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NO. 4-11-0956

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JOSHUA HELMICK and ALICIA HELMICK, Plaintiffs-Appellants, v. LARRY LAMBRIGHT, DIANE LAMBRIGHT, and SCOTT LAMBRIGHT, Defendants-Appellees.	))))))))	Appeal from Circuit Court of Champaign County No. 09MR762 Honorable Charles McRae Leonhard, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: In this case, where the trial court was asked to interpret the language of an easement, the evidence established that the intent of the easement was for the purpose of ingress and egress over the servient estate to the dominant estate by using the current eastern portion of the gravel circular driveway. However, nothing in the record indicated that the servient estate was intended to be further used by the dominant estate as a turnaround area for vehicles. Thus, the trial court did not err (1) in its declaratory judgment, ordering the width of the easement to be 10 feet, (2) by ordering defendants to refrain from interfering with plaintiffs' use of the established easement, or (3) by denying plaintiffs' further request for permanent-injunctive relief.

¶ 2 Plaintiffs, Joshua and Alicia Helmick, sued their neighboring landowners, Larry, Diane, and Scott Lambright, to enforce their unrestricted ability to use the driveway easement running on the Lambrights' property. The Helmicks sought declaratory relief, preliminary- and permanent-injunctive relief, and money damages. After a bench trial and posttrial motions, the trial court entered an order (1) declaring the width and location of the easement, (2) enjoining the

Lambrights from interfering with the Helmicks' use of the easement, (3) otherwise denying the Helmicks' claim for permanent-injunctive relief from the Lambrights' harassment, and (4) denying money damages. The Helmicks appeal and we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 1980, Eileen Cook purchased a rectangular, one-acre tract of land across the street from the Lake of the Woods park in Mahomet, Illinois. Lake of the Woods Road ran alongside the north side of the tract. Since the 1950's, Cook's tract contained a gravel circular driveway providing two access areas to Lake of the Woods Road. This gravel driveway started at one point on Lake of the Woods Road, entered the tract, and circled around Cook's home to a separate exit access. For purposes of this appeal, we will describe that part of the gravel driveway that contains the easement at issue (the eastern side of the driveway), as the "entrance portion" of the gravel driveway.

¶ 5 In 1984, Cook subdivided the tract, creating two different lots, one to the south of Cook's house. David Philippe, a land surveyor, created the Cook Replat. Cook conveyed Lot 2 to her son and his wife, Dennis and Vicki Cook, who built a home on their lot. They poured a concrete driveway from their garage on Lot 2 to connect with the entrance portion of the gravel driveway (the "concrete approach") in order to gain access to the Lake of the Woods Road. When leaving their residence, Dennis and Vicki would back their vehicle down their concrete driveway onto the gravel driveway on Lot 1 (at the top of the circle on the circular drive) and drive toward Lake of the Woods Road using the entrance portion of the gravel driveway, after having performed a three-point turn.

¶ 6 In August 1994, Dennis and Vicki conveyed Lot 2 to William Huston, along with a right-of-way easement for the entrance portion of the gravel driveway, signed by Eileen as grantor. The easement provides in pertinent part:

> "Full and free right and liberty for the Grantee, the Grantee's tenants, servants, visitors, and licensees, at all times hereafter, with or without vehicles *** for all purposes connected with the use and enjoyment of said land of the Grantee, for whatever purpose the said land may be from time to time lawfully used and enjoyed, to pass and repass along that portion of the existing driveway as indicated on Cook's Replat *** which passes along the easterly side of the improvements on Grantor's parcel [(the entrance portion of the gravel driveway)] *** for the purpose of making ingress and egress to and from any public highway *** adjoining the aforementioned parcel of real estate now owned by the Grantor[.]"

The easement was intended to run with the land. The measurements and exact location of the easement are not described, but Huston used the easement without conflict during his ownership of Lot 2. The language also indicated that both parties would equally divide the cost of maintaining the gravel driveway and that no buildings or other structures may be constructed on the east 60 feet of Lot 1 that would obstruct the view from the house on Lot 2 to Lake of the Woods Road and beyond to the park. Further, Eileen and Huston signed a shared-well agreement that is located on Lot 1 and serves both lots.

¶ 7 In February 2003, Huston conveyed Lot 2 to plaintiffs, the Helmicks. In February 2007, Eileen conveyed Lot 1 to Karl and Diana Thrasher, who built a garage inside the circular driveway immediately to the south of their house. In February 2008, the Thrashers conveyed Lot 1 to defendants, Larry and Diane Lambright, for use by their son, defendant Scott Lambright.

¶ 8 Alicia Helmick operated a day care for approximately four children at her home on Lot 2. The parents of those children use the entrance portion of the circular drive (the easement property) for ingress and egress to the day care. Joshua Helmick is employed in the heating, ventilation, and air conditioning industry and drives a company vehicle. His employer has requested that he pull a trailer containing needed equipment behind his company vehicle; however, due to the obstructions in the driveway at issue in this lawsuit, he has been unable to do so.

¶ 9 Scott Lambright is employed in the construction industry and stores construction material, including concrete blocks, bricks, wood, metal, and shingles, on Lot 1. The Helmicks were concerned that the Lambrights' conduct could adversely affect their property values, so they called Champaign County authorities to inquire whether Scott was in compliance with local ordinances. The Lambrights received notices of violations, primarily in relation to the storage of construction supplies and debris. At this point, the relationship between the Helmicks and the Lambrights began to spiral downward.

