exclusive, and under a claim of title inconsistent of that with the true owner. See *Gacki*, 369 Ill. App. 3d at 292. As stated, "Even a one-day lapse in the concurrent existence of all five elements resets the 20-year period." *Id.*

¶ 74 D. Permanent Injunction

¶ 75 Last, defendants argue that the trial court erred in granting plaintiffs a permanent injunction by granting summary judgment on count II of their complaint.

¶ 76 An injunction is an extraordinary remedy. *Hadley v. Department of Corrections*, 362 Ill. App. 3d 680, 684 (2005). A party seeking a permanent injunction must show (1) a clear and ascertainable right needing protection; (2) irreparable harm if the injunction is not granted; and (3) a lack of an adequate remedy at law. *Dedic v. Board of North Shore Towers Condominium Ass'n*, 2018 IL App (1st) 171842, ¶ 42. Typically, we will not disturb a trial court's ruling on whether to grant injunctive relief unless it is against the manifest weight of the evidence. *Id.* However, because the trial court granted the permanent injunction via summary judgment, our review is *de novo*. See *Cobo*, 2018 IL 123038, ¶ 16.

¶ 77 Defendants argue that the trial court granted the permanent injunction based on plaintiffs' claim that they had a right in need of protection, in that the automatic gate remained in place. Defendants argue that, however, a gate had been present in the same location for many years before plaintiffs brought this suit. Defendants maintain when plaintiffs brought the action, their focus was on temporary concrete barriers that the Zennis had erected to block the Blair Estate's heavy demolition equipment from crossing their property. Defendants argue that the work was eventually finished without using Blodgett Avenue, and there is nothing in the record to suggest

plaintiffs' continuing need to use the entrance. Defendants further argue that plaintiffs presented no evidence that they tried to use the easement or gate and were prevented from doing so, and that in the absence of a specific need to use the easement, they could not show a right in need of protection. Defendants maintain that plaintiffs also did not show irreparable harm, or that there is no lack of an adequate remedy at law, as plaintiffs can seek monetary damages.

¶ 78 Plaintiffs argue, and we agree, that the trial court did not err in granting plaintiffs summary judgment on count II. Our supreme court has stated: "It is firmly established by our case law that a mandatory injunction may be issued to protect the enjoyment of an easement." *Ariola v. Nigro*, 16 Ill. 2d 46, 55 (1959). Here, we have held that plaintiffs have the right to use the Blodgett Easement, so it constitutes an ascertainable right. It is also clear from the record that in the months following the trial court's determination of this right, defendants did not remove the gate at the southern terminus of the Blodgett Easement or provide plaintiffs with the code to be able to access the easement from Blodgett Avenue. As such, although plaintiffs could exit through the gate because it opened automatically when leaving Crab Tree Farm, they could not enter through the gate from Blodgett Avenue. Plaintiffs' right to fully access the easement was therefore in need of protection. See also *Flower*, 135 Ill. App. 3d at 1040 ("It is well established that the owner of a 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.") Additionally, although a court will normally balance the hardship of a proposed injunction upon a defendant against the benefit to be derived by the plaintiff, such balancing of equity is not normally considered when the defendant's encroachment was intentional. *LeClerq v. Zaia*, 28 Ill. App. 3d 738, 742 (1975). As defendants installed the gate and denied plaintiffs use of the code, the trial court was not required to balance the equities of the injunction.

¶ 79 Turning to the remaining elements considered for permanent injunctions, "irreparable harm" means transgressions of a continuing nature, and the injury need not be very great. *Hadley*, 362 Ill. App. 3d at 688. Here, plaintiffs would suffer irreparable harm in the absence of an injunction in that defendants had not provided plaintiffs with the passcode to the gate, such that plaintiffs could not access it from Blodgett Avenue.

¶ 80 Plaintiffs also do not have an adequate remedy at law. Although defendants argue that plaintiffs could seek monetary damages, an injunction is appropriate where, as here, the damages recoverable for each instance would be small, whereas the expenses of litigation would be great. See *Pliske v. Yuskis*, 83 Ill. App. 3d 89, 96 (1980); see also *Mutual of Omaha Life Insurance Co. v. Executive Plaza, Inc.*, 99 Ill. App. 3d 190, 195 (1981). Accordingly, we find no basis to reverse the trial court's grant of a permanent injunction for plaintiffs.

¶ 81 III. CONCLUSION

¶ 82 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 83 Affirmed.