

SUPREME COURT OF MICHIGAN

Tomecek v. Bavas, 482 Mich. 484

759 N.W.2d 178 (2008) · No. 134665 (Calendar No. 6) · Decided December 30, 2008

SUMMARY

The Michigan Supreme Court held that the original grantors intended a central drive easement in the O.T. Henkle subdivision to include utility access, allowing the plaintiffs to connect their property to a municipal sewer. The court also held that the Land Division Act cannot be used to create substantive property rights, although it may be used to reflect rights that already exist. The court declined to decide whether Michigan recognizes an easement by necessity for utilities and affirmed the result below in part, reversed in part, and vacated in part.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Marilyn Kelly; Clifford W. Taylor; Michael F. Cavanagh; Elizabeth T. Weaver; Robert P. Young, Jr.; William H. Corrigan; Stephen J. Markman
JURISDICTION	Michigan
DECIDED	December 30, 2008
DOCKET	134665 (Calendar No. 6)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs obtained summary disposition in the trial court concerning their right to use a central drive easement for utility access and to build on Lot 2. The Court of Appeals affirmed in a published opinion. The Michigan Supreme Court affirmed the result in part, reversed the Court of Appeals' holding concerning the Land Division Act, and vacated its unnecessary easement-by-necessity analysis.
STANDARD OF REVIEW	Summary disposition is reviewed de novo; the extent of rights under an easement is a question of fact reviewed for clear error; statutory interpretation and application are reviewed de novo.
PRECEDENTIAL VALUE	published precedential Michigan Supreme Court opinion
PARTIES	Andrew Lucian Bavas, Joyce Bavas, Inez Hildegard Bavas, Stanley Francis Stasch, Julia Stasch, Martha Stasch, Patricia M. Curtner, Timothy V. McGree, Peter A. Stratigos, Alice M. Stratigos, Pamela

Krueger, Devereaux Bowly, Jr., David N. Derbyshire, Ellen R. La Fountain, Jonathan Rodgers, Royal Kennedy Rodgers, Lee Stahl, III, Susan Stahl v. Frank J. Tomecek, Jr., Janis H. Tomecek, Indiana Michigan Power Company, doing business as American Electric Power Company, Inc., Michigan Department of Labor and Economic Growth, Berrien County Drain Commissioner

TOPICS

easements

easement by necessity

covenants and restrictions

statutory interpretation

real estate

PRACTICE AREAS

real estate

property law

land use

QUESTIONS PRESENTED

1. Whether the central drive easement included utility access when it was created.
2. Whether the restrictive covenant barred construction on Lot 2 after municipal sewer service became available.
3. Whether the Land Division Act authorized a court to create or alter substantive property rights by revising a recorded plat.
4. Whether Michigan should recognize and apply an easement by necessity for utility access in this case.

HOLDINGS

1. The central drive easement included utility access, in addition to road access for ingress and egress, because the original grantors intended the central and south drive easements to have the same scope.
2. The restrictive covenant did not permanently bar construction on Lot 2; it merely prohibited construction until municipal sewer service became available to the lot.
3. The Land Division Act cannot be used to create substantive property rights; it permits a court to alter a recorded plat to reflect property rights that already exist.
4. The court did not decide whether Michigan recognizes an easement by necessity for utilities or whether such an easement would apply here because resolution was unnecessary.

KEY QUOTATIONS

“The LDA was never intended to enable a court to establish an otherwise nonexistent property right.” (482 Mich. at 496)

“The result reached by the Court of Appeals is affirmed on the basis of the intent of the grantors.” (482 Mich. at 497)

“The restrictive covenant merely prevented construction on Lot 2 until sewer service became available to that lot.” (482 Mich. at 495)

FACTUAL BACKGROUND

Plaintiffs owned landlocked Lot 2 in the O.T. Henkle subdivision and sought to build a home after municipal sewer service became available. A central drive easement connected Lot 2 to Lake Shore Road, while a similarly labeled south drive easement serving other lots was used for both driveway and utility access. A restrictive covenant barred construction on Lot 2 unless and until a municipal sewer line was made available. The original grantors' plat, contemporaneous covenant, and drawings depicting a potential home and the central easement were relied on as evidence of their intent.

PROCEDURAL HISTORY

Plaintiffs sought a zoning variance to construct a home on landlocked Lot 2 and asserted that their existing central easement permitted access to a municipal sewer. After the variance was granted, defendants challenged construction based on a restrictive covenant. The trial court granted plaintiffs summary disposition, and a divided Court of Appeals affirmed, reasoning that the Land Division Act authorized revision of the plat and that an easement by necessity for utilities existed. The Michigan Supreme Court affirmed the result on the basis of the original grantors' intent, rejected the Land Division Act rationale, and vacated the easement-by-necessity discussion.

DISPOSITION

other

CASES CITED

- Blackhawk Development Corp. v. Village of Dexter, 473 Mich. 33, 40, 700 N.W.2d 364 (2005)
- Eggleston v. Bio-Medical Applications of Detroit, Inc., 468 Mich. 29, 32, 658 N.W.2d 139 (2003)
- Delaney v. Pond, 350 Mich. 685, 687, 86 N.W.2d 816 (1957)
- Chapdelaine v. Sochocki, 247 Mich. App. 167, 170, 635 N.W.2d 339 (2001)
- Curran v. Maple Island Resort Ass'n, 308 Mich. 672, 679-681, 14 N.W.2d 655 (1944)
- Bell v. Todd, 51 Mich. 21, 16 N.W. 304 (1883)
- Interstate Construction Co. v. United States Fidelity & Guaranty Co., 207 Mich. 265, 274, 174 N.W. 173 (1919)
- Neal v. Wilkes, 470 Mich. 661, 665, 685 N.W.2d 648 (2004)
- Yaldo v. North Pointe Insurance Co., 457 Mich. 341, 346, 578 N.W.2d 274 (1998)
- Tomecek v. Bavas, 276 Mich. App. 252, 740 N.W.2d 323 (2007)
- City of Grosse Pointe Park v. Michigan Municipal Liability & Property Pool, 473 Mich. 188, 197-198, 702 N.W.2d 106 (2005)
- McCarty v. Mercury Metalcraft Co., 372 Mich. 567, 575, 127 N.W.2d 340 (1964)
- Ives v. Kimball, 1 Mich. 308, 313 (1849)
- Keller v. Paulos Land Co., 381 Mich. 355, 161 N.W.2d 569 (1968)
- McConnell v. Rathbun, 46 Mich. 303, 9 N.W. 426 (1881)

- Martin v. Beldean, 469 Mich. 541, 542-543, 550-552, 677 N.W.2d 312 (2004)

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