¶ 10 In 2009, the Lambrights erected a six-foot wooden fence, installed metal gates, and placed boulders around their house, blocking the top of the circular driveway, the part which did not include the easement but had been previously used to back out from the Helmicks' concrete approach. In short, the Helmicks and their visitors were unable to perform the three-point turn when leaving the concrete driveway from their house on Lot 2 due to the obstructions placed on Lot 1 in and around the circular driveway. The Helmicks believed the fences, gates, and boulders obstructed or violated the easement.

¶ 11 In October 2009, the Helmicks filed a verified petition for declaratory judgment and injunctive relief, alleging the Lambrights had "wilfully and intentionally prevented and interfered"

with the Helmicks' use of the easement. The Helmicks had demanded the Lambrights remove the obstructions, to no avail. Instead, the Lambrights had allegedly continued to further obstruct the driveway, made personal threats, and engaged in other harassing conduct. The Helmicks claimed the terms of the easement were ambiguous. They asked the court to rely on extrinsic evidence to clarify the terms and subsequently enjoin the Lambrights from interfering with their use of the easement.

¶ 12 In November 2009, the trial court considered evidence over three separate hearings on the Helmicks' motion for preliminary injunction. The court eventually denied their request for relief. The court noted that the particulars of the easement were not specified and thus, it could not determine whether the Helmicks' rights of ingress and egress had been disturbed by the Lambrights. The court stated:

> "And until such time as a spatial aspect of this easement is ascertained, the court simply isn't in a position to reliably determine what if any rights of the respective parties has been violated."

The court further noted that, because the requested relief was mandatory, rather than prohibitory, in nature, and such relief was "not favored by the law," it denied the Helmicks' request.

¶ 13 In April and May 2010, the trial court conducted a bench trial. The court noted that it would consider not only the evidence presented at trial, but also the evidence presented at the injunctive-relief hearings in November 2009. Thus, the following is a summary of the total evidence presented.

¶ 14 David P. Phillippe, a land surveyor who had prepared the initial survey of the property upon the Cook's subdivision, testified that both parties retained him to perform a "reboundary

survey" of Lots 1 and 2. His testimony was supported by aerial photographs of the property taken in 1988 (plaintiff's exhibit No. 84), 2002 (plaintiff's exhibit No. 85), 2005 (plaintiff's exhibit No. 86), and 2008 (plaintiff's exhibit No. 87). Phillippe, as well as both parties and the trial court, relied heavily on plaintiff's exhibit No. 83, a survey of the property performed on March 26, 2010. This survey indicated that the entrance portion of the gravel circular driveway was 9 to 10 feet wide for the first approximate 140 feet and then widened at the top of the circle as it approached Lot 2. Also depicted in plaintiff's exhibit No. 83 in the "East 60" of Lot 1 (the area which is to remain free from buildings or construction in order to maintain an unobstructed view for Lot 2) were a septic tank area, playground equipment, a sandbox, several No Trespassing signs, and boulders lining the driveway. With the exception of the septic-tank area, these objects do not appear in the aerial photograph taken in 2008 (plaintiff's exhibit No. 87).

¶ 15 On the survey drawing (plaintiff's exhibit No. 83), Phillippe drew a blue line representing the inside of the circular driveway along the entrance portion, continuing around past the front of the Helmicks' house. The line drawn by Phillippe, representing the inside of the circular drive, marks through (1) the southwest corner of the Lambrights' garage, (2) rocks placed on the circular driveway, (3) linear timbers, and (4) a fence and gate erected on Lot 1. The blue line is included in the "East 60" part of Lot 1.

¶ 16 On cross-examination, Phillippe testified that, in his professional opinion, Lot 2 was not landlocked because Lot 2 includes a 20-foot wide strip, directly to the east of the "East 60," that runs from Lake of the Woods Road south into the wider portion of Lot 2 where the Helmicks' house sits. In other words, an aerial view of Lot 2 depicts a panhandle. The 20-foot strip runs parallel to the easement. Phillippe could not think of any reason in his professional opinion why the Helmicks

could not build themselves their own circular driveway, using this 20-foot wide panhandle strip of land. Phillippe also stated that when he visited the property for the purpose of preparing the survey in March 2010, he used the "entire driveway to egress and ingress the property," including the western part of the circular driveway. The rocks and boulders lying along the edge of the driveway caused no impediment. Phillippe further testified that generally, the terms "egress and ingress" do not assume that the easement includes an available turnaround.

¶ 17 Next, Vicki Cook testified that the county zoning administrator advised her at the time of the subdivision of Eileen's property that Lot 2 would be required to have some frontage to Lake of the Woods Road. As a result, Lot 2 was created into the panhandle-shape. They considered building a driveway down the panhandle, but that construction would have required removing trees, an expense they could not afford at the time. She further explained that the county administrators had placed a condition on the receipt of their building permit for the construction of their home that they establish a means to turn their vehicles around so as to avoid backing out in reverse onto Lake of the Woods Road. Cook admitted the language in the easement did not clearly encompass this condition; however, she felt the language in the easement "was sufficient at the time." In her opinion, the term "existing drive" as used in the easement meant "the whole circle drive and the leg to the new house." She believed the easement included the area south of the garage on Lot 1 and in front of the house on Lot 2 (the top of the circular drive) to allow vehicles to back into and turn around.

¶ 18 William Huston testified that, when he resided in the house on Lot 2, he backed out his vehicle in a similar manner as that described by Vicki Cook, using a three-point turn. He said the fences and gate now on Lot 1 block the drive, making it impossible to turn around as he used to

do.

¶ 19 Alicia Helmick testified that between November 2009 and the day of trial, the Lambrights had moved the metal gates blocking the top of the circular drive and the backing area further onto the gravel driveway. She said the Lambrights had posted several "No Trespassing" signs on the fences, erected metal posts, and strung yellow caution tape around as a boundary around Lot 1. Alicia said she was upset with the Lambrights' conduct, stating: "I don't like looking out my front window and every single time I go out my front door to be able to look at this ridiculous view." In her opinion, their conduct affected her day-care business, as clients were questioning the strange circumstances.

¶ 20 Alicia testified to the many acts that she viewed as harassment performed by the Lambrights. Those acts include the following: (1) in December 2009, Scott propped up a mannequin-type figure wearing an apron, a Halloween mask, and a Santa Claus hat, holding a bloody chainsaw; (2) Scott often sat on the tongue of his trailer parked behind his garage next to the circular drive; (3) the Lambrights installed a video camera on a fence post; and (4) Scott frequently yelled and cussed at the Helmicks when they were outside. In February 2010, Scott yelled that the Helmicks would never be able to sell their home. They were stuck. He then laughed "hysterically."

¶ 21 Alicia testified that in January 2010, Scott posted a sign on the metal gate near the driveway that said "Private Parking. Violators will be towed by Tatman's Towing." Josh called Tatman's Towing to find out why they posted the sign. Tatman's acknowledged the sign was their sign, but they refused to remove it since they had not posted it. The next day, Scott posted a spray-painted plywood sign that said: "Keep Trying Josh" with a smiley face. In March 2010, Alicia noticed a second video camera mounted on a fence post. Scott frequently blocked the driveway with

his truck at the time when Alicia's day-care parents would be arriving to pick up their children. She claimed Scott would park the truck on the east side of their home on the entrance portion of the circular drive while working on the west side of his home. In February 2010, the Lambrights posted two signs on the East 60 which stated: "Posted. No Trespassing. Keep Out."

¶ 22 Alicia described an incident that occurred on March 27, 2010. Their doorbell rang and she went to the door. She saw Scott running down the driveway away from their house. He stopped on his property. Alicia opened the door and saw him "laughing hysterically." She looked down and saw a dead possum at her doorstep. Alicia yelled for Josh and then called the police. Alicia said she and Josh have been seeing a counselor due to the Lambrights' conduct.

¶ 23 Josh testified that in February 2010, Scott spit in his face when he entered Lot 1 to investigate the well not working. The wire for water service to Lot 2 had been cut. Josh also stated he found approximately 12 nails in the circular driveway.

¶ 24 On cross-examination, Josh was asked about throwing a rock at Scott's 13-year-old daughter. Josh explained that his father-in-law drove a trailer to their house. As they were trying to jockey the trailer onto the concrete approach, Scott, while on his property, started hollering, "going on and on" about the property dispute. Josh picked up a "small river rock" and threw it at the fence. He apologized at trial for his conduct, but said he had been "pushed to [his] limit" with "all this verbal abuse."

¶ 25 Joan Burch, a realtor, testified that she was the Lambrights' agent when they purchased Lot 1. She explained the terms of the easement to the Lambrights at the time—that they would share the east side of the circular driveway with Lot 2. There was no mention of the shared use of the top of the circular drive as a turnaround. According to Burch, the easement ran north and

south, "straight up to their house" on Lot 2 from Lake of the Woods Road.

¶ 26 Dylan Gentry, aged 17, testified he "like[d] to play pranks and jokes on people in Mahomet, so [he] found a possum on the side of the road, put it on their porch," referring to the Helmicks. He said after he put the possum on the porch, he rang the doorbell, and ran toward their garage because he "thought it would be a funny prank." On cross-examination, Dylan testified he knew Scott's daughter and told her about it afterward, but no one had asked him to do it.

¶ 27 Scott testified he erected the metal gates because Josh had "been consistently trespassing on [his] property, taking pictures, [and] opening [his] white trailer." Scott posted the no-trespassing signs and gates to prevent Josh from "sneaking around around there." He also put up the yellow caution tape in the East 60 "to actually lay down where the property lies" because, according to Scott, Josh "seems to keep wandering on [Scott's] property." Scott said his Halloween/Christmas decorations were merely for fun and were not meant to harass or intimidate the Helmicks. Scott explained he erected the sign which read: "Keep Trying Josh" in response to Josh's warning that he would keep harassing Scott until he put his house on the market. Scott said Josh takes photographs and videos of him and his children daily. Scott had placed cameras on his fence post in response to being falsely accused of placing a rodent on the Helmicks' porch.

¶ 28 Scott further testified he had not blocked the driveway for an extended period of time. He would sometimes park his truck in the driveway to load or unload, but only for a few minutes. He denied being involved with the possum incident. On the day of the incident, his daughter had friends in and out of the house the entire day, but he could not recall if Dylan was there.

