STATE OF MICHIGAN

COURT OF CLAIMS

PAUL MOLESKY, JR.,

Plaintiff,

v

Case No. 24-000063-MB

MICHIGAN DEPARTMENT OF NATURAL RESOURCES,

Hon. Michael F. Gadola

Defendant.
_____ /

OPINION AND ORDER

In this matter involving the scope of plaintiff, Paul Molesky, Jr.'s, ingress-egress easement over a parcel of land owned by defendant, the Department of Natural Resources (the DNR), both parties move for summary disposition under MCR 2.116(C)(8) and (10) following the close of discovery. The Court heard arguments on both motions on July 21, 2026. For the reasons discussed in this Opinion and Order, the Court GRANTS IN PART and DENIES IN PART both motions for summary disposition, and GRANTS plaintiff's requests for a declaratory judgment and specific performance.

I. BACKGROUND

This case involves a written ingress-egress easement over property owned by the DNR near where Silver Creek meets the Manistee River in Greenwood Township, Michigan. Plaintiff owns property surrounded on three sides by property owned by the DNR and on one side by the Manistee

River. Plaintiff purchased his property via a warranty deed, which contained the following ingress-egress easement:

> Together with an easement for ingress and egress created by deed from John Kolarovic to Ed Mox and Grace Mox, husband and wife, and recorded in Liber 162 Page 11, Wexford County Records, and being described as: an easement [for] ingress and egress for the use and benefit of second parties, their heirs and assigns, from [the] public highway to the above described premises, over the private way now in use over and across the premises of the first party. It being understood that said easement may be used by the person or persons acquiring the whole or any part of the premises above described.

The easement was conveyed in December 1948 when Ed and Grace Mox purchased the dominant estate, which is now owned by plaintiff. In 1948, the servient estate was owned by the Kolarovics as part of a larger "parent parcel." The DNR purchased the servient estate in 1985. The DNR's property is open to the public for use in hunting, fishing, and recreation. James Bremer and Angela Dunklow, formerly known as Angela Egeler-Bremer, were the immediate prior owners of the dominant estate. James Bremer, who was single at the time, acquired the parcel in 1997. James Bremer married Dunklow while he owned the property, and he later died. Plaintiff purchased the property from Dunklow (who was at that point the sole owner) in December 2020. Plaintiff's parcel contains a structure that appears too small to be a suitable dwelling. During the hearing, plaintiff's counsel represented that plaintiff intends to build a more suitable dwelling on the site, but will require vehicular access across the easement to do so.

