2014 IL App (2d) 140525-U
No. 2-14-0525
Order filed September 17, 2014



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| ROBERT E. HOLDRIDGE and JAN DEANGELES-HOLDRIDGE, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiffs-Appellees, | ) | |
| v. | ) | No. 13-CH-3048 |
| JOHN P. BOULUS and ELIZABETH A. BOULUS, | ) | Honorable Terence M. Sheen, |
| Defendants-Appellants. | ) | Judge, Presiding. |

JUSTICE SPENCE delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not make findings of contested fact, did not enter an inappropriate mandatory injunction, and properly considered defendants' laches argument. Therefore, we affirmed its grant of a preliminary injunction.

¶ 2 Plaintiffs, Robert E. Holdridge and Jan DeAngeles-Holdridge (Holdridges or plaintiffs), brought suit against defendants, John P. Boulus and Elizabeth A. Boulus (Bouluses or defendants), to enjoin interference with their claimed easement over the Bouluses' property. Plaintiffs then filed a petition for a preliminary injunction. Following a hearing, the trial court granted the petition, enjoining defendants from interfering with plaintiffs' claimed easement,

pending a trial on the merits. Defendants appealed the interlocutory order under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), and for the reasons set forth herein, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The Holdridges are married and have lived together at 649 Lake Road in Glen Ellyn, Illinois (the "Holdridge Property"), since 1986. The Holdridge Property is located in Sundene's Subdivision, and a plat of the subdivision (the "Plat") identifies four lots. Lot 1 is the northernmost lot; lot 2 is adjacent to lot 1 at lot 1's southern boundary; lots 3 and 4 are juxtaposed, sharing a north-south border (lot 3 to the west, lot 4 to the east), and both lots 3 and 4 are adjacent to lot 2's southern boundary. The Holdridge Property is lot 2 on the Plat.

¶ 5 The Plat identifies an "Easement for Private Drive" that provides lots 2, 3, and 4 access to Lake Road at the northwest end of the subdivision. The specifics of the easement as shown by the Plat are as follows. Lots 2, 3, and 4 do not have direct access to a public road. The Easement for Private Drive extends in two directions from Lake Road in the northwest end of the Plat: east across lot 1, turning south and terminating at lot 2; and south across lot 1, continuing south through lot 2, turning east through lot 3, and ending at the western edge of lot 4. The Holdridge Property had access to the easement at both its northwestern and northeastern boundaries, and the Holdridges used both points of access to enter and exit their property.

¶ 6 Three documents concerning the Easement for Private Drive were filed with the Du Page county recorder in 1977 and 1978. They were: a Grant of Easement (1977), an Abrogation Agreement (1977), and a Grant of Additional Easement (1978). The Grant of Easement involved only lots 3 and 4 of the Plat. It established an easement over lot 3 for the benefit of lot 4 as it was being used by the owners of lot 4, which was as a driveway along a slightly different path

than originally plotted, so that the driveway would avoid certain trees on lot 3. The Abrogation Agreement again involved only lots 3 and 4. It complemented the Grant of Easement, abrogating the old easement over lot 3, while the Grant of Easement established the new easement that matched the driveway as it was constructed and used. The Grant of Additional Easement involved lots 2, 3, and 4. Lot 2 granted an additional portion of its property as an easement for the benefit of lots 3 and 4, to accommodate that the driveway through lot 3 deviated from the original easement boundaries in avoidance of certain trees.

¶ 7 The Bouluses are married, and they purchased the property at 651 Lake Road in Glen Ellyn (the "Boulus Property") in February 2013. The Boulus Property is lot 1 on the Plat. Mr. Boulus visited the Boulus Property at least three times before purchasing it, and he observed an asphalt drive running through the property.

