

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 31, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-1785**  
**STATE OF WISCONSIN**

**Cir. Ct. No. 00-CV-67**

**IN COURT OF APPEALS  
DISTRICT IV**

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**THOMAS C. MALIN, BARBARA A. MALIN, THOMAS A.  
GALLAGHER, AND AMY GALLAGHER,**

**PLAINTIFFS-RESPONDENTS,**

**v.**

**RANDEL D