¶ 29 Scott also presented photographic evidence depicting (1) a camera mounted on the Helmicks' property (defendant's exhibit No. 8); (2) rocks that Josh had moved on Scott's property

(defendant's exhibit Nos. 9, 16, 17, and 18); (3) the Helmicks' truck and trailer turning around using their own property (defendant's exhibit No. 10); (4) Josh approaching Scott while yelling not to photograph him (defendant's exhibit No. 11); (5) Josh parking his van blocking Scott's driveway on the west side of Scott's house (defendant's exhibit Nos. 12, 13, and 14); (6) a video camera in the Helmicks' window pointing at the Lambrights' property (defendant's exhibit Nos. 15, 22, 23, and 27); (7) the Helmicks' garden hose extended toward Scott's fence posts for the alleged purpose of weakening the posts (defendant's exhibit No. 19); (8) a visitor at the Helmicks' house in the process of turning her vehicle around using the Helmicks' concrete approach (defendant's exhibit No. 20); (9) the same visitor after she had turned her vehicle around and was driving out of the driveway (defendant's exhibit No. 21); (10) Josh holding a still camera and taking a picture (defendant's exhibit No. 24); (11) Josh holding a video camera allegedly filming Scott and his daughter at night (defendant's exhibit No. 25); and (12) Josh walking around looking at the Lambrights' property (defendant's exhibit No. 26).

¶ 30 Scott testified that the Helmicks frequently call the police and the fire department to complain about Scott's conduct. For example, Josh called the fire department when he, his girlfriend, and his daughter had a bonfire on their property. And, on the same day, but after the possum incident, Josh called the police complaining that Scott's radio was too loud at 9 p.m. Scott said he was tired of the Helmicks' constant harassment, taking photographs and videos, and trespassing on Scott's property.

¶ 31 Brittany Lambright, Scott's 13-year-old daughter, testified that on March 27, 2010, the night of the possum incident, Scott telephoned her, told her of the incident, and advised that the police were there investigating. She said she never spoke to Dylan about the Helmicks and she did

not ask Dylan to place the possum on their porch. She testified that, on April 5, 2010, she began taking photographs of Josh turning a truck and trailer around on the concrete approach in his driveway. When Josh spotted her, he picked up a rock and threw it at her and Scott. Brittany testified she was afraid of Josh and she refused to go on the east side of their property alone because of Josh's conduct.

¶ 32 Larry Lambright denied ever harassing the Helmicks, but insisted the Helmicks harass his family "constantly." He testified that Josh frequently photographs them, and Alicia "comes out, and she just goes berserk, vulgar language, hollering at us."

¶ 33 After the close of the evidence, at the trial court's request, the parties filed written closing arguments. In September 2010, before the court entered judgment, the Helmicks filed a motion to reopen the evidence, claiming "additional facts, circumstances[,] and events ha[d] occurred since the close of the evidence" in May 2010. The Helmicks attached an affidavit to the motion, which identified further acts of harassment by the Lambrights since May 2010, including (1) erecting several different signs with messages to the Helmicks to leave them alone, (2) seeing Scott "pull[] down his pants and expose[] his bare butt" in their direction, (3) Scott failing to deliver a Federal Express package addressed to Alicia, which had been inadvertently left at Scott's house, (4) installing a floodlight on their fence, which blinds drivers pulling into the entrance portion of the driveway at night, and (5) intentionally damaging the circular driveway after Josh performed repairs. The Hemlicks attached photographs depicting this conduct and supporting these allegations.

¶ 34 On September 9, 2010, the trial court conducted a hearing on the Hemlicks' motion to reopen evidence. The court concluded that the evidence presented in their motion, although relevant, was "nonetheless cumulative to the evidence that was presented at length during the many

sessions [they] had in court on the principal complaint." The court denied the Hemlicks' motion but scheduled a hearing for September 20, 2010, for the court's ruling from the bench on the merits of the complaint.

¶ 35 On September 20, 2010, the parties reconvened for the trial court's ruling. After initial comments, the court stated:

> "The initial issue here is where the easement is, and the parties have ably established that by reference to [plaintiff's exhibit No.] 83 [the March 2010 survey].
>
> * * *
>
> The text of this easement, once it has been spatially located, in the court's assessment, [is] not ambiguous. It permits use of that portion of the circle driveway which is to the east of what is now the Lambright residence. So, looking at it spatially as one enters the property from Lake of the Woods Road, it is that portion of the circle drive that runs along the left side of the Lambright house that this easement was intended to be.
>
> There is nothing in the text of the easement, nor really is there anything in the extrinsic evidence offered, that would permit a court to find that the original parties intended that successor owners be able to use any other part of that circle driveway, that is to say travel in any way other than a direct [corollary] to and from what is now the Hemlick property.

It is true, as the court discusses in its written opinion, that Mr. Huston testified that it was customary, or if not customary, then certainly not infrequent for him to use the top of the circle drive and the other west side of the circle drive for at least egress when the easement was blocked. But that, in the court's assessment, is not dispositive of the question of what the original intention of the parties was.

And the court further observes, in the written ruling to be rendered today, Mr. Huston was able to use the entirety of the circle drive not pursuant to the terms of the easement but just because he and Ms. Cook were neighbors in every sense of the word.

So there is a distinction to be drawn here between the permissive use of the circle drive, as was exemplified in their relationship between Ms. Cook and Mr. Huston, and use as a matter of right under the terms of receipt.

And so the court is of the view that the easement permits essentially a direct route from Lake of the Woods Road to and from the Hemlick property. It does not permit any lateral departure beyond the width of that easement onto any other part of the driveway or onto any other part of the Lambright property.

Now, that said, the location of the easement has been identified by the surveyor with the aid of satellite photographs, and

it's readily apparent that the original easement having been defined in terms of the east side of the circle drive was initially and remains somewhat vague. It's also difficult to ascertain the width of the easement at any given moment because of the usual erosions and accretions, driveways, and the like.

***

Now, the defendants have very laudably suggested that they are willing to deem the entire width of the easement [to be] 10 feet. The court believes that the court as an equity court would have the power to so order, but in all events will implement the laudable gesture of the defendants and declare here that the width of this easement, as originally intended is, and shall be, 10 feet.