¶ 8 Mr. Boulus testified that he received and reviewed a survey of the Boulus Property prior to closing on the property. The survey represented the property as it existed in February 2013. When asked whether the survey reflected an easement for private drive, he responded, "No, that's not how I interpret it." When asked again whether he saw where it said easement for private drive, he answered, "I see an easement for private drive. I'm not exactly sure how to interpret the whole thing." Mr. Boulus also testified that he received and read a title policy for the property after he closed on it. The title policy listed the Easement for Private Drive. He later testified that he did not know who owned the easement.

¶ 9 Mr. Boulus further testified that when he first saw the Boulus Property, it was in poor condition, had been vacant for 11 or 12 years, and the driveway was consistent with the general state of the property: "torn up, pothole ridden, unkept [*sic*]." Soon after purchasing the property, Mr. Boulus filed an application for a construction permit with Glen Ellyn. He testified that his

intent was to rip out existing asphalt from parts of the driveway on his property and replace and repave some of that ripped up driveway with new asphalt.

¶ 10 In April 2013, contractors erected a fence that blocked the Holdridges' access to the private drive running along the northeastern branch of the easement (the "northeastern easement"). The fence was on the Boulus Property and blocked the Holdridges' access to the northeastern easement. There was also a gate placed at the Lake Road access point.

¶ 11 After the fence went up, Mr. Holdridge contacted an attorney, Daniel Kramer. He also had one telephone conversation with Mr. Boulus about his intent to leave the fence up, and they exchanged approximately four emails. Mr. Holdridge forwarded to Mr. Boulus a letter from Kramer, in which Kramer expressed his legal opinion that Mr. Holdridge's "neighbor to the north has absolutely no right to block off either drive." In one of his reply emails, Mr. Boulus stated that "while an easement grant to [*sic*] access through my property, it does not provide you with any ownership of my property which means all of the liability issues fall on me."

¶ 12 Mr. Boulus retained John Chitkowski, and on May 31, 2013, Chitkowski sent a letter to Kramer (the "Chitkowski letter") asserting that the northeastern easement did not exist. The letter read, in part:

> "While Holdridge contends that an easement was created for a private drive to access the 649 Lake Road Property, no such easement exists. The only easement for private drive is across the west portion of the 651 Lake Road Property and was established for the purpose of providing access to the properties in the Subdivision, including the 649 Lake Road Property owned by Holdridge."

The letter also requested that the Holdridges "immediately cease and desist use of the Boulus' personal driveway." If the Holdridges continue to use the driveway, "Boulus has authorized me

to file suit against the Holdridges for trespass and seek all damages through all available remedies under the law. I trust such action will not be necessary." The Holdridges did not respond to the letter.

¶ 13 Construction work continued on the Boulus Property, and by around October 2013, the asphalt surface was replaced. However, the asphalt drive did not continue along the path of the easement depicted on the plat, as it had before, but terminated at the Bouluses' garage. Sod filled in the remaining path up to the Holdridge Property. Mr. Holdridge testified that it was not until the new asphalt was put in that the Holdridges realized they would not be able to access their property via the northeastern easement.

¶ 14 On October 29, 2013, the Holdridges filed a "Verified Complaint for Permanent Injunction and Trespass," and on November 8, 2013, they petitioned for a preliminary injunction against the Bouluses to enjoin them from interfering with their right to use the easement and reinstall a driveway along the easement.

¶ 15 On May 9, 2014, the trial court issued its order granting a preliminary injunction against the Bouluses. After considering the evidence presented, credibility of witnesses, exhibits, arguments, and applicable case law, the trial court found the following.

¶ 16 (1) Much testimony was given whether an easement existed on the Boulus Property and whether there was interference with the easement, which was clearly the central dispute between the parties. However, this dispute was still "in its simplest form a contested fact." When considering an application for a preliminary injunction, the trial court "should not decide contested issues of fact, nor should [it] decide the merits of the case."

¶ 17 (2) Mr. Boulus lacked credibility in his testimony regarding the existence of an easement over his property and in his testimony that there was no purpose to the private drive across his

property, other than that the drive/easement was for his and his family's sole use.

¶ 18 (3) If facts are ultimately proved at trial, the Holdridges stated a claim for use of the easement, entitling them to the relief they sought in the complaint.

¶ 19 (4) The Holdridges made a *prima facie* case showing a fair question that the claimed property right existed, and there was a reasonable belief that they would be entitled to the relief sought if "they ultimately prove the facts at trial."

¶ 20 (5) Plaintiffs demonstrated irreparable injury in the absence of an injunction. They demonstrated that "if they are successful, they have the right to use the easement. *** This alone can constitute irreparable injury." Irreparable injury also included their use of the easement on a continuing basis and loss of the use of the easement.

¶ 21 (6) There was no adequate remedy at law.

¶ 22 (7) Defendants had full knowledge of the recorded easement and claim of plaintiffs, and they intentionally caused the drive to be ripped out where the easement existed.

¶ 23 (8) The Grant of Easement, Abrogation Agreement, and Grant of Additional Easement did not affect the easement that existed on the Boulus Property: they had nothing to do with the easement that ran across the Boulus property, nor did they abrogate or terminate the easement.

¶ 24 (9) The easement on the Boulus Property was "clearly shown on a plat of survey they received when they purchased the property, the deed they were given title to the land and the title insurance." There was no ambiguity as to the easement on the basis of the documents they received, and no legitimate argument could be made that the driveway across the easement was for the Bouluses' sole use.

¶ 25 (10) Because the Bouluses intentionally placed the fence on the easement, dug up the driveway, then sodded it, the court was not required to balance equities between the parties.

¶ 26 (11) The "last uncontested peaceful event was before [the Bouluses] ripped up the road, put a fence up and put landscaping elements on the easement," that is, before the easement was obstructed.

¶ 27 (12) Regarding the defense of laches, the Holdridges did not cause the fence to be put up or the easement to be obstructed. There was no alleged prejudice or hardship on the part of the Bouluses caused by the Holdridges, nor was there any evidence presented "which supported the fact that any delay on Plaintiffs part induced Defendants to act." There was "not any unreasonable delay for a great length or any unreasonable length of time on the part of the Plaintiffs."

¶ 28 (13) In Illinois, generally the owner of the easement has the duty to repair it. "However, in appropriate circumstances, the court may issue a mandatory injunction directing the owner of the servient tenement to remove obstructions *** or restore a roadway to its original condition." Nonetheless, "[h]ere, the Plaintiffs as owners of the easement are responsible regarding the cost of the maintenance of the easement."

¶ 29 Accordingly, the court ordered a preliminary injunction on behalf of the Holdridges and against the Bouluses, enjoining them from "interfering in any way with the Holdridges' right to use the entire easement or interfering with said use as delineated on the Sundene's Subdivision plat, pending full trial on the merits." It also enjoined the Bouluses from interfering with the Holdridges' right to reinstall a driveway along the easement, pending a full trial on the merits.

¶ 30 Defendants timely appealed.

¶ 31 II. ANALYSIS

¶ 32 A. Standard of Review

¶ 33 "The decision to grant or deny a preliminary injunction is generally reviewed for an abuse of discretion." *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62-63 (2006); see also *People v. Studio 20, Inc.*, 314 Ill. App. 3d 1000, 1004 (2000) (generally, we review the propriety of a preliminary injunction for abuse of discretion; but, to the extent the ruling was based on construction of a statute, review is *de novo*). "[A]n abuse of discretion occurs only when the ruling is 'arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view.' " *World Painting Co., LLC v. Costigan*, 2012 IL App (4th) 110869, ¶ 12.

¶ 34 Defendants contend that because the trial court rendered a decision on the merits, we are not constrained by an abuse of discretion standard and instead should review whether the grant of the preliminary injunction was against the manifest weight of the evidence. They cite *Dixon Ass'n for Retarded Citizens v. Thompson*, 91 Ill. 2d 518, 524-25 (1982), where our supreme court did "not feel limited by the traditional scope of review of an order issuing a preliminary injunction." The order in *Dixon* purported to be a preliminary injunction that preserved the status quo in form, but, in substance, the order had the effect of deciding the merits of the case. *Id.* The supreme court reasoned as follows: The hearing transcript for the motion for the preliminary injunction was over 4,000 pages long; about 28 witnesses testified at the hearing, and over 80 exhibits were introduced; the hearing lasted 15 days; the order found that the defendants' proposed plan would violate certain statutes, and the injunction enjoined the plan " 'until defendants, at an evidentiary hearing on the merits of this cause can persuade the court that' " the plan should proceed, thus shifting the burden from plaintiffs to defendants in establishing the plan's validity; and the order did not enjoin the plan temporarily pending

disposition of the case but rather until the defendants' presented a different, acceptable plan to the judge. *Id.* at 525-26.

¶ 35 Defendants do not at any point in their briefs argue why this case is similar to the facts of *Dixon*. In their argument for the standard of review, they merely argue that "[a]s the central dispute between the parties decided by the Trial Court, in its simplest form, is a contested fact, the appropriate standard of review to be applied is whether the Trial Court's May 9, 2014 decision was against the manifest weight of the evidence." One of defendants' arguments against the grant of the preliminary injunction is, in fact, that the trial court erred by deciding contested issues of fact in its order. For reasons discussed *infra*, we reject that argument. Accordingly, our review is whether the trial court abused its discretion in granting the preliminary injunction.

¶ 36 B. The Propriety of the Preliminary Injunction

¶ 37 "The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits of a cause." *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk and Western Ry. Co.*, 195 Ill. 2d 356, 365 (2001). A preliminary injunction is an extreme remedy that should be employed only where an emergency exists and serious harm would result if the injunction were not issued. *Id.* at 365. The party requesting a preliminary injunction must demonstrate the following four elements: "(1) a clearly ascertained right in need of protection; (2) irreparable harm in the absence of an injunction; (3) no adequate remedy at law for the injury; and (4) a likelihood of success on the merits." *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177 (2002).

¶ 38 Nonetheless, the party seeking a preliminary injunction is not required to make out a case that would be sufficient to entitle her to judgment at trial. *Stocker Hinge Manufacturing Co. v.*

*Darnel Industries, Inc.*, 94 Ill. 2d 535, 542 (1983); see *LSBZ Inc. v. Brokis*, 237 Ill. App. 3d 415, 425 (1992) ("[T]he plaintiff need not carry the same burden of proof that is required to support the ultimate decision."). Rather, the party only needs to raise a "fair question" about the existence of the claimed right and that the court should preserve the status quo until the cause can be decided on the merits. *Buzz Barton & Associates, Inc. v. Giannone*, 106 Ill. 2d 373, 382 (1985).

¶ 39 1. Whether the Trial Court Improperly Decided Contested Facts

¶ 40 Defendants argue that the trial court erred both because it should not have decided issues of fact and because it decided issues of fact incorrectly. Defendants first argue that the trial court should not have decided issues of contested fact. They argue as follows.

¶ 41 By acknowledging that the very existence of an easement on the Boulus Property was a highly contested fact and was the central dispute between the parties, any decision by the trial court on whether an easement existed was a decision of a contested fact and, thus, improper. In its May 9, 2014, order, the trial court decided that an easement indeed existed on the Boulus Property based on the Plat, warranty deed issued to the Bouluses, and the title insurance to the Boulus Property. However, the trial court did not consider the subsequently recorded documents (the Grant of Easement (1977), Abrogation Agreement (1977), and Grant of Additional Easement (1978)). By deciding that an easement existed without considering these documents, the trial court followed in the steps of the trial courts in *Dixon* and *Powell v. Home Run Inn, Inc.*, 202 Ill. App. 3d 94, 100 (1990) (holding that the circuit court decided facts that were not at issue and altered, rather than preserved, the status quo).

¶ 42 We reject this argument. We have already discussed *Dixon*, *supra*. *Dixon* bears no resemblance to our case, and neither does *Powell*. In *Powell*, the trial court found that the

defendant breached certain confidentiality agreements, despite the fact that the plaintiffs did not seek to hold the defendant liable for the breach of those agreements in their complaint. *Powell*, 202 Ill. App. 3d at 100. The court also found that the parties entered into oral contracts, even though the defendant denied the existence of such contracts, the court said it was not interested in hearing evidence of the contracts, and the contracts were not at issue. *Id.* Moreover, the *Powell* court found that the preliminary injunction entered by the trial court enjoined the defendant from terminating the plaintiffs' oral contracts without a year's written notice, despite that the assertion was that there were oral contracts terminable at will. Thus, the injunction did more than preserve the status quo. *Id.*

¶ 43 Here, unlike in *Powell* or *Dixon*, the trial court contained its examination of the evidence to the immediate issue at hand, that is, determining whether the Holdridges raised a "fair question" of an easement that existed for their benefit, whether there was irreparable harm or a remedy at law, and whether there was a likelihood of success on the merits. The report of proceedings was under 150 pages, and there were only two witnesses called, Mr. Holdridge and Mr. Boulus. The trial court was careful not to decide the factual issues, stating multiple times that its conclusions were pending a full trial on the merits. After reviewing documents such as the Plat and title to the Boulus property, which clearly depicted the claimed easement, it found instead that if "they ultimately prove the facts at trial," the Holdridges had stated a claim for use of the easement entitling them to relief. Nor did the injunction do more than maintain the status quo. As the trial court rightly found, the last peaceful, uncontested event, was before the Bouluses erected a fence and dug up the driveway, thereby obstructing the claimed easement. Defendants would have us equate the trial court's consideration of evidence and testimony at the hearing with findings of fact, but the record patently does not support this. *Dixon* and *Powell* are

exceptional instances where the trial court exceeded the purpose and purview of a preliminary injunction hearing, whereas here, the trial court properly exercised its inherent authority to consider evidence and testimony to determine whether the four elements necessary for a preliminary injunction were met in this case.

¶ 44 The trial court also found the subsequently recorded documents to be irrelevant to its determination. The Grant of Easement, Abrogation Agreement, and Grant of Additional Easement collectively addressed the easements running through lots 2, 3, and 4. As the easement at issue here is the easement running through lot 1, the trial court was correct to hold that the documents did not affect its determination, and defendants' argument is baseless.

¶ 45 Defendants further argue that the Holdridges have no right to interfere with their control and beneficial use of the land, merely for convenience further than is necessary for the reasonable enjoyment of the easement. The only legal authority they cite for this proposition is *Schnuck Markets, Inc. v. Soffer*, 213 Ill. App. 3d 957, 974 (1991). They argue that it would be unreasonable to allow the Holdridges to enjoy the claimed northeastern easement because they still have access to the northwestern easement, and therefore the preliminary injunction should be reversed.

¶ 46 We find this argument forfeited under Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)) because defendants fail to cite authority for their claim. Moreover, we find this argument is not germane to the preliminary injunction hearing. See *Falcon, Ltd. v. Corr's Natural Beverages, Inc.*, 165 Ill. App. 3d 815, 820 (1987) (affirmative defenses not properly resolved at preliminary injunction). While consideration of a defense is permitted (*Danville Polyclinic, Ltd. v. Dethmers*, 260 Ill. App. 3d 108, 115 (1994)), the argument here goes only to the proper extent

of the Holdridges' use of the easement, not whether they have a protectable property interest that defendants irreparably interfered with.

¶ 47 2. Whether the Trial Court Erred in Granting a Prohibitory Injunction

¶ 48 Defendants' next argument is that the trial court erred by purporting to enter a prohibitory injunction that, in fact, was mandatory in nature, and the terms of the injunction were improper for a mandatory injunction. There are two types of preliminary injunctions: (1) mandatory or (2) prohibitory. See *Continental Cablevision of Cook County, Inc. v. Miller*, 238 Ill. App. 3d 774, 789 (1992). Determining whether an injunction is mandatory or prohibitory requires examining the effect the injunction has on the parties. *Id.* A mandatory injunction commands a party to perform a positive act, whereas a prohibitory injunction orders a party to refrain from continuing certain actions. *Id.*

¶ 49 Defendants continue that the trial court erred by mandating that a driveway be installed on the Boulus Property. They contend that the only injunction the trial court ordered was a mandatory injunction when, in its May 9, 2014, order, it stated that "in appropriate circumstances, the court may issue a mandatory injunction directing the owner of the servient track to remove obstructions *** or restore a roadway to its original condition." They argue that the trial court ordered that the easement had to be restored. They contend that the purpose of a mandatory injunction is not to grant affirmative relief or to correct a wrong, which is what the trial court did, making the injunction improper. They conclude that the order "improperly preliminarily enjoins Boulus and improperly mandates a driveway to be installed through Boulus' backyard."

¶ 50 We reject defendants' argument and note that it is not only meritless but also misleading. In its written order, the court stated that "in appropriate circumstances, the court may issue a

mandatory injunction directing the owner of the servient track to remove obstructions *** or restore a roadway to its original condition." This was said in the context of addressing which party bore the cost of the easement's maintenance, and in the very next line, the court concluded that "[h]ere, the Plaintiffs as owners of the easement are responsible regarding the cost of the maintenance of the easement."

¶ 51 Moreover, the trial court did not order that a driveway be restored, much less by the Bouluses. In fact, the court did not order the Bouluses to perform any positive act. The injunction read, verbatim:

> "1. That a Preliminary Injunction shall issue on behalf of Mr. and Mrs. Holdridge and against Mr. and Ms. Boulus, their successors and assigns enjoining them and their agents or anyone whom they exercise control of or supervision over *from interfering in any way with the Holdridges*['] *right to use the entire easement or interfering with said use* as *delineated in Sundene's Subdivision plat*, pending full trial on the merits.
>
> 2. That a Preliminary Injunction shall issue on behalf of Mr. and Mrs. Holdridge against Mr. and Ms. Boulus, their successors and assigns enjoining them and their agents or anyone whom they exercise control of or supervision over *from interfering in any way with the right of the Holdridges*['] *right to reinstall a driveway along the entire Easement from Lake Road to the Holdridges' property*, pending full trial on the merits." (Emphases added.)

¶ 52 It is clear from the order that the trial court did not enter a mandatory injunction in name or effect. It merely *prohibited* the Bouluses from interfering with the Holdridges' claimed easement, preserving the status quo, until a trial on the merits could take place. Therefore, as the

injunction was not mandatory, we need not proceed to whether it was a proper mandatory injunction.

¶ 53 Defendants' unfounded argument reveals either a failure to read the entire order or borders on misrepresentation. Either is problematic. Rule of Professional Conduct 1.1[5] (Ill. S. Ct. R.P.C. 1.1[5] (eff. Jan. 1, 2010)) requires adequate preparation, which should certainly include reading the entirety of the order defendants appeal from. If counsel did read the entire order, Rule of Professional Conduct 3.3(a)(1) (Ill. S. Ct. R.P.C. 3.3(a)(1) (eff. Jan. 1, 2010)) requires candor toward the tribunal in that a lawyer shall not knowingly make a false statement of fact or law to a tribunal. Without offering a further opinion on the matter, we caution defendants' counsel not to cross the line between argument and fabrication.

¶ 54 3. Whether The Court Improperly Determined Laches Did Not Apply

¶ 55 Defendants next argue that the court erred by deciding the merits of their laches defense at the preliminary injunction hearing. It is true that, as we have noted, a court is not to resolve defenses at a preliminary injunction hearing, although it may consider them. See *Falcon*, 165 Ill. App. 3d at 820 (a trial court may not resolve defenses); *Dethmers*, 260 Ill. App. 3d at 115 (but it may consider defenses).

