

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 30, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3607

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**EDWARD HUMPEL,
MARGARET HUMPEL,
GARY SHILTS and
NANCY SHILTS,**

Plaintiffs-Appellants,

v.

**DONALD R. MEIDER and
CAROLYN F. MEIDER,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Edward Humpel, Margaret Humpel, Gary Shilts and Nancy Shilts appeal a judgment defining their rights under an easement over a lake lot belonging to Donald and Carolyn Meider. The appellants argue that the terms of the instrument granting the easement are ambiguous and,

therefore, they are entitled to an evidentiary hearing to determine the grantor's intent. They also contend that the trial court erroneously interpreted the document to mean that the easement was limited to providing access to the lake. We affirm the judgment.

This is the second time the interpretation of this document has been before us on appeal. In an unpublished decision, *Humpel v. Meider*, No. 95-1629 (Wis. App. Dec. 19, 1995), the issue was whether the document precluded the lot owner from placing a home on the lot. We concluded it unambiguously did.

The issue before us now is whether the instrument permits the easement holders to engage in activities unrelated to ingress and egress and access to the lake. We conclude it does not. An easement is a liberty, privilege or advantage in land that exists distinct from the ownership of the land. *Stoesser v. Shore Drive Partnership*, 172 Wis.2d 660, 667, 494 N.W.2d 204, 207 (1993). The use of an easement must be confined to the terms and purposes of the grant of the easement. *Id.* at 668, 494 N.W.2d at 208. The estate owner has the duty to protect the easement holders' rights to use the easement for the purposes for which it was created. *Figliuzzi v. Carcajou Shooting Club*, 184 Wis.2d 572, 588, 516 N.W.2d 410, 417 (1994).

We construe the terms of the easement to ascertain its intent. *See Rikkens v. Ryan*, 76 Wis.2d 185, 188, 251 N.W.2d 25, 27 (1977). We first examine the language of the instrument to determine whether it is reasonably susceptible to more than one interpretation. *Id.* If so, it is ambiguous. *Id.* Whether an ambiguity exists is a question of law that we review de novo. *Stauffacher v. Portside Properties, Inc.*, 150 Wis.2d 242, 245, 441 N.W.2d 328, 330 (Ct. App. 1989).

The easement provides in part:

1. That said premises are hereby impressed with an easement for the purpose of providing ingress and egress and access to Lake Wissota for bathing, swimming and boating, in favor of the owners of lots in Lake Edge Park plat, and any additions thereto, and for the members of the family and guests of said

owners. That said premises shall be used for such purposes only.

2. That all taxes and assessment[s] levied on or against said premises by the town or any lawful taxing authority, shall be paid by said lot owners, and future lot owners, in proportion to the number of lots held by each.
3. That said premises shall be kept clean, and orderly and in full compliance with the sanitary code and orders of the State Board of Health and other state and town departments and officers, by said lot owners.
4. That said premises are for the use and mutual enjoyment of all lot owners including future lot owners in any and all plats and additions of said Lake Edge Park, Inc., their families and guests, and no one shall exclude, molest, hinder or restrict such use or enjoyment by any means whatsoever.
5. That the owners of a majority of the lots shall have the power and authority to alter, amend, revise, revoke in whole or in part, and reinstate, any and all covenants, easements and restrictions herein contained. The term "majority of the lots" means majority of lots in any area platted or subsequently platted in the vicinity....

The easement later defines "said premises" with the legal description for the entire lot that was purchased by the Meiders. The lot has ninety-four feet along the lake edge, and the easement serves forty-two lot owners in the Lake Edge Park plat.

The appellants argue that the trial court erroneously concluded that the easement provides only for ingress and egress and access to the lake for swimming and boating. They argue that the terms of the easement are ambiguous and, therefore, they are entitled to an evidentiary hearing to ascertain its intent. They contend that the court should take testimony to

decipher the meanings of "ingress and egress" and "access." They claim that it is uncertain whether trailers, boats and cars can be parked on the lot or whether sunbathing, picnics and parties are allowed.

We conclude that there is no ambiguity in the language. The meaning of egress, ingress and access can be readily ascertained.¹ "Every easement carries with it by implication the right ... of doing whatever is reasonably necessary for the full enjoyment of the easement itself." *Scheeler v. Dewerd*, 256 Wis. 428, 432, 41 N.W.2d 635, 637 (1950) (citation omitted). Whether parking vehicles or sunbathing is permitted can be answered by asking the question whether these activities are reasonably necessary for access, ingress or egress to and from the lake. Generally, parking, picnics and parties would be inconsistent with the plain meaning of the easement. Therefore, the trial court correctly ruled that unrelated activities such as parking vehicles, parties, picnics and camping were not permitted.

Next, the appellants argue that the requirement that the easement holders pay taxes and assessments is inconsistent with our interpretation and implies far more expansive rights. We disagree. Because the language is unambiguous, we do not resort to construction to expand the rights plainly set forth in the terms of the instrument.

Next, the appellants argue that paragraph three, requiring that the premises be kept clean and orderly and in compliance with health codes, imposes duties far beyond those relating merely to an easement for ingress and egress. To the contrary, clean and orderly premises are reasonably necessary for access to the lake. A path or trail must be kept clear or mowed, and debris must be removed. To the extent these activities are required for the reasonable enjoyment of the easement, they are contemplated by the instrument's plain language. See *id.* at 432, 41 N.W.2d at 637.

Next, the appellants contend that paragraphs four and five create an ambiguity. They argue that these paragraphs "could be interpreted to permit

¹ Egress is described as "the act or right of going or coming out." See WEBSTER'S THIRD NEW INT'L DICTIONARY 727 (Unabr. 1976). Ingress is described as "the act of entering ... the power or liberty of entrance or access." *Id.* at 1163. Access is described as "a landowner's legal right to pass from his land to a highway and to return without being obstructed." *Id.* at 11.

totally unrestricted use of the lots (sic) by appellants and their fellow lot owners." We disagree. Although paragraph four states that "said premises are for the use and mutual enjoyment of all lot owners," their families and guests, and no one shall "exclude, molest or hinder" their use or enjoyment, paragraph four must be read in conjunction with paragraph one that states that the lot is impressed with the easement for ingress and egress and access to the lake, and that "said premises shall be used for such purposes only."

Taken in context, paragraph four defines the persons entitled to use the easement. To read paragraph four as expanding the activities permitted would render the final sentence of paragraph one meaningless, an unfavored construction. *Goebel v. First Federal S&L Ass'n*, 83 Wis.2d 668, 679-80, 266 N.W.2d 352, 358 (1978).

The appellants argue that paragraph five demonstrates that their interest in the land is more than an easement. We conclude that although paragraph five permits the lot owners to vote to change the restrictions by a majority, paragraph five does not expand the scope of the easement or render the easement's language ambiguous. Until the majority of the lot owners exercise their powers under paragraph five, the scope of the easement remains limited to its present terms.

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.