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2012 IL App (3d) 100948-U

Order filed April 30, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

KAREN S. LORANCE,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
Plaintiff-Appellant,) Peoria County, Illinois
)
v.) Appeal No. 3-10-0948
) Circuit No. 09-CH-240
)
ANITA M. LORANCE,) Honorable
) Stuart P. Borden,
Defendant-Appellee.) Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred when it determined that: (a) easement of ingress and egress was personal to easement holder and did not authorize her to allow invitees to utilize the easement; and (b) easement holder allowing invitees to utilize the easement placed an unreasonable burden on the servient estate. The matter is remanded for entry of judgment in favor of the easement holder.

¶ 2 Plaintiff, Karen S. Lorance (Karen), appeals from an order of the circuit court of Peoria County finding that an easement of ingress and egress over property titled to defendant, Karen M. Lorance (Anita), was personal to Karen and did not permit her to allow business invitees to use

the subject easement. On appeal, she maintains that the trial court erred in following the directions of this court when a previous order of the court was reversed and remanded with instructions by this court.

¶ 3

FACTS

¶ 4 On April 2, 1999, Karen conveyed to Anita her interest in fee simple in a certain parcel of real estate (the subject property). The deed of conveyance included an easement for Karen which stated as follows:

"Reserving unto Grantor [Karen], her heirs, successors and assigns and granting the owners of the real estate to the North, an easement for ingress, egress and regress, in perpetuity, for the free and uninterrupted use, liberty and privilege of passage over, along and upon the real estate full described in Exhibit "B" attached hereto and made a part hereof by this reference."

¶ 5 At the time the deed was executed, the property directly to the north of the subject property was owned by a couple named Creason (the Creason property). The property immediately north of the Creason property was owned by Claude Lorance, Sr. (the Claude property). Claude was Karen's father and Anita's father-in-law. The record established that the Claude property had been used as a commercial campground since the 1970s. Claude leased the Claude property to Anita from August 1999 until August 2008. She operated a campground and fishing club on that property until the lease expired. During the time Anita held the lease, her customers traveled over the subject property and the Creason property to reach the campground on the Claude property.

¶ 6 On August 31, 2008, Anita's lease on the Claude property expired. Very shortly thereafter, Karen obtained a life estate in the Claude property following Claude's death. Karen took over operation of the campground from Anita at that time and allowed campers to use the easement over the subject property to gain access to the campground, on the Claude property. The record is clear that when Anita operated the campground, she permitted campers to access the Claude property by traveling over the subject property. In March 2009, following Karen's taking over the campground, Anita installed a locked gate at the north end of the easement to prevent Karen's invitees from using the easement to travel across the subject property to the campground.

¶ 7 In May 2009, Karen filed a complaint to enforce her easement across the subject property and requested a preliminary injunction. Anita filed an answer and a counterclaim asserting that the easement was personal to Karen and did not extend to her business invitees. Anita sought summary judgment on her counterclaim. Karen responded and filed a cross-motion for summary judgment, supported by her affidavit in which she stated that the number of invitees she permitted to use the easement had never exceeded 15, and this number was, in fact, fewer than when the campground was operated by Anita. Anita responded with her own affidavit in which she stated that prior to 2008, no invitees were permitted to utilize the easement while the campground was under lease to Anita.

¶ 8 In July 2009, the trial court granted Karen's motion for summary judgment. The court found that there was no genuine issue of material fact and that Karen was entitled to judgment as a matter of law. The court held that, since the easement had been in existence for many years and there had been no increase in the volume of use of the easement, Karen's use of the easement

created no unreasonable burden upon the subject property. The trial court held, therefore, that Karen's use of the easement was reasonable and within the scope of the reservation contained within the deed. The court granted Karen's complaint and ordered Anita to permit Karen's use of the easement allowing her invitees reasonable use of the easement to gain access to and from the campground on the Claude property.

¶ 9 Anita appealed to this court, which reversed the judgment entered in favor of Karen, and remanded the matter to the circuit court. *Lorance v. Lorance*, No. 3-09-0534 (January 13, 2010) (unpublished order under Supreme Court Rule 23). The court held that a genuine issue of material fact existed as to whether: (1) Karen's use of the easement was reasonable; (2) the burden upon the easement had increased since it was originally created in 1999; and (3) Karen's use of the easement interfered with Anita's use of her property. The court then remanded the matter to the circuit court to take further evidence. On remand, this court, with one dissent, instructed the trial court to limit its factual inquiry to the period of time since the easement was created and whether Anita could have anticipated that Karen would one day come into possession of the campground.

¶ 10 On remand, an evidentiary hearing was held at which evidence was introduced establishing that: (1) the campground now operated by Karen was a family operation that had been in existence since the 1970s; (2) as such, it was in existence and operated as a campground at the time the easement was created; (3) allowing campers to use the easement at the time it was created and thereafter was not a new or novel use of the easement; and (4) Karen acquired a life estate interest in the Claude property upon Claude's death.

¶ 11 Following the evidentiary hearing, the trial court this time granted judgment to Anita, holding that it was extremely unlikely that Anita would have envisioned that one day Karen would own and operate the campground. The court also found that Karen allowing her invitees to use the easement unreasonably burdened Anita because Karen would be unable to monitor and patrol its use by her invitees. Karen appealed to this court. We reverse and remand for entry of judgment for Karen.

¶ 12 ANALYSIS

¶ 13 Karen raises two issues on appeal. She maintains: (1) the trial court exceeded the scope of direction of this court when it reversed the order granting Anita summary judgement and remanded the cause for factual determinations; and (2) the trial court's finding that the easement was personal to her and she could not use it to gain access to the Claude property for her invitees was both contrary to law and against the manifest weight of the evidence.

¶ 14 In order to resolve this matter, we must revisit this court's prior order. As this court noted in the prior order, the core issue is, and continues to be, whether Karen has a right to allow her guests and invitees to use the easement. An easement, such as the one at issue, which does not expressly limit the grantee's use of the easement, permits the grantee to allow guests and invitees to use the easement. See *Gricius v. Lambert*, 7 Ill. App. 3 716, 720 (1972). However, the grantee's use of the easement must be reasonable and cannot materially alter the easement by placing a greater burden upon the subject property or interfere with the subject property's owner's use and enjoyment of the property. *Ogilby v. Donaldson's Floors*, 13 Ill. 2d 305, 309 (1958). Thus, if allowing campers to use the easement placed an unreasonable burden on the subject

property or interfered with Anita's use and enjoyment of the property, Karen would not be allowed to give access to the campground over Anita's property.

¶ 15 When faced with the question of whether summary judgment for Karen was appropriate, this court found that genuine issues of material fact existed as to whether Karen was entitled to judgment as a matter of law. The court then reversed the order granting summary judgment in Karen's favor and remanded the matter for relevant findings of fact.

¶ 16 On remand, this court gave the trial court the following guidance:

"In analyzing whether [Karen's] use is reasonable and does not create a greater burden on the easement, the court must consider only [Karen's] use of the easement since 1999, not [Anita's]. That [Anita] allowed her business invitees to travel through the property from 1999 to 2008 is irrelevant because [Anita], as the owner of the property, did not have or need an easement over her own land. [Citation.] The court may consider the circumstances that existed at the time the easement was created and whether [Anita] could have reasonably anticipated that [Karen] would one day operate a business on property two parcels away from the easement and allow her business invitees to use the easement. [Citations.]"

¶ 17 On appeal, Karen maintains that the trial court erred in following the appellate court's direction on remand. She further maintains that this court should review the trial court's ruling *de novo* and determine that the court's factual findings were erroneous as a matter of law. See

People v. Chapman, 194 Ill. 2d 186, 209 (2000) (a trial court's application of the law to uncontested facts is subject to *de novo* review). In the alternative, she asks this court to find that the trial court's finding that Karen's use of the easement was unreasonable and overly burdensome was against the manifest weight of the evidence. *McMahon v. Hines*, 298 Ill. App. 3d 231, 239-40 (1998) (reasonable or unreasonable use of an easement is a question of fact); *Duresa v. Commonwealth Edison Co.*, 348 Ill. App. 3d 90, 102 (2004) (whether use of easement is unduly burdensome is a question of fact).

¶ 18 The evidence heard on remand established that, in 1999, Karen deeded the subject property to Anita while retaining an easement of ingress and egress across the property in a northerly direction to the Creason property. There is no indication in the record why Karen would desire an easement that would allow her to access the Creason property, other than the fact that the Creason property was situated between the subject property and the Claude property. Karen testified that, prior to August 2008, only she and the Creasons had occasion to use the easement. The evidence also established that Karen was the daughter of Claude at all times, including at the time the easement was created. Moreover, the record established that, as Claude's daughter, Karen might reasonably acquire an interest in the Claude property at some point in the future. Additionally, the record also established that the campground on the Claude property was a family operation that had been in existence since the 1970s and, as such, it was in existence and operated as a campground at the time the easement was created.

¶ 19 Reviewing the record *de novo*, we find nothing in the record that was outside the appellate court's direction on remand. There is little in the record that discussed Karen's use of the easement between 1999, when the easement was created, and 2008, when she acquired an

interest in the Claude property and began to operate the campground. Likewise, no evidence was taken or considered on Anita's use of the easement. However, the record does contain evidence regarding whether Anita could have reasonably anticipated that Karen would one day operate a campground on the Claude property.

¶ 20 We next consider whether the trial court's findings that Karen's use of the easement was unreasonable and overly burdensome was contrary to law or against the manifest weight of the evidence. A finding is against the manifest weight of the evidence when an opposite conclusion is clearly apparent or when the court's conclusions are unreasonable, arbitrary, or not based on the evidence. *Vancura v. Katris*, 238 Ill. 2d 352, 374 (2010).

¶ 21 As to whether Karen's use of the easement to permit her invitees to access the campground on the Claude property was contemplated by the parties when the easement was created, we must consider not only the language of the conveyance but the circumstances existing at the time the easement was created. *Smith v. Jack Nicholas Development Corp. of Illinois*, 225 Ill. App. 3d 384, 391 (1992). The language of the conveyance in the deed Karen executed not only reserved an easement for herself, but also gave the same easement of ingress and egress to the owners of the Creason property. The record established that, at the time this conveyance was drafted, access to the Claude property from the subject property was had by way of the Creason property. In other words, at the time the easement was drafted, it provided access to the Creason property, not the Claude property. The question must be asked, why would Karen reserve for herself *and the Creasons* an easement of ingress and egress across the subject property to the *Creason* property. The answer can only be that she wished to retain a means of access to the campground by way of the Creason property.

¶ 22 The record established that, in 1991, the Creasons granted an easement of ingress and egress to Claude Lorance, Sr., Claude Lorance, Jr., and Karen across their property from the subject property to the Claude property. More specifically, this easement connected the subject property to the Claude property. This evidence established that, at the time the easement over the subject property was created by Karen, she had already acquired an easement over the Creason property to the Claude property. Obviously, as the grantor of the easement on the subject property, Karen sought to retain access to the Creason property, over which she already possessed an easement of ingress and egress to the Claude property, where the campground was located. Also, the record established that, during the period when Anita owned the subject property and held a lease to the Claude property, campers were traveling over the Creason easement to access the Claude property. Given this record, it is clear that Karen intended to reserve an easement over the subject property to allow business invitees to gain access to her preexisting easement over the Creason property which, in turn, allowed those invitees to access the campground on the Claude property. The trial court's finding that the use of the subject easement by Karen to allow access to the campsite on the Claude property was not contemplated by the parties and therefore not reasonable was clearly against the manifest weight of the evidence.

¶ 23 We also find that the trial court's determination that Karen's use of the easement placed an unreasonable burden upon Anita's use of the subject property was contrary to law. It is well settled that the owner of a servient estate is entitled to the reasonable use of her property. *Erday's Clothiers, Inc. v. Spentzos*, 228 Ill. App. 3d 540, 548 (1992). It is also, however, well settled that the owner of a servient estate can only use her property in a manner consistent with

the reasonable enjoyment of the easement owner. *Ogliby*, 13 Ill. 2d at 310. The trial court in the instant matter based its finding that Karen's use of the easement interfered with Anita's use of her property on the fact that some of Karen's invitees may have damaged the property of some of Anita's invitees. Assuming this fact to be true, it does not establish that Karen's use of her easement to permit her invitees to traverse the easement to reach the Claude property placed an unreasonable burden upon Anita's use of the subject property. Principles of concurrent ownership underlie the law of easements. *McMahon*, 298 Ill. App. 3d at 239. Therefore, the use of the servient estate, and the easement by each of the respective owners, must be accommodated in full accordance with each of their individual interests. *Id.* The trial court's finding that Karen could not use her easement to its fullest extent because one or more of her invitees may have damaged property while utilizing the easement is contrary to the principal of law that allows the holder of an easement to utilize the easement to its fullest extent.

¶ 24 If Karen's invitees cause damage to Anita's property or the property of her invitees, Anita has other remedies at law to seek compensation for damage to property. She cannot, however, prevent Karen from exercising her rights to ingress and egress granted to her by express the express easement. See *Schaefer v. Burnstine*, 13 Ill. 2d 464, 468-89 (1958) (holding that owner of servient estate could not install a gate blocking easement of ingress and egress because it interfered with easement holder's full use of the easement).

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Peoria County is reversed, and the matter is remanded for entry of judgment in favor of the plaintiff.

¶ 27 Reversed and remanded with direction.