¶ 56 At the preliminary hearing, the following discourse took place:

> "Mr. Chitkowski: Now, your Honor is aware that we have argued latches [*sic*] as an affirmative defense. The latches [*sic*] defense is triggered by not only construction that was done at the property in the plain view of Mr. Holdridge but by a cease and desist letter that was sent to his attorney which now in his deposition in April he testified that he never received.

> The Court: This is a preliminary injunction. It's not evidence as to any disputed facts ***
>
> I can't decide any disputed facts at a preliminary injunction hearing. This is preliminary. This isn't a final hearing on the issues and merits of the case. It's just whether the elements for a preliminary injunction are met.
>
> It's actually a very simple hearing, so if you guys were planning on doing the whole trial, it probably be [*sic*] a waste of both your client's time and money to do it that way because I can't decide any issue of fact in a preliminary injunction hearing. *** And latches [*sic*] has certain requirements as the matter of law, so—alright are you ready to being?"

Later, in closing argument, Mr. Chitkowski argued for the defense of laches.

¶ 57 Defendants' laches argument rests on the fact that the Holdridges did not respond to the Chitkowski letter asking them to cease and desist use of the driveway over the easement, with the threat of a lawsuit if they did. Defendants continued construction on their property until the Holdridges filed this suit in October 2013, after their discovery that month that the reconstructed driveway on the Boulus Property would not run to the Holdridge Property but instead stopped at the Bouluses' garage.

¶ 58 The party asserting laches must prove (1) a lack of diligence by the other party and (2) injury or prejudice as a result of the delay of the other party. *In re Marriage of Davenport*, 388 Ill. App. 3d 988, 993 (2009). This is the lens through which the trial court could consider (but not resolve) the impact, if any, of defendants' asserted defense of laches.

¶ 59 In the trial court's May 9, 2014, order, it addressed laches, stating that there was no alleged prejudice or hardship on the part of the Bouluses caused by the Holdridges. It also found

no evidence that any delay on the part of the Holdridges induced the Bouluses to act. Nor did it observe any unreasonable delay by the Holdridges. These findings are supported by the record. The Bouluses had notice of the easement before buying the property, and they had correspondence with the Holdridges where the Holdridges asserted their right to use the easement between when construction began in April 2013 and the Chitkowski letter on May 31, 2013. The Bouluses, undeterred, continued construction and threatened legal action against the Holdridges if they interfered. As soon as the Holdridges realized that the construction would not be a temporary interference with their use of the northeastern easement but a permanent one, as the new driveway would not extend to their property, they took immediate legal action.

¶ 60 Accordingly, the trial court's findings regarding laches were not an abuse of discretion, nor were they "on the merits." The trial court considered the laches defense that defendants' counsel insisted on raising at the preliminary hearing and found that it did not weigh against entry of a preliminary injunction. Nothing stops defendants from arguing laches at trial, the ultimate success of which remains to be seen.

¶ 61 4. Defining the Rights and Obligations of the Easement's Maintenance

¶ 62 Defendants' final argument is that the trial court erred in failing to define the parties' maintenance obligations regarding the easement. They do not cite authority requiring the trial court to define such obligations, therefore forfeiting the argument. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). However, even if not forfeited, the argument is without merit. The May 9, 2014, order, made clear that the Holdridges "as owners of the easement are responsible regarding the cost of maintenance of the easement." The trial court did not order either party to restore the easement, as defendants presume in their argument, but rather ordered only that the Bouluses not interfere with the Holdridges' use or restoration of the easement.

¶ 63 III. CONCLUSION

¶ 64 For the aforementioned reasons, the trial court did not abuse its discretion in granting a preliminary injunction, and we affirm the Du Page County circuit court's order.

¶ 65 Affirmed.