

STATE OF MICHIGAN
COURT OF APPEALS

SONIA M. BEGGS, individually and as personal representative for the ESTATE OF JAMES L. BEGGS,

UNPUBLISHED
June 23, 2022

Plaintiff/Counterdefendant-Appellee,

v

STEVEN P. FREED,

No. 354797
Oceana Circuit Court
LC No. 19-013888-CH

Defendant/Counterplaintiff-Appellant.

Before: K. F. KELLY, P.J., and SHAPIRO and GADOLA, JJ.

SHAPIRO, J. (*concurring*).

I concur, though I do not subscribe to a portion of the majority’s opinion. The majority concludes that the language of the easement is unambiguous. I believe the trial court properly concluded that the provision was ambiguous as to whether the “exclusive easement” was intended to bar the owners of the servient estate from using their own property or to prevent a second easement over that land being granted to some third party. Despite my difference with the majority on this aspect of the analysis, because the extrinsic evidence makes the intent of the parties clear, I agree with its conclusion that the easement was to be exclusive even as against the owners of the servient estate. As to the issue regarding the scope of the easement, specifically with regard to construction of a fence, I agree fully with the majority.

/s/ Douglas B. Shapiro