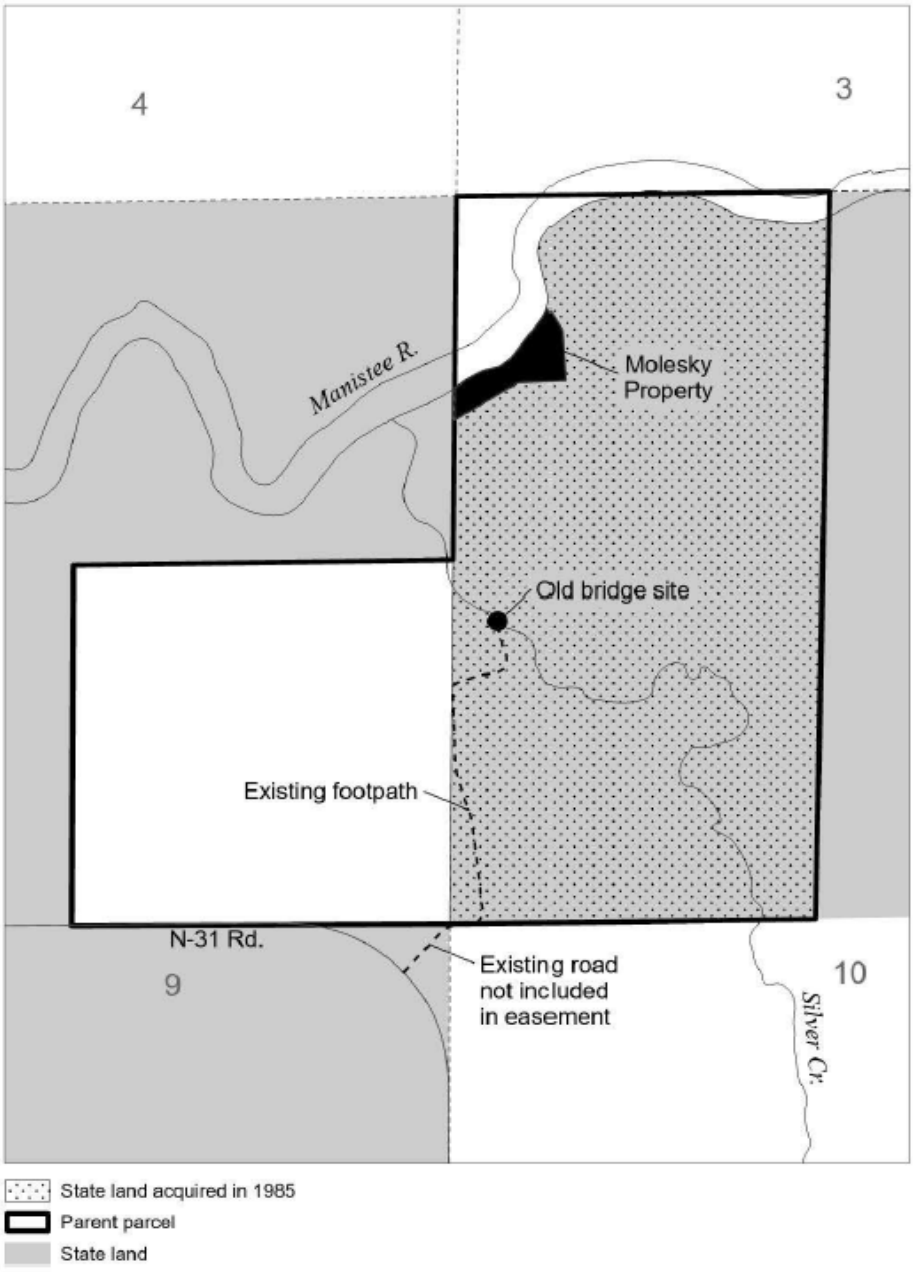
Plaintiff claims that the easement granted him the right to access his property by vehicle and to repair an existing bridge over Silver Creek. He stated in an affidavit attached to his motion for summary disposition that he routinely enters the DNR-owned parcel by driving his truck over an old two-track that starts near the intersections of 4-1/2 Road and 31 N. Road. Plaintiff's

easement falls 200 feet short of connecting to 31 N. Road. According to plaintiff, the access point to the easement has been modified since the easement was conveyed. He explained:

> The original Easement entrance, that was in place previous to the public roadway route being modified, was basically a straight path North that continued off of 31 N. Rd. That path has now been blocked by one or more pine trees, a log, and a mound of dirt across the entry way. The obstacles look like they had been purposefully placed.

Because the original entrance is no longer accessible, the access point to the DNR's parcel is through another DNR-owned parcel that connects to the public highway. Accessing the easement requires crossing over a point where the corners of four separate properties meet in a checkerboard pattern. Two of those properties are owned by the DNR, and two of the properties are owned by private individuals. The DNR-owned parcels are diagonal to each other in the checkerboard, with the DNR parcel containing the easement in the northeast quadrant, and the DNR property containing the access point in the southwest quadrant.

The DNR provided the Court with following drawing to assist the Court in visualizing the four corners of the parcels in question. The diagram shows the parent parcel outlined in black. The DNR-owned property is shaded in gray. The privately owned property is shaded in white. The servient estate is shaded in gray and is dotted.



Plaintiff explained in his affidavit that he accesses the easement by taking the unblocked two-track from the public road (noted in the above diagram as the "[e]xisting road not included in easement") across the DNR-owned parcel to his easement (designated in the diagram as the

"[e]xisting footpath").[1] According to plaintiff, the two-track "meets up with the original Easement and takes me back to the valley that drops down to Silver Creek where the old bridge is located." According to plaintiff,

> [t]he Easement that goes down the valley and that leads to the bridge has had stones laid there for traction in the past, and some gravel still remains to allow for the safe passage down the hill via a vehicle right up to the edge of the wetland area which leads directly to the old bridge across Silver Creek.

The easement continues as another two-track path on the other side of Silver Creek.

The presence of Silver Creek makes it impossible to cross the easement by vehicle without the use of a bridge. The easement path includes the remnants of an old bridge across Silver Creek that consist of four steel beams that are approximately 4 feet apart and 10 to 12 feet "out to out." The individual beams are about 20 feet long. The bridge is in a significant state of disrepair, and some of the beams have fallen into Silver Creek. The area of the bridge also contains concrete, asphalt, or stone on both sides.

On the opposite side of Silver Creek is a continuation of the two-track that runs up the side of the valley, and, according to plaintiff, would permit him to access his property by vehicle if he were able to get his vehicle across Silver Creek. The two-track is approximately 10 to 12 feet wide after Silver Creek. According to plaintiff, "it is . . . apparent to me that the Easement conveyed in my deed . . . was previously and historically used for vehicle access to and from" his parcel. Although plaintiff attaches historical photographs of the site to his motion for summary

[1] The Court notes that the parties dispute whether the easement is a "footpath" as described in the drawing.

disposition, it is not possible to decipher from the photographs when the bridge fell into a state of disrepair or whether it was used for vehicular access.

However, evidence exists that the bridge was in a state of disrepair by the late 1990s, at the latest. In March 1999, assistant attorney general Kevin Smith drafted a memorandum to an individual associated with the Michigan Department of Environmental Quality (now the Department of Environment, Great Lakes, and Energy (EGLE)) regarding an application that James Bremer completed to construct a bridge over the same area on Silver Creek. In that memorandum, Smith stated, in relevant part:

> Across the property deeded to the state is what appears to be an old two-track road used to access the property deeded to the Moxes and subsequently to Bremer. The state's title commitment makes no mention of the reservation in the Kolarovic deed to the Moxes, although it was of record in the Register of Deeds office.
>
> The above-mentioned two-track crosses Silver Creek on an old bridge located on the state land. Apparently Mr. Bremer is requesting a permit to repair or replace this bridge. In light of the reservation in the deed from Kolarovic to the Moxes, I conclude that Mr. Bremer has a valid easement across the state-owned land to access his property on the River.

The bridge was not reconstructed at that time, however, and neither party has presented evidence that a permit was ever sought or granted.

In January 2021, approximately one month after purchasing the property, plaintiff applied for a permit with EGLE to repair or rebuild the bridge and the two-track. In the permit application, plaintiff described his proposed activities as follows: "Repair[/]Rebuild existing bridge, add fill to existing roadway, install relief culvert due to high groundwater." Plaintiff also indicated his intent was to "add stone agg to roadway, road is currently a clay mess." At the hearing on the parties' motions for summary disposition, plaintiff's counsel represented that his client's interest is in

repairing the bridge and potentially removing overgrown vegetation in the two-track. Plaintiff does *not* intend to install a paved driveway or make other major improvements to the easement.

As part of the permitting process, DNR employee Matthew Fry visited the property in 2022. Fry confirmed at his deposition that a two-track exists on the easement but characterized the path as a "foot path." Fry testified that there was no evidence that the bridge was operational in the last 30 years, but he was unable to provide any further details about the original bridge. He explained, "I probably wasn't alive when it was put in."

David Fisher, a longtime DNR employee, testified at his deposition that he visited the site of the easement several times. In 2021, Fisher met with plaintiff on the site of the easement to discuss options for rebuilding the bridge before plaintiff applied for a permit with EGLE. Fisher started working for the DNR in 1998 or 1999 and believed that the easement "looked pretty much the same then as it does today." Fisher confirmed at his deposition the existence of a two-track going along the path of the easement to the old bridge site, explaining that the "remnant of a road" continues up a "steep bank" onto an empty field near plaintiff's property. Fisher testified the bridge was "most likely" used to transport farming equipment considering the empty field near plaintiff's property but acknowledged that he "would only be speculating" on the exact nature of the bridge.

EGLE denied the permit application in June 2022 after the DNR refused to authorize the permit. EGLE indicated in its denial letter that plaintiff started construction activities without a

permit, in violation of the permit requirement.[2] Plaintiff filed a notice of intent to file a lawsuit in this Court in November 2023 in which he asserted that, following some discussions between the parties, in June 2023 the DNR indicated "with finality" that it would not consent to the permit.

This lawsuit was filed in May 2024. Following discovery and a stipulation to dismiss certain claims,[3] the following claims remain at issue:

1. A request for a declaratory judgment that plaintiff has a valid and enforceable ingress-egress easement over the DNR's parcel and requiring that the DNR consent to plaintiff's EGLE permit application (Count I).
2. A request for specific performance of the easement, again requesting that the DNR consent to the EGLE permit application (Count II).
3. A claim to quiet title "in the subject ingress/egress easement area in Plaintiff's name and/or otherwise declaring that the Plaintiff has the legal or equitable right to use said ingress/egress easement, as the owner of Plaintiff's Parcel," and a ruling that the DNR cannot prevent plaintiff from using the easement (Count V).