***

The next issue here relating to the easement is whether the plaintiffs or plaintiffs' invitees should be able to use any part of the land bought right properly beyond the lateral boundaries of the easement for the purposes of turning around, and in that respect there are two related propositions.

The first is that it is unduly perilous to back out onto Lake of the Woods Road.

The second broader related proposition is that there's no place on the Hemlick property that one can turn about.

***

And the court believes that it would be, one, beyond the text and intent of the easement; and two, it would also be an undue violation of the property rights of the land rights to permit anyone who is using the easement to traverse its lateral boundaries to make a three-point turn or a U-turn or the like.

***

So, traversing the lateral boundaries of this easement in order for the plaintiffs or the plaintiffs' invitees to turn around is not something that the terms of this easement will authorize.

*** [T]he evidence establishes both testimonially [*sic*] and photographically beyond per adventure that there is abundant room on the plaintiffs' property on which to turn about prior to exiting the premises onto Lake of the Woods Road.

***

Let's next turn to the so-called East 60. ***

The layout of the respective lots is somewhat unusual. The Huston lot, which was severed from the Cook lot, has what is essentially a long panhandle on its left aspect, if one looks at the two partials from Lake of the Woods Road, and that part of the land that is contiguous to Lake of the Woods Road was placed there, the evidence shows, for two reasons. First, there is testimony that the

county zoning authority required that the Huston lot, which is now the Hemlick lot, have some minimal footage, or frontage I should say, on Lake of the Woods Road. And secondly, there is an easement that goes on and under that property.

Beyond that, the deed to Mr. Huston describes this east 60 feet of the lot and the recital in the grant is that neither Mr. Huston nor any of his successors shall erect any buildings or otherwise develop that east 60 feet.

***

Now, the parties in this case have referred to this provision relating to the so-called East 60 from time to time as an easement, but it's really not an easement; it is a restrictive covenant that runs with the land. And it's readily apparent that both, from the text of the covenant or, assuming that it's ambiguous, on the basis of the extrinsic evidence for Mr. Huston and again particularly Ms. Cook, that it was the grantor's original intention that that property remain as is, that it remain green space.

***

[I]t's obvious that the Lambrights have went afoul of that restrictive covenant. It's really just that simple.

That portion of the land is to remain undeveloped; and thus, it will be incumbent upon the defendants to remove any indicia

development, to include the play equipment, the sandbox, and the boulders that have been placed there. And the court will direct and order that the defendants comply with what will be an order of the court to that effect within [30] days.

Let's then finally deal with the question of monetary damages. There is joined with the prayer for declaratory relief a claim for monetary damages for harassment, and as well there is an intended prayer for injunctive relief.

* * *

From the standpoint of the elemental requirement that the conduct to be compensated with an awarded damages or to be enjoined is concerned, that element being that the conduct be extreme and outrageous, the only conduct here that the court believes meets that definition or can be so characterized insofar as the deportment of the Lambright gentleman is concerned, is this incident of which a possum carcass was placed on the doorstep of the plaintiffs' residence.

Now, that would, in most contexts, and I believe in this context as well, be appropriately characterized as extreme and outrageous conduct. But the evidence used at the trial establishes, in the court's assessment, without doubt that the defendants didn't play any role in that. And accordingly, the court simply doesn't believe

> that there is a factual or legal basis here for an award of monetary damages or an injunction against the defendants for their deportment during the course of the parties' dispute."

The court denied the Hemlicks' claims for injunctive relief and monetary damage, but granted their claim for declaratory relief as specified above with regard to the terms of the easement and the East 60. The court entered a written order on September 20, 2010, in accordance with its oral pronouncement.

¶ 36 On October 19, 2010, the Helmicks filed a motion to reconsider, claiming the Lambrights had removed, as ordered, the playground equipment from the East 60, but they placed it in "the middle of gravel driveway, and moved the large metal gates further to the east, north of the Helmick concrete approach, further obstructing the easement." In their response, the Lambrights denied the playground equipment and the metal gates were placed within the easement boundaries.

¶ 37 On December 16, 2010, the trial court conducted a hearing on the Helmicks' motion to reconsider. After considering the arguments of both parties, the court took the matter under advisement.

¶ 38 On February 4, 2011, before the trial court issued a decision on the Helmicks' motion for reconsideration, the Helmicks filed a second motion to reopen evidence, claiming the Lambrights' "egregious and outrageous conduct" continued. A supporting affidavit filed by the Helmicks indicated (1) Scott moved the metal gate further east to "intentionally increase the obstruction of the driveway"; (2) while Josh was shoveling snow on his driveway, Scott "came out yelling, screaming[,] and cursing" at him; (3) a telephone call was placed from Scott's cellular telephone to Josh's employer, wherein the caller falsely informed the employer that Josh was a convicted felon; (4) a

large boulder was concealed in a pile of snow on the Helmicks' concrete approach; and (5) Scott installed metal stakes 11 feet apart across the width of the entrance area of the easement, which prevented Josh from making ingress and egress to his house while driving his work truck because the truck's mirrors do not fit between the stakes.

¶ 39 On May 17, 2011, before the trial court had issued a ruling on the Helmicks' motion to reconsider, they filed a third motion to reopen evidence, adding allegations that on April 17, 2011, the Lambrights (1) erected a wooden fence in front of the Helmicks' concrete approach, "which further restricts [their] use of the easement driveway"; and (2) removed gravel from the easement to use elsewhere on their property.

¶ 40 On September 20, 2011, the trial court issued a commendable 10-page order, setting forth, in great detail, a history of the issues presented, a summary of the court's September 20, 2010, final judgment, and then addressed the new allegations, finding as follows:

> "The court next addresses plaintiffs' repeated entreaty that defendants be enjoined by this court from harassment of them. The acrimony between the parties has been palpable throughout the litigation of this case and the court continues to find the deportment of certain of the parties to be disgraceful and disturbing. ***
>
> The record would establish the occurrence of other such incidents, whether before or since the rendition of the original ruling in this case. While some of those incidents may not cross any line defined by the Illinois Criminal Code, each certainly exceeds the bounds of civility. The court need not further describe such conduct,

> whether proven at prior hearings or merely alleged thereafter. The court, presiding under the law of equity, instead reiterates that it declines to be the referee of the parties' *ad hominem* disputes. It is for each of the parties to at last decide whether they wish to reside as adults in a subdivision or pursue a virtual existence as children in a sandbox.
>
> *** To the extent that any party has committed or might further commit a tort or crime against another, there exist adequate remedies under the law. The prayer for injunctive relief on the present record is accordingly denied."

The court further ordered the removal of (1) any improvement or structure on the East 60, including rocks and trees, and (2) any encroachment on either side of the easement, "whether in the form of rocks, timbers, fencing[,] or otherwise." The court also ordered defendants to "refrain from unlawfully obstructing, in any way, plaintiffs' lawful use of the easement." The court denied the Helmicks' pending motions to reopen evidence, finding the new allegations cumulative. This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 A. Denial of Plaintiffs' Motions to Reopen Evidence

¶ 43 First, the Helmicks claim the trial court erred in denying their three motions to reopen the evidence. Each motion asked the court to consider recent conduct, which the Helmicks believed further supported their claims for injunctive and declaratory relief. In denying these motions, the court held that, although the allegations constituted new evidence and, even assuming the Helmicks

could prove the veracity of the allegations, the conduct described provided nothing more than cumulative evidence. Nevertheless, in this appeal, the Helmicks claim the conduct described in their motions "depict[ed] extreme and outrageous conduct on the part of defendants, which was relevant to the issues of punitive damages and injunctive relief."

¶ 44 This court will not disturb a trial court's decision denying a motion to reopen evidence unless we find the court clearly abused its discretion. *People v. Henry*, 103 Ill. App. 3d 1143, 1148 (1982). Illinois courts, including this court, have applied a four-factor test in determining whether a party should be allowed to reopen proofs. Those factors are (1) whether the failure to introduce the evidence occurred because of inadvertence or calculated risk, (2) whether the adverse party will be surprised or unfairly prejudiced by the new evidence, (3) whether the new evidence is of the utmost importance to the movant's case, and (4) whether any cogent reason exists to justify denying the request. *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1141 (2004).

¶ 45 The first factor does not apply because the allegations constitute new evidence, not evidence that could have been previously introduced but, for whatever reason, was not. Likewise, because the allegations stem from the Lambrights' own conduct, it is unlikely they would be surprised or unfairly prejudiced by the introduction of the new evidence. Thus, the second factor is not a consideration either. However, the third and fourth factors could apply in this situation.

¶ 46 The trial court determined that the new allegations were simply more of the same. The court found that additional evidence of the obvious discord between the parties and further descriptions of the steps that each party undertook to demonstrate that discord would be merely cumulative to the evidence already presented to the court. We do not disagree with that assessment. For instance, the Helmicks argued that evidence of the Lambrights' construction of the new wooden

fence, which according to the photographs presented, runs directly in front of a portion of the Helmicks' concrete approach, was clearly relevant to the issue of whether the Lambrights' encroachments of the driveway were intentional. We fail to see how the construction of this wooden fence is an actionable encroachment upon the easement. Basically, the metal gates were replaced with a six-foot wooden privacy fence. Indeed, the wooden fence may extend onto the gravel circular driveway further than the metal gates did; however, this does not necessarily constitute actionable conduct. According to the photographs presented (and not otherwise alleged by the Helmicks), the Lambrights constructed this fence entirely upon Lot 1 and the same does not encroach upon Lot 2 or the easement. The Helmicks claim only that the fence makes "it more and more difficult to make ingress and egress," a nonactionable claim absent an actual encroachment.

¶ 47 In its September 2010 order, the trial court made clear that the Helmicks shall make ingress and egress without touching the Lambrights' property. The court further found the easement did not include an area to turn a vehicle around or back into. The new wooden fence, which apparently is entirely on Lot 1, should not affect the Helmicks' ingress or egress, as it is not on the designated easement. The Lambrights have not interfered with the designated 10-foot-wide strip ordered to run the entirety of the entrance part of the gravel driveway. That the construction of the wooden fence makes ingress and egress more difficult does not necessarily contravene the trial court's order.

¶ 48 The same can be said for the other allegations regarding the Lambrights' recent conduct. The fact that harassing conduct continued, whether it be reciprocated or not, was neither pivotal nor decisive to the court's decision in this case. Except for the possum incident, the court found no other conduct rose to an extreme or outrageous level though the court did describe the

conduct as childish. Such conduct may be the subject of a separate tort or criminal proceeding but is not evidence that is "of the utmost importance to the movant's case."

¶ 49 For these reasons, we find the trial court's decision to deny the Helmicks' requests to reopen the evidence based on cumulative evidence is reasonable and did not constitute an abuse of discretion. The court correctly anticipated that further evidence would merely provide further examples of like conduct to which witnesses already testified.

¶ 50 B. Declaratory Judgment of Width and Location of Easement

¶ 51 The Helmicks next claim the trial court erred in entering a declaratory judgment, finding that the easement extends from Lake of the Woods Road to the concrete approach to the Helmicks' driveway at a width of 10 feet the entire length of the easement. They claim the evidence did not support this finding.

¶ 52 We first address the disputed issue of the proper standard of review. The Helmicks claim this court should review a declaratory judgment under a standard less deferential than abuse of discretion but more deferential than *de novo*. Citing this court's previous decision, they contend the issue is whether the declaratory judgment was proper. See *Bodine Electric of Champaign v. The City of Champaign*, 305 Ill. App. 3d 431, 435 (1999) (the standard of review for declaratory judgments is less deferential than abuse of discretion, but more deferential than *de novo* review and actually centers on whether the decision of the trial court was proper).

¶ 53 On the other hand, the Lambrights claim our review may be twofold depending on the issues presented for review. They contend an abuse-of-discretion standard should be applied when the appellate issues depend on witness credibility or disputed facts while a *de novo* standard should be applied to questions of law. See *In re Marriage of Rife*, 376 Ill. App. 3d 1050, 1058-59

(2007) (there is not just a single standard of review for declaratory-judgment actions, but instead, it depends on the nature of the underlying issue).

¶ 54 We conclude the proper standard of review in this case, where the trial court determined the width and location of the easement after considering the evidence presented, is a manifest-weight standard. "Generally, the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. In this appeal, we review the trial court's judgment in light of the evidence presented at trial and determine whether the court's decision was supported by the manifest weight of the evidence.

¶ 55 In several instances, including in the September 2010 and 2011 orders, the trial court referred to the Lambrights' "laudable" willingness to allow a width of 10 feet for the easement when no specific width was mentioned in the language of the easement itself. The Helmicks claim their review of the record failed to reveal when or if any one of the three Lambrights had stated such a willingness and thus, they claim, the court erred in so ordering. The Helmicks further claim the width of only 10 feet worked to their detriment.

¶ 56 In challenging the trial court's assertion that the Lambrights had assented to a width of 10 feet, the Helmicks point to Larry Lambright's testimony from the November 2009 hearing, wherein he stated the existing driveway runs "straight back" to the Helmicks' property and that "[i]t widens out back at their property, at about 26 feet, plus or minus." Thus, the Helmicks argue that Larry did not assent to a width of 10 feet, but instead acknowledged that the easement widened to a span of 26 feet as it approached Lot 2. While testifying, Larry relied on a drawing (defendant's exhibit No. 3) that he had prepared of the property. The drawing included various measurements

noted throughout different areas of the property.

¶ 57 Contrary to the Helmicks' assertion, Larry did not testify that the *easement* widened out to 26 feet. Rather, Larry testified that the *circular driveway* widened out to 26 feet as it approached the Helmicks' concrete pad. Defendant's exhibit No. 3 indicated that the entrance portion of the driveway was 10 feet wide. The trial court may have relied on the Lambrights' measurements in exhibit No. 3 to support its finding that they had assented to a width of 10 feet.

¶ 58 The Helmicks make the same argument with reference to Phillippe's testimony. Phillippe, relying on plaintiff's exhibit No. 83, his prepared survey of the property from March 2010, testified that the entrance portion of the driveway was 9 to 10 feet wide for the northern two-thirds of the driveway and then widened out as the driveway approached Lot 2. Like the Lambrights, Phillippe testified that the *driveway*, not the *easement*, widened out.

¶ 59 The trial court determined that the easement included only that part of the existing gravel driveway, a 10-foot wide strip, running from Lake of the Woods Road to the Helmicks' concrete approach on Lot 2, and that it did not include any portion of the top of the circle for use as a turnabout. The court believed the Helmicks could utilize their own concrete approach to turn around their vehicles. The court further found the 10-foot wide strip was sufficient to satisfy the purpose for which the easement was created—for ingress and egress from Lake of the Woods Road to Lot 2.

¶ 60 Citing this court's decision in *Perbix v. Verizon North*, *Inc.*, 396 Ill. App. 3d 652, (2009), the Helmicks claim the historical and actual use of the easement should guide the court in defining the width and location. Indeed, in *Perbix*, this court noted:

" '[W]here an easement granted by deed is undefined as to its location

and width, the dimensions depend upon the intent of the parties, which can be shown by the extent of the actual use.' " *Perbix*, 396 Ill. App. 3d at 657 (quoting *Peters v. Milks Grove Special Drainage District No. 1*, 243 Ill. App. 3d 14, 18-19 (1993)).

¶ 61 Several witnesses testified that the original intent of the easement was to provide ingress and egress to Lot 2, as the language of the easement specifically states. However, in earlier days, those individuals residing on Lots 1 and 2 were neighbors "in every sense of the word," as the trial court had noted. With that relationship came not only the ingress and egress along the entrance portion of the driveway, but the implicit understanding and permission that the occupants on Lot 2 could use the top of the circular driveway (the property of Lot 1) as a backing area for cars leaving Lot 2. The Helmicks insist that such a use should continue, *i.e.*, that the easement should include not only the 10-foot-wide strip but the curved and widened portion of the circular driveway in front of the Helmicks' concrete approach.

¶ 62 In *Vallas v. Johnson*, 72 Ill. App. 3d 281, 282 (1979), the court addressed a similar issue and was asked to determine the width and location of an easement otherwise unspecified. The plaintiffs wanted the easement limited to 12 feet in width, while the defendants sought to have the trial court define the same easement as being 25 feet wide, the measurement of the width at its widest. After a bench trial, the trial court determined that the proper dimension was 19 feet of width. *Vallas*, 72 Ill. App. 3d at 282. The appellate court referred to the accepted principle that the width of an unspecified easement is only that which is " 'reasonably convenient and necessary for the purposes for which the way was created.' " *Vallas*, 72 Ill. App. 3d at 282 (quoting 25 Am. Jur. 2d *Easements* § 78 (1966)).

¶ 63 The trial court considered the testimony of the actual use of the easement as probative of the intent of the parties at the time the easement was granted. *Vallas*, 72 Ill. App. 3d at 282. What the evidence revealed was that the lane was used to gain access to the defendant's property. The evidence also revealed that the plaintiffs had constructed a fence on their property along the easement, restricting the width of the easement. Several witnesses testified that the plaintiffs' fence increased the difficulty of navigating the easement. *Vallas*, 72 Ill. App. 3d at 283. The testimony supported the court's finding that ingress and egress was the intended purpose of the easement and the construction of the fence, effectively making the easement narrower than before, wrongfully altered the character without the defendants' consent. The court affirmed the trial court's decision, making the easement a continuous width of 19 feet. *Vallas*, 72 Ill. App. 3d at 284.

¶ 64 The *Vallas* decision can be distinguished from this case. There, the plaintiffs interfered with the intended primary purpose of the easement. The drivers of larger vehicles testified they had great difficulty traveling into and out of the property because of the plaintiffs' fence. The actual ingress and egress was restricted. In this case, the Lambrights have interfered only with the Helmicks' act of backing their vehicle onto the top of the circular drive in making a three-point turn for the purpose of heading out the driveway facing forward. There is a distinction between permissive use and use as a matter of right. For years, the occupants of Lot 2 had permission to utilize the top of the circular driveway for a turnabout, while they had the right to use the entrance portion of the driveway. The permissive use was not part of the intended, primary, and necessary purpose of the easement.

¶ 65 The trial court ordered the Lambrights to remove anything that would restrict the width of the easement, such as the large rocks or the steel posts placed along the easement driveway.

Otherwise, the Lambrights have not interfered with the intended, primary, and necessary purpose of the easement. Further, the court-ordered 10-foot width is " 'reasonably convenient and necessary for the purposes for which the way was created.' " *Vallas*, 72 Ill. App. 3d at 282 (quoting 25 Am. Jur. 2d *Easements* § 78 (1966)).

¶ 66 As the Cooks and Huston testified, the entrance portion of the circular drive was intended to be used by the occupants of Lot 2 for the purpose of providing ingress and egress to and from Lake of the Woods Road. Nothing in the easement indicated that the top portion of the circular driveway should be used by the occupants of Lot 2 to turn around. The Lambrights' newly constructed wooden fence does not interfere with the intended purpose of the easement—the ingress and egress to and from Lot 2.

¶ 67 Contrary to the Helmicks' assertions, the easement only grants them ingress and egress of a width and location reasonably necessary and convenient for their use, not the right to utilize more than a necessary portion of the Lambrights' property. See *McMahon v. Hines*, 298 Ill. App. 3d 231, 239 (1998) ("the width of an easement is confined to the dimensions that are reasonably necessary for the purposes for which it was created"). The fact that the Helmicks' predecessors used the property on Lot 1 (where a wooden fence now sits) to turn their vehicles around, although the same constitutes evidence of prior actual use, that use actually constitutes more than is reasonably necessary and more than was initially intended when the easement was granted. As the trial court noted, the record reveals the occupants and invitees of Lot 2 can turn their vehicles around using Lot 2 exclusively.

¶ 68 Applying the appropriate standard to the record before us, we conclude the trial court's decision was not against the manifest weight of the evidence. The even width of 10 feet

along the entire easement reasonably and adequately accomplishes the intended purpose.

¶ 69 C. Permanent Injunctive Relief

¶ 70 Finally, the Helmicks claim the trial court erred in denying their complaint for injunctive relief presumably related to the Lambrights' harassment. In its September 20, 2011, order, the court stated that it "politely decline[d] to assume the role of nanny to puerile neighbors. To the extent that any party has committed or might further commit a tort or crime against another, there exist adequate remedies under the law. The prayer for injunctive relief on the present record is accordingly denied."

¶ 71 Despite stating that it denied the Helmicks' request for injunctive relief, the trial court ordered the Lambrights to

> "(1) remove any encroachments on either side of the easement, whether in the form of rocks, timbers, fencing or otherwise; (2) refrain from building on or otherwise developing the land subject to the restrictive covenant[;] and (3) refrain from unlawfully obstructing, in any way, plaintiffs' lawful use of the easement."

¶ 72 The trial court's order is sufficient in that it properly enjoins the Lambrights from interfering with the Helmicks' use of the easement. Should the Lambrights place, construct, or plant anything that would obstruct or interfere with the width of the easement, as defined in this litigation, the Helmicks may proceed with any available legal remedies to redress the situation. Otherwise, as the trial court reasonably determined, the Helmicks have an adequate remedy at law, either in a tort or criminal tribunal, that could police the alleged harassing conduct.

¶ 73 III. CONCLUSION

¶ 74 For the foregoing reasons, we affirm the trial court's judgment. We note the trial judge's written orders reflecting his analysis were most helpful in our review.

¶ 75 Affirmed.