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STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF FOREST HOME,

Plaintiff-Appellee/Cross-Appellant,

v

FRANKLIN J. PALERMO and SUSAN B. PALERMO,

Defendants-Appellants/Cross-Appellees.

UNPUBLISHED
October 12, 2026
1:08 PM

No. 365497
Antrim Circuit Court
LC No. 2006-008181-CZ

BRANDON BERTRANG, as Attorney-In-Fact for SUSAN B. PALERMO, Trustee of the PALERMO TRUST,

Plaintiff-Appellant/Cross-Appellee,

v

TOWNSHIP OF FOREST HOME,

Defendant-Appellee/Cross-Appellant.

No. 369008
Antrim Circuit Court
LC No. 23-009346-CZ

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

These appeals involve a dispute over a strip of land in the Township of Forest Home (the Township) located between private property and a public right of way leading to Lake Bellaire. In Docket No. 365497, defendants Franklin J. Palermo and Susan B. Palermo appeal by right the trial court's order granting summary disposition under MCR 2.116(C)(10) (genuine issue of material fact), in favor of the Township regarding whether the Palermos were required to remove certain trees and signage from the strip of land. In Docket No. 369008, plaintiff Brandon Bertrang, the

grandson and attorney-in-fact for Susan Palermo, the trustee for the Palermo Trust,[1] appeals by right the trial court's order granting summary disposition under MCR 2.116(C)(10) (genuine issue of material fact) in favor of the Township finding that Bertrang had failed to provide sufficient evidence to establish that the Township abandoned the property.[2] Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In 2006, the Township sued the Palermos in an effort to quiet title to the property (the Disputed Property), which is identified as

> Steiner Road located east of County Road 593 and extending to the shore of Lake Bellaire (formerly known as Grass Lake) along the section line between sections 33, 34 and 35 to the north and sections 4, 3 and 2 of the Forest Home Township to the south.

The Disputed Property is a strip of land that extends east to west from Lake Bellaire at the intersection of Cottage Drive and Steiner Road in the Township. The southern portion of the Disputed Property abuts Steiner Road, while the northern portion of the Disputed Property abuts the Palermos' property.

According to the Township's complaint, the Palermos "erected a fence within a portion of the public right of way of Steiner Road located near the shore of Lake Bellaire with the intent to exclude members of the public from the use of that portion of Steiner Road . . . ." The parties settled the matter in 2007 by way of consent judgment, in which the parties agreed that

> [t]he portion of Steiner Road from Cottage Drive to Lake Bellaire shall be a seasonal county road under the jurisdiction of the [Antrim County Road Commission] up to the east edge of the Palermo garage, and then shall be a Township Road from the east edge of the Palermo garage to the lake.

The parties also agreed that the Township would move the Palermos' fence "to a line no closer than 30.5 feet from the section line . . . ." The Township also agreed to "install boulders" to direct

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[1] During the pendency of this case, Franklin Palermo passed away, and title to the Palermos' property was put into the Palermo Trust. Bertrang was appointed as attorney-in-fact for Susan Palermo, who was the trustee for the Palermo Trust.

[2] These appeals were consolidated to advance the efficient administration of the appellate process. *Twp of Forest Home v Palermo*, unpublished order of the Court of Appeals, entered February 2, 2024 (Docket No. 365497). And although the Township filed claims of cross-appeal in both cases, the cross-appeals were later dismissed by stipulation and order. *Twp of Forest Home v Palermo*, unpublished order of the Court of Appeals, entered October 30, 2024 (Docket No. 365497); *Palermo Trust v Twp of Forest Home*, unpublished order of the Court of Appeals, entered October 30, 2024 (Docket No. 369008).

persons away from the Palermos' property and to "prohibit public parking[] north of the section line," picnicking, lounging, sunbathing, and "non-temporary anchoring or mooring of boats."

In 2022, the Township filed a motion for an order to direct the Palermos to show cause why they should not be held in contempt for violating the consent judgment after they were alleged to have planted trees and placed private property signs on the Disputed Property. On behalf of the Palermos, Bertrang opposed the motion, arguing that the 2007 consent judgment did not prevent him from planting trees in the Disputed Property. Although the court held a hearing on the motion, it did not render a decision and instead set the matter for trial. The Township ultimately moved for summary disposition under MCR 2.116(C)(10), which the court granted and ordered Susan to remove the trees and otherwise return the Disputed Property to its prealtered state.

Bertrang subsequently filed a complaint seeking to quiet title to the Disputed Property under the theory that the Township abandoned it. The Township again moved for summary disposition, arguing that there was no evidence that the Township abandoned the Disputed Property. The Township included affidavits from the Township supervisor, as well as the owner of the maintenance company engaged by the Township, describing the ongoing maintenance in and around the Disputed Property. The trial court agreed with the Township and dismissed the complaint. These appeals followed.

II. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Hastings Mut Ins Co v Grange Ins Co of Mich*, 319 Mich App 579, 583; 903 NW2d 400 (2017).

> In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). [*Id*. at 583-584 (quotation marks and citation omitted).]

This Court also reviews de novo the interpretation of contractual provisions. *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664; 770 NW2d 902 (2009).

III. DISCUSSION

A. JURISDICTION AND USE

On appeal, appellants contend that the trial court erred when it granted the Township's motion for summary disposition because the Township never established that it had jurisdiction over the Disputed Property. Appellants also argue that even if the Township had jurisdiction, their use would not interfere with the Township's intended use. We disagree.

Settlement agreements are contracts and governed by the same rules as any other contract. *Id*. at 664-665. The Court must give the words in the contract "their plain and ordinary meanings," and "[i]f the contract language is unambiguous, we construe and enforce the contract as written." *Id*. at 664 (quotation marks and citation omitted). "Courts may not create ambiguity when the contract language is clear," and the Court "must honor the parties' contract, not rewrite it." *Id*. at 665.

In the consent judgment, the parties agreed that

> [t]he portion of Steiner Road from Cottage Drive to Lake Bellaire shall be a seasonal county road under the jurisdiction of the [Antrim County Road Commission] up to the east edge of the Palermo garage, and then shall be a Township Road from the east edge of the Palermo garage to the lake.

Although the record is not entirely clear as to the location of the east edge of the Palermo garage, there does not appear to be any dispute between the parties that the Disputed Property is located between the east edge of the Palermo garage and the water's edge. Accordingly, under the plain terms of the agreement entered by the parties in 2007, the Township retained jurisdiction over Steiner Road—however defined—to Lake Bellaire. See *id*. at 664-665.

The argument advanced by appellants, however, maintains that because the agreement did not specify the width of Steiner Road, the Township failed to establish jurisdiction over the Disputed Property. In the consent judgment, the parties agreed that the Township would move the Palermos' fence "to a line no closer than 30.5 feet from the section line . . . ." Appellants are correct, therefore, that the consent judgment does not explicitly state that the Township retained jurisdiction over the northern part of Steiner Road from the section line, nor does the consent judgment describe where the section line is located.

Under MCL 221.20, all highways that are deemed "public highways" "shall be 4 rods in width, and where they are situated on section or quarter section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be 2 rods in width on each side of such lines." One rod is 16.5 feet in length. See *Daley v Gruber*, 361 Mich 358, 360; 104 NW2d 807 (1960) (stating that 16 rods is equal to 264 feet). A highway is "the generic name for all kinds of public ways, including county and township roads, streets and alleys, turnpikes and plank roads, railroads and tramways, bridges and ferries, canals and navigable rivers." *Haynes v Village of Beulah*, 308 Mich App 465, 469; 865 NW2d 923 (2014) (quotation marks and citation omitted).

Appellants presented no evidence that Steiner Road was not a public highway for purposes of MCL 221.20, as it was a township road, *Haynes*, 308 Mich App at 469, and the Township presented evidence that Steiner Road was used as a public highway for the public's access to Lake Bellaire. Accordingly, absent other evidence, under MCL 221.20 the width of Steiner Road is 4 rods, or 66 feet. Because the center of Steiner Road is the section line, MCL 221.20, the north half of the section line of Steiner Road is 2 rods in width, or 33 feet. *Id*. Under the terms of the consent judgment and consistent with MCL 221.20, the Township retained jurisdiction over 66 feet of road (33 feet on each side of the section line), from the east edge of the Palermos' garage to the water's edge. Thus, the trial court did not err when it concluded that the Township had jurisdiction over Steiner Road, including the Disputed Property.

Appellants also claim that even if this Court were to agree with the Township that it had jurisdiction, none of their uses of the Disputed Property interfered with the Township's use of the right of way. "A fee owner may use his or her land on a servient estate for any purpose not unreasonably inconsistent with the rights of the easement holder." *Smith v Straughn*, 331 Mich App 209, 216; 952 NW2d 521 (2020). "Under our well-established easement jurisprudence, the dominant estate may not make improvements to the servient estate if such improvements are unnecessary for the effective use of the easement or they unreasonably burden the servient tenement." *Little v Kin*, 468 Mich 699, 701; 664 NW2d 749 (2003).

In the present case, the trial court determined that the placement of the trees in the Disputed Property would interfere with the Township's right to exercise control and maintenance of Steiner Road, which the Township had jurisdiction over, from the section line 33 feet north. Maintenance of a piece of land by an easement holder "includes maintaining the property in the appropriate condition so that it is accessible . . . ." *Panhandle Eastern Pipe Line Co v Musselman*, 257 Mich App 477, 486 n 3; 668 NW2d 418 (2003). Maintenance also includes the clearing of trees "to ensure maintenance and inspection." *Id*. at 486. The trees were planted in the public right of way that the Township had the authority to maintain for the purpose of ensuring public access to Lake Bellaire, and therefore the Township had the authority to require their removal and transplant. Thus, the trial court did not err when it granted summary disposition in the Township's favor regarding the issue of reasonable use. *Id*.

B. ABANDONMENT

Appellants also contend on appeal that the trial court erred when it granted the Township's motion because there were questions of fact regarding whether the Township abandoned the Disputed Property. We disagree.

"A roadway established for public use may cease to be such by voluntary abandonment and nonuse." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003). "To prove such abandonment, both an intent to relinquish the property and external acts putting that intention into effect must be shown by the party asserting abandonment." *Id*. "Nonuse alone is insufficient to prove abandonment." *Sparling Plastic Indus, Inc v Sparling*, 229 Mich App 704, 718; 583 NW2d 232 (1998).

Appellants cite various actions and decisions made by the Township to demonstrate that the Township abandoned its use of Steiner Road such that it no longer had the right to control or

maintain the Disputed Property. First, appellants point to the consent judgment itself as evidence that the Township intended to abandon the Disputed Property. While appellants cite the fact that the Township agreed to move the fence 30.5 feet from the section line and agreed to prohibit certain uses, nothing in the consent judgment indicates that the Township intended to relinquish all control over the Disputed Property. The very fact that the Township litigated the case and, consistent with the settlement, installed signage and boulders (which were later replaced by a fence) demonstrates that the Township was, in reality, the party exercising control over the public's access through the Disputed Property since the consent judgment was entered.

Appellants also claim that the affidavit from the maintenance company submitted in support of the Township's motion for summary disposition was insufficient because it did not state with specificity when maintenance was performed on the Disputed Property. Cory Arsnoe, the owner of Torch Lake Cottage Service—a company that maintains the lake and park access sites in the Township—stated in his affidavit:

> During my years of regular maintenance of the above-stated access site, it has been regularly and continuously maintained by Forrest Home Township with no indication of being possessed or controlled by any other person until in the summer of 2022 when a number of small pine trees were planted and a number of signs were posted, indicating that it was private property.

The Township also presented an affidavit from its supervisor, Terry Smith, who stated that the Township "has never intended to abandon any portion of Steiner Road and has made numerous improvements to the access site . . . ." Smith noted that the Township hired Torch Lake Cottage Service to maintain the Disputed Property for a period of 14 years, and the "general public . . . has continually used the east end of Steiner Road for access to Lake Bellaire for decades . . . ."

It was appellants' burden to show that the Township abandoned the Disputed Property, and appellants offered no evidence to counter Arsnoe's or Smith's affidavits that Torch Lake Cottage Service performed regular maintenance on the Disputed Property for the last 14 years. *Ambs*, 255 Mich App at 652. Moreover, mere nonuse of property is not sufficient to demonstrate abandonment. *Sparling Plastic Indus, Inc*, 229 Mich App at 718. Thus, even if the affidavits were insufficient to show that the Township did perform regular maintenance, that fact, standing alone, would not be sufficient to show that the Township abandoned the Disputed Property. *Id*. Accordingly, the trial court did not err when it granted the Township's motion on this basis.

Affirmed.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense