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NO. 5-11-0083

APPELLATE COURT OF ILLINOIS

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

) Honorable
) Clarence W. Harrison II,
) Judge, presiding.

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Gargac. The circuit court of Madison County found in favor of plaintiffs and ordered that the former easement road be restored. The court further enjoined the placement of certain posts and fencing adjacent to the roadway which interfered with its former use. Defendants appeal contending that the court abused its discretion in directing defendants to remove the posts and fencing. We affirm.

¶ 3 Plaintiffs' land lies south of, adjacent to, and abutting defendants' properties. The easement right-of-way travels north from plaintiffs' land through defendants' properties until it reaches Gargac Acres Lane/Gargac Lane which provides access to Old Edwardsville Road. At the time plaintiffs purchased their property, the easement was the only route by which they had access to a public highway. Defendants decided to relocate the easement road from its present line to the most westerly side of their properties in order to remove traffic from between the two residences of defendants. Shortly after creating a new roadway, defendants blocked the old road with trenches and chains and railroad ties and further removed the rock surface from about 60% of the easement length. Defendants thought they had reached an agreement with plaintiffs pertaining to the new road, but defendants also placed additional restrictions on the use of the new road, to which plaintiffs did not agree. Plaintiffs filed a complaint seeking to enforce their rights under the original easement grant and sought restoration of the surface of the old road to its condition which had existed before it was removed and destroyed by defendants. The court determined that there was no enforceable agreement that had been reached between plaintiffs and defendants terminating the existing easement or accepting the new easement and roadway. Accordingly, the court ordered defendants to restore the old roadway and remove all obstacles. Defendants removed the blockage and filed a petition to declare compliance with the court's order. The court denied defendants' motion, however, and further ordered defendants not to interfere with the maintenance and usage of the old roadway. Plaintiffs subsequently decided to restore the

rock surface of the old road themselves and poured new rock on the old roadway in order to make it useable again. Immediately prior to doing so, however, defendants placed poles and fencing alongside the road, one foot outside the roadway on each side, allegedly in order to delineate the boundaries of the easement. Defendants used barbed wire for the fencing allegedly because it was the easiest, cheapest, and fastest way to put up a fence. Plaintiffs again filed a petition to restore the old road, specifically asking that the poles and barbed wire be removed as they impeded the use of the road, especially for larger vehicles. Plaintiffs argued that originally there was a seven- to eight-foot shoulder of grass on each side of the road between the roadway and nearby corn fields. Defendants, in turn, requested an order terminating plaintiffs' continued use of the new roadway. Defendants also asserted that plaintiffs widened the existing road with the addition of their rock by spreading it up to the poles and stakes. After hearing argument and viewing the roadway, the court ordered that the adjacent poles and fencing be removed. The court determined that the fencing was not installed to mark the roadway but to cause harm to vehicles using the easement. Given the history between the parties, the court further specified that the poles were to be placed no closer than six feet lineally and had to be located alternatively on each side of the road. In addition, the poles were to be set two feet away from the edge of the road as presently rocked. Defendants are appealing because they believe the court's restrictions are granting plaintiffs more of an easement than they previously had.

¶ 4 An easement is a right or privilege in the real estate of another. *McCann v. R.W. Dunteman Co.*, 242 Ill. App. 3d 246, 254, 609 N.E.2d 1076, 1081 (1993). The land benefitted by the easement is known as the dominant estate, and the land burdened with the easement is referred to as the servient estate. *McMahon v. Hines*, 298 Ill. App. 3d 231, 235-36, 697 N.E.2d 1199, 1203 (1998). While the owner of the servient estate is not to interfere with the use of the easement by the owner of the dominant estate, he or she may otherwise

use his or her land in any manner that does not materially interfere with or obstruct its use as a right-of-way. The owner of the dominant estate has the right to maintain the easement, although he or she cannot, for the sake of his or her convenience, materially alter the easement so as to place a greater burden on the servient estate or interfere with the use and enjoyment of the servient estate by its owner. *McMahon*, 298 Ill. App. 3d at 239, 697 N.E.2d at 1206. The court's task in resolving controversies involving easements, therefore, is to balance the rights of the respective dominant and servient owners. See *Madonna v. Golick*, 60 Ill. App. 3d 914, 376 N.E.2d 1111 (1978). Given that a trial court's judgment will not be reversed on appeal unless that judgment is against the manifest weight of the evidence (*Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 177, 819 N.E.2d 1220, 1227 (2004)), we see no reason, in this instance, to overturn a decision which we believe carefully attempts to balance such competing rights.

¶ 5 When first filed, the issue in this cause revolved around the construction of the wording of an easement which granted plaintiffs "all necessary easement rights of ingress and egress to said premises over existing driveways and roadways leading to said property." The old roadway, while not described in the deeds, was clearly established by use and sufficiently defined that one could determine where the old road was located. Because the road ran past defendants' homes, they decided to build a new straighter and wider road for plaintiffs' use on another part of their property. Defendants never bothered to get plaintiffs' actual consents to the relocating of their easement prior to constructing the new roadway, however. While the testimony of various parties outlines a vague agreement in principle to relocate the roadway, defendants failed to reduce this vague agreement in principle to an actual contract or compromise. This was in part because defendants attempted to add new terms and conditions to the use of the roadway easement which were absent from the old easement. The proposed new easement not only would have revised, modified, and restricted

rights already vested in plaintiffs, it essentially would have terminated their easement rights, leaving them with nothing more than a permissive path. The unilateral action of defendants clearly was in violation of plaintiffs' vested rights. Plaintiffs, therefore, were entirely within their rights to reject defendants' changes and to have the old easement returned to its previous condition. Merely because plaintiffs were forced to use the new roadway once defendants chose to block the old roadway does not mean that plaintiffs forfeited their rights to use the previously existing roadway.

¶ 6 Turning to the next stage of the controversy, after defendants blocked the old easement roadway and removed the rock surface, and after being ordered by the court to restore the easement, defendants removed the blockage. They did not restore the rock surface, however. Plaintiffs opted to repair the road themselves at this point. Shortly before new rock was to be delivered to resurface the roadway, defendants installed stakes and barb wire allegedly one foot outside the edge of the road on each side to demarcate the edges of the road. By doing so, however, defendants accomplished more than merely marking the edges of the roadway. They, in fact, again restricted plaintiffs' usage of the roadway. The fencing made it difficult for vehicles to safely navigate one portion of the roadway which consisted of an "s" curve and nearly impossible for larger and/or emergency vehicles to reach plaintiffs' properties. The placing of the poles and of barbed wire caused the use of the road to be less than it was before. Yet, as owners of the dominant estate, plaintiffs were entitled to "necessary use" of the easement, that being such use as is reasonably necessary for full enjoyment of the premises. *McCann*, 242 Ill. App. 3d at 254-55, 609 N.E.2d at 1081. It is true that an easement holder may not increase the burden on the property owner. See *Roketa v. Hoyer*, 327 Ill. App. 3d 374, 379, 763 N.E.2d 417, 421 (2002). Contrary to defendants' assertions, this is not what plaintiffs did. Plaintiffs, by requesting removal of portions of the fencing, were asking only for the roadway to be made the same as it was before. And, as the

court itself pointed out, given the nature of the history between the parties, the court was forced to fashion a very specific manner in which to accomplish this feat. The parties requested guidance on the matter as to how best to remedy the situation to avoid future conflict and cannot now be heard to complain on appeal that they got what they wanted. While it may be unusual and atypical, it certainly did not constitute reversible error for the court to fashion such an order in the manner in which the court chose to balance the competing rights of the parties. See *Madonna v. Golick*, 60 Ill. App. 3d 914, 376 N.E.2d 1111 (1978).

¶ 7 For the aforementioned reasons, we affirm the judgment of the circuit court of Madison County.

¶ 8 Affirmed.