COURT OF APPEALS
DECISION
DATED AND FILED

June 13, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1361 **Cir. Ct. No. 2004CV74**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

THOMAS M. HOLMGREEN AND LORI L. HOLMGREEN,

PLAINTIFFS-RESPONDENTS,

V.

JOHN A. HULLEMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Burnett County: MICHAEL J. GABLEMAN, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. John Hulleman appeals a judgment declaring that Thomas and Lori Holmgreen have the right to install an electric service line under the easement conveyed to them. Hulleman argues that because the terms of the easement restrict its use to ingress and egress only, the circuit court erred by

extending that use to include the installation of an underground power line. We reject Hulleman's arguments and affirm the judgment.

BACKGROUND

¶2 The parties own adjacent parcels of property in Burnett County. The Holmgreen parcel would be landlocked were it not for a written easement providing for a "private road" over the Hulleman parcel, thereby allowing the Holmgreens access to a county highway. In order to provide electricity to their property, the Holmgreens sought to install a power line under the easement. The Holmgreens proposed to pay for the power line's installation and subsequent restoration of the easement. Hulleman opposed the installation and the Holmgreens filed suit seeking a declaration that the easement route may be used for the provision of electrical utility services to the Holmgreens' property. The circuit court entered judgment in the Holmgreens' favor and this appeal follows.

DISCUSSION

¶3 Hulleman argues that the easement's terms restrict its use to ingress and egress only. Where an easement is explicitly created, we look to the instrument that created it to construe the relative rights of the landowners. *See* ***Hunter v. McDonald***, 78 Wis. 2d 338, 342-43, 254 N.W.2d 282 (1977). "The use of the easement must be in accordance with and confined to the terms and purposes of the grant." ***Id.*** Construction of the terms and purposes of the grant presents a question of law we review independently. ***Edlin v. Soderstrom***, 83 Wis. 2d 58, 69, 264 N.W.2d 275 (1978).

¶4 Here, the easement is described as "[a] permanent easement for a private road," and further indicates: "The easement herein provided shall be for

the benefit of the grantee, his heirs and assigns." Hulleman argues that the "common meaning" of a private road is a passage for ingress and egress only. Hulleman thus claims that the easement's use for electrical service is impermissibly acquired by implication. *See* ***Scheeler v. Dewerd***, 256 Wis. 428, 431, 41 N.W.2d 635 (1950) (easements can only be acquired by grant or prescription, not by implication). We are not persuaded. There is no dispute that an easement was granted. The question before us is whether the terms of the grant include a right to install an electric service line under the easement conveyed.

¶5 As our supreme court has recognized: "Every easement carries with it by implication the right of doing whatever is reasonably necessary for the full enjoyment of the easement itself." ***Id.*** at 432. Further, "[i]t is an established principle that the unrestricted grant of an easement gives the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement." ***Id.***

¶6 In ***Atkinson v. Mentzel***, 211 Wis. 2d 628, 566 N.W.2d 158 (Ct. App. 1997), this court considered whether an easement permitted the installation of utility service. There, the easement's language articulated that its purpose was "to provide access from Lake Shore Drive to the [property] … and … allow access for all uses of said property other than retail sale." ***Id.*** at 635. In concluding that the easement permitted the installation of utility service, the ***Atkinson*** court was persuaded by the reasoning of ***Dowgiel v. Reid***, 59 A.2d 115 (Pa. 1948). There, the court was asked to determine whether "the right to use a [private] road to and from one's habitation" included the right to provide that property with electricity. ***Id.*** at 117. The ***Dowgiel*** court observed: "[I]t is well settled that *where a right of way is granted in general terms* … what is necessary to its reasonable enjoyment is conferred." ***Id.*** at 118 (emphasis added).

¶7 Here, the easement language does not expressly limit its use to ingress and egress, nor does it articulate its use with the specificity of the ***Atkinson*** easement. We conclude, however, that the easement's provision for a "private road" is a general grant by its terms, and unrestricted such that it carries with it by implication the right of doing whatever is reasonably necessary for the proper enjoyment of the easement. Because electrical service is reasonably necessary for the proper enjoyment of the easement, ***Atkinson***, 211 Wis. 2d at 641, we affirm the circuit court's judgment permitting installation of the underground power line.[1]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

[1] In their brief, the Holmgreens move to strike the appendix to Hulleman's brief (numbered as pages 101 through 105), on grounds that these documents are not a part of the record. The Holmgreens consequently move for fees and costs for what they describe as Hulleman's "procedural misconduct and misrepresentation of facts." It appears, however, the Holmgreens themselves cite at least one of these documents to support their argument that the absence of language limiting the easement's use to ingress and egress is conspicuous in light of that language's inclusion in another easement arising from the same deed. Moreover, pages 104 and 105 of the appendix *were* included in the record as attachments to the complaint. In any event, we did not rely on matters outside the record in reaching our decision. The Holmgreens' motion to strike and motion for fees and costs are denied.