Both parties moved for summary disposition under MCR 2.116(C)(8) and (10). Plaintiff argues that, as the owner of the dominant estate, he may maintain, repair, and improve the easement by repairing or reconstructing the bridge. He argues that there is no factual dispute that his property cannot be accessed in a meaningful way without a vehicle, thus necessitating a bridge across Silver Creek. He contends that the bridge would not impose an unreasonable burden on the DNR's land. Plaintiff argues that his description of the property in his affidavit supports that the bridge and the

[2] The Court received photographic evidence that some decking has been laid across the area of the old bridge.

[3] Counts III (prescriptive easement) and IV (easement by necessity/implied easement) were voluntarily dismissed during the course of this litigation.

two-track road were used historically for vehicular travel and argues that the DNR's claim that the bridge may have been used for farming purposes is speculative in nature.

The DNR argues, in contrast, that at least a portion of the easement (the 200 feet between the public highway and the servient estate) is invalid because it violates the statute of frauds. The DNR explains that, at the time the easement was conveyed in 1948, the parcel to the southwest of the DNR's parcel, where plaintiff now accesses the easement by vehicle, was owned by a private party. That parcel was not part of the servient estate, and the private party owning the adjacent parcel did not sign the easement. Because the private party who originally owned the adjacent parcel did not sign the easement, the DNR argues that the first 200 feet of the easement path does not satisfy the statute of frauds. The DNR further argues plaintiff must technically trespass (or "corner-cross") on the land of neighboring parcels to access the DNR parcel from the highway by vehicle.

Additionally, the DNR argues that the easement must be construed in harmony with administrative rules requiring the DNR to make the area accessible for hunting and fishing. According to the DNR, plaintiff is seeking exclusive use of the easement, which would violate the law requiring that the land be accessible to the public. The DNR maintains that plaintiff's permit application goes beyond the scope of constructing a bridge and would expand the easement to construct new items, such as a new driveway, fills, and culverts. The DNR further argues that the easement language is unambiguous and does not mention a driveway or a bridge. The DNR further argues that even if the easement incorporated a bridge, that part of the easement was abandoned by nonuse because the bridge has been in a state of disrepair since at least the late 1990s. The DNR contends that the portion of the easement after Silver Creek is not accessible via a standard

vehicle and that, under state law, plaintiff cannot drive an off-road vehicle (ORV) on the DNR-owned property.

As far as the requests for specific performance and to quiet title to the easement in plaintiff's favor, the DNR argues plaintiff cannot establish a right to quiet title or specific performance. The DNR adds that both claims are barred by laches given the passage of time since the easement was conveyed and decades of neglect relating to the bridge. The parties have filed response and reply briefs.[4] At the July 21, 2026 hearing, the parties confirmed that the issue presented in this case is limited to the scope of the easement and does not involve the specifics of the proposed work to the bridge or two-track as outlined in plaintiff's 2021 permit application.

II. ANALYSIS

A. STANDARD OF REVIEW

Both parties moved for summary disposition under MCR 2.116(C)(8) and (10). Because the Court must look beyond the pleadings and examine the exhibits attached to the motions to decide the legal issues raised, the Court will analyze the issues under MCR 2.116(C)(10). See *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 506-507; 885 NW2d 861 (2016).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. When evaluating a motion for summary disposition under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine

[4] The Court DENIES the DNR's request to consider plaintiff's response brief as untimely. Although plaintiff's response brief was filed two days after the 14-day deadline expired, the delay was minimal. There is no apparent prejudice to the DNR, which filed a timely reply brief. The Court therefore declines the DNR's request to treat the DNR's motion for summary disposition as uncontested under Court of Claims LCR 2.119(C)(3).

> issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Id*. at 507 (quotation marks and citations omitted).]

Additionally, plaintiff requests declaratory relief in Count I of the complaint. MCR 2.605(A)(1) provides, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

B. STATUTE OF FRAUDS

The DNR first argues in its motion for summary disposition that, although the language of the easement states that the easement extends from the public highway to the dominant estate, at least the first 200 feet of the access point to the easement is void for failure to satisfy the statute of frauds. The DNR contends that the DNR's parcel falls short of connecting to the public highway, and plaintiff does not have a written easement over the parcel he uses to access his easement from the public highway. In the DNR's view, because plaintiff cannot lawfully access the easement by vehicle, he has no legal grounds to repair the bridge to accommodate vehicular travel.

Easements are subject to the statute of frauds, and a writing is required to establish an express easement. *Forge v Smith*, 458 Mich 198, 205; 580 NW2d 876 (1998). To satisfy the statute of frauds, the easement must be in writing that "manifest[s] a clear intent to create a servitude." *Id*.

The DNR's statute of frauds argument concerns the area of land owned by the DNR that plaintiff must cross in order to reach the servient estate. The parcel connecting the servient estate to the public highway was originally owned by a private party when the easement was conveyed in 1948. That private party did not sign the easement. However, that parcel is now owned by the DNR and is open to the public. Evidence was presented in this case that members of the public

routinely access the DNR-owned property containing the easement by vehicle from the public highway. Plaintiff, therefore, does not require an easement to access this parcel as a member of the public.

Accordingly, compliance with the statute of frauds is not necessary for plaintiff to access the DNR parcel adjacent to the servient estate. Even if the DNR did not own the parcel of land connecting the servient estate to the public highway, uncontradicted evidence was presented that the original easement path would have been accessible to the highway when the easement was first created in 1948, but was later blocked with natural items such as rocks and logs. Rather than attempt to enforce the easement through removal of the natural structures, plaintiff has opted to use another access point owned by the same public entity. His decision to do so does not render the easement void for failure to comply with the statute of frauds.

C. CORNER-CROSSING

Alternatively, the DNR argues that even if plaintiff may cross the DNR-owned parcel connecting the servient estate to the highway, he is not entitled to cross that stretch of land by vehicle because crossing diagonally over four parcels forming in a checkerboard configuration would constitute a technical trespass over the corners of the neighboring parcels owned by private property owners (the properties in white toward the bottom half of the diagram).

The DNR relies on *Leo Sheep Co v United States*, 440 US 668; 99 S Ct 1403; 59 L Ed 2d 677 (1979), to support its theory that when crossing over the corner of four parcels that meet in a checkboard pattern it is impossible to cross diagonally without some minimum intrusion on the alternate corners. In that case, which involved a dispute over the government's easement rights in property historically owned by the Union Pacific Railroad but later purchased by a private

landowner, the United States Supreme Court observed, "Because of the checkerboard configuration, it is physically impossible to enter the Seminoe Reservoir sector [used by the public for fishing and hunting] . . . without *some minimum physical intrusion* upon private land." *Id*. at 678 (emphasis added). The private landowners began denying access from their property to the reservoir area or started requiring the payment of an access fee. *Id*. However, the issue in the case was whether the government had an implied easement to build a road across land that was originally granted to the Union Pacific Railroad. *Id*. at 669. The Court did not decide whether the corner-crossing would invalidate an otherwise valid easement. See *id*.

The DNR also relies on a nonbinding case from the United States Court of Appeals for the Tenth Circuit, *Iron Bar Holdings, LLC v Cape*, 131 F4th 1153 (CA 10, 2025). *Id*. at 1179. However, *Iron Bar Holdings* was a trespass lawsuit. The Tenth Circuit held that the defendants *could* corner-cross provided that they did not physically cross the plaintiff's land. *Id*. at 1179. Thus, *Iron Bar Holdings* is distinguishable from the instant action, in which the private property owners are not involved in the lawsuit. If anything, the case may support *plaintiff's* position to the extent the court held that corner-crossing was permissible in that circumstance. See *id*.

The Court concludes that even if there is some minimum physical intrusion inherent in the corner-crossing that occurs when plaintiff accesses the servient estate via the DNR-owned property to the southwest, this intrusion would not invalidate the ingress-egress easement. To start, the Court notes that the DNR parcel is open to the public, and arguably any other individual seeking to drive onto the DNR's parcel would also engage in a minimal physical intrusion upon private land on the basis of the DNR's corner-crossing theory. In other words, the issue is not isolated to plaintiff's use of his easement.

Additionally, the DNR does not cite any caselaw to support its theory that the corner-crossing would invalidate plaintiff's otherwise valid express easement. Again, the private landowners themselves are not involved in this lawsuit, and plaintiff is not requesting relief from this Court to make any changes to the land owned by those property owners. He is seeking to repair a bridge that is located well within the boundaries of the DNR's property. Nor does the DNR cite any legal basis to support that it has standing to invoke any legal rights of the neighboring landowners. On a more practical note, there is no evidence that the neighboring private landowners have raised any issue with the access point to the DNR property. Accordingly, the DNR cannot rely on the interests of the adjacent private landowners to support its theory that plaintiff cannot lawfully access the easement by vehicle.

D. SCOPE OF THE EASEMENT

The main dispute in this case involves the scope of the ingress-egress easement and whether it encompasses the right to drive a vehicle on the DNR's property and to repair the existing two-track or bridge. "An easement is the right to use the land of another for a specified purpose . . . ." *Bayberry Group, Inc v Crystal Beach Condo Ass'n*, 334 Mich App 385, 399; 964 NW2d 846 (2020) (quotation marks and citation omitted). "The use of an easement must be confined strictly to the purposes for which it was granted or reserved, and [t]he owner of the fee subject to an easement may rightfully use the land for any purpose not inconsistent with the easement owner's rights." *Id*. (quotation marks and citations omitted; alteration in original). The language of the easement instrument determines its scope. *Id*. at 399-400. The Court of Appeals has adopted the following standards for interpretation of an express easement:

> [t]he language of an express easement is interpreted according to rules similar to those used for the interpretation of contracts. Accordingly, in ascertaining the scope and extent of an easement, it is necessary to

> determine the true intent of the parties at the time the easement was created. Courts should begin by examining the plain language of the easement, itself. If the language of the easement is clear, it is to be enforced as written and no further inquiry is permitted. [*Id*. at 400 (quotation marks and citation omitted; alteration in original).]

As it relates to ingress-egress easements, the Court of Appeals has held that "[a]n 'ingress-and-egress easement' is an easement that grants [t]he right to use land to enter and leave another's property." *Id*. (quotation marks and citation omitted; alteration in original). The Court in *Bayberry Group* held that the meaning of "ingress-and-egress" was clear, and thus the easement must be enforced as written. *Id*. As far as repairs to existing easements, "[t]he making of repairs and improvements necessary to the effective enjoyment of an easement . . . is incidental to and part of the easement." *Id*. at 400-401 (quotation marks and citation omitted). The key is whether the repairs "would assist . . . with safely entering and leaving" the premises. *Id*. The Michigan Supreme Court has explained that when it comes to issues involving the construction or maintenance of a structure on the easement, the Court must examine whether the structure is necessary for the effective use of the easement and whether it unreasonably burdens the servient estate. See *Little v Kin*, 468 Mich 699, 701; 664 NW2d 749 (2003).

The DNR maintains that plaintiff's requested relief for his claims for declaratory judgment, specific performance, and quiet title suggests that "he believes he is entitled to an exclusive right-of-way for solely his own use." The DNR argues that it is unlawful to block a road or trail in a manner that hinders public access to state-owned lands. See Mich Admin Code, R 299.922(k). However, plaintiff does not claim a right to exclusive use of the DNR's property or the right to "close off" the easement. Rather, as clarified at the hearing, plaintiff is requesting that this Court rule on the scope of the easement and, more specifically, whether it includes the right to drive a

vehicle on the easement and to repair an existing bridge. Plaintiff's sole focus is on repairing the easement so that he may drive a vehicle to his property.

Turning to that issue, the easement is silent on whether the original parties to the easement intended for the easement to include vehicular traffic or to include foot traffic, only. The Court of Appeals has held that the meaning of ingress-egress is clear and means "[t]he right to use land to enter and leave another's property." *Bayberry Group*, 334 Mich App at 400 (quotation marks and citation omitted). Because the easement was conveyed in 1948, the easement did not predate the existence or prevalence of motor vehicles as a means of travel. The easement should be interpreted to allow for safe entry and exit from the property. It is not reasonable or safe to conclude that the drafters of the easement intended for the owner of the dominant estate to either wade across Silver Creek or avoid the easement altogether by navigating the Manistee River. See *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 297; 778 NW2d 275 (2009) ("[C]ontract terms should not be considered in isolation and contracts are to be interpreted to avoid absurd or unreasonable conditions and results."). Even if the easement language were to be construed as ambiguous, the evidence presented by plaintiff establishes that the easement was intended to include vehicular access, and the DNR has presented no evidence to the contrary beyond mere speculation.

Although there is no evidence on the condition of the easement in 1948, the uncontested evidence in this case is that a two-track and the remnants of a steel bridge exist on the easement and have been there for decades. There is no dispute that members of the public routinely drive vehicles onto the DNR's parcel for recreational purposes. There is also no dispute that a two-track exists on the path of the easement that is 10 to 12 feet wide, further supporting that the easement is wide enough to support a vehicle. Although the DNR's representatives characterize the two-track as a "foot path," the DNR has provided no factual basis for the conclusion that the two-track

was used or intended for foot traffic. To the contrary, a two-track, by its very nature, is indicative of vehicular traffic.

As for the bridge, neither party has presented any witnesses to testify about the condition or use of the bridge as it existed when the easement was first granted in 1948. However, there is no dispute that a bridge existed on the easement path and was in a state of disrepair by the late 1990s. The remnants of the structure reveal that the old bridge was constructed with steel beams that were 10 to 12 feet wide and secured by stone or concrete pads. The use of steel and concrete to support the bridge further indicates that the bridge was intended to support heavy objects, such as vehicles, rather than to support foot traffic, only.

The memorandum of Assistant Attorney General Smith further supports plaintiff's position. Assistant Attorney General Smith concluded, in the context of Bremer's application to improve the bridge, that Bremer had a valid easement across the DNR-owned land to access his property. Although Assistant Attorney General Smith did not opine on whether the easement permitted a bridge, his memorandum supports that the easement was valid and permitted the property owner (now plaintiff) to access his property via the DNR-owned parcel.

The DNR has not presented evidence to contradict the physical findings on the property or to establish that the easement was intended for it to apply to foot traffic, only. The DNR relies on speculative testimony that the easement *may* have been used for farming equipment because the open field near plaintiff's property appears to be an old hay field. Both Fry and Fisher recognized that they lacked any firsthand knowledge of the condition of the land or the use of the easement at the time the easement was conveyed. Furthermore, even if the easement was originally designed to accommodate farming equipment, at the time the easement was conveyed in 1948 this

undoubtedly would have involved the use of motor vehicles for farming. Accordingly, the Court concludes that the intended purpose of the easement includes vehicular travel, and improving the bridge to accommodate vehicular travel is necessary for the effective and safe use of the easement.

Improvement of the bridge to accommodate vehicular travel would not unreasonably burden the DNR's estate. While the DNR suggests that repairing or reconstructing the bridge could harm the surrounding wetlands environment, the DNR does not present evidence to support this position. The DNR also argues that driving a motor vehicle through the path would significantly burden the natural state of its property, but the only evidence on this point is that vehicles are routinely driven on the DNR's property to allow the public access for hunting and fishing. The DNR has not established that the improvement of the bridge would create an unreasonable burden on its property. The Court further notes that, as recognized by the parties at the hearing, the method by which the repair of the bridge is accomplished would be a matter to be determined through the EGLE permitting process, which would take into account all applicable environmental regulations and requirements.

The DNR also argues that plaintiff may not use an ORV on state lands except on designated routes to support its theory that the construction of a bridge or repair of a driveway would be a greater burden than the easement allows. However, there is no evidence that plaintiff intends to use an ORV on the property. Plaintiff describes his vehicle as a "truck," and there is no indication that it is an ORV as defined under Michigan law. Even if plaintiff did drive an ORV onto the easement, that would not change the nature of the ingress-egress easement. To the extent the DNR is suggesting that plaintiff may attempt to modify the easement to accommodate an ORV, plaintiff's counsel clarified that plaintiff does not intend to make any major changes to the two-track. Plaintiff's counsel represented at the hearing that plaintiff merely intends to reconstruct the

bridge and repair the slopes surrounding the bridge, in consultation with EGLE. The DNR's argument about the use of ORVs appears to be based on speculation and does not invalidate any aspect of the easement in question.

E. ABANDONMENT DEFENSE

The DNR next argues that plaintiff and his predecessors abandoned the easement by allowing the bridge to fall into a state of disrepair. An easement may be abandoned. *Minerva Partners, Ltd v First Passage, LLC*, 274 Mich App 207, 214; 731 NW2d 472 (2007). "An easement is abandoned when the owner of the easement relinquishes it with the intention of releasing his or her right to the easement." *Id*. Nonuse alone, without evidence of intent, is not sufficient to establish abandonment. See *id*.

There is no dispute that the bridge has fallen into a state of disrepair and has been in poor condition since at least 1999, when the previous owner of plaintiff's property applied for a permit to repair it. However, there is no evidence of an intent to abandon the easement. In fact, the evidence suggests otherwise given that plaintiff's predecessor attempted to repair the bridge in 1999. Neither party was able to present evidence regarding whether the permit was granted or why repair activities did not commence. When plaintiff purchased the property in late 2020, he promptly sought a permit from EGLE to repair the bridge. There is no indication that plaintiff relinquished the easement or had any intent to abandon it. The DNR does not cite any caselaw that would attribute abandonment on the part of any prior owners to plaintiff. For these reasons, the Court GRANTS summary disposition in plaintiff's favor as it relates to plaintiff's request for a declaratory judgment in Count I of the complaint.

F. SPECIFIC PERFORMANCE/QUIET TITLE

Plaintiff also requests specific performance of the easement through a court order "compelling Defendant to recognize and not interfere with Plaintiff's lawful use, maintenance, and repair of the Easement and bridge" (Count II) and an order to quiet title to the easement in plaintiff's favor (Count V).

"Specific performance of an agreement may be an appropriate remedy where enforcement of the promise is necessary to avoid injustice." *Thermatool Corp v Borzym*, 227 Mich App 366, 375; 575 NW2d 334 (1998). Specific performance is an equitable remedy falling within the court's discretion. *Dep't of Agriculture & Rural Dev v Engle*, 344 Mich App 213, 223; 999 NW2d 73 (2022).

The DNR argues that plaintiff's specific-performance claim is barred by the doctrine of laches. The passage of time alone is not sufficient to trigger laches. *Knight v Northpointe Bank*, 300 Mich App 109, 114; 832 NW2d 439 (2013). Rather, "[i]t is the prejudice occasioned by the delay that justifies the application of laches." *Id*. at 115.

The evidence establishes that plaintiff acted diligently in protecting his legal rights. Plaintiff purchased his property in December 2020 and applied for a permit with EGLE to repair the bridge in early 2021. Plaintiff maintains, and the DNR does not dispute, that there were ongoing communications between the parties about the ingress-egress easement through at least the first half of 2023. Plaintiff filed a notice of intent in 2023 and filed this lawsuit in the spring of 2024. The Court finds there was no delay attributable to plaintiff in this circumstance.

Furthermore, the DNR has not presented evidence to establish prejudice. The DNR maintains that it was prejudiced by the passage of time given that the bridge has been in a state of

disrepair since at least 1999, and the DNR cannot locate witnesses with knowledge of the purpose of the bridge or its condition when the easement was first executed. However, the DNR does not cite any legal basis for applying laches during the period of inaction before plaintiff purchased the property in 2020. Again, plaintiff was diligent in exercising his legal rights upon his purchase of the property. It is also noteworthy that any prejudice caused by the delay applies equally to both parties considering plaintiff also cannot produce a firsthand account of the condition of the property in 1948. The Court concludes that plaintiff acted promptly to preserve his legal rights, and the DNR has not established any prejudice from the point plaintiff purchased his property until this lawsuit was filed.

The Court concludes that specific performance is warranted in this circumstance to enforce the easement and GRANTS plaintiff's request for specific performance in Count II of the complaint. The DNR may not contest plaintiff's right to lawfully use, maintain, and repair the easement in the manner outlined in this Opinion and Order.

However, plaintiff is not entitled to an order to quiet the title to the easement because there is no dispute that the easement is valid, nor is there a dispute regarding the boundaries of the easement. "[T]he purpose of an action to quiet title is to determine the existing title to property by removing any cloud therefrom." *Trademark Props of Mich, LLC v Fed Nat'l Mtg Ass'n*, 308 Mich App 132, 141-142; 863 NW2d 344 (2014). In this case, there is no dispute between the parties that a valid express ingress-egress easement exists, with plaintiff's parcel serving as the dominant estate and the DNR's parcel as the servient estate. There is also no cloud on the title to the easement as no other party is claiming a right to the easement. There is no dispute about the boundaries of the easement. Instead, the sole dispute in this case is regarding the scope of the

easement and whether it permits vehicular travel. As such, there is no claim to title that must be settled in this lawsuit. Summary disposition is GRANTED in defendant's favor on Count V.

III. CONCLUSION

For the reasons stated in this Opinion and Order,

IT IS ORDERED that plaintiff's motion for summary disposition is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that the DNR's motion for summary disposition is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that the relief sought by plaintiff in Counts I and II of the complaint is GRANTED.

IT IS HEREBY DECLARED, under MCR 2.605, that plaintiff holds a valid, enforceable ingress-egress easement over the DNR's property, which includes the right to improve the bridge across Silver Creek to accommodate vehicular travel.

IT IS FURTHER ORDERED that the DNR shall not dispute the scope of the ingress-egress easement, as outlined in this Opinion and Order, for purposes of plaintiff's renewed permit application to improve the bridge.

IT IS FURTHER ORDERED that plaintiff's request to quiet title is DENIED.

IT IS SO ORDERED. This is a final order that resolves the last pending claim and closes the case.

Date: August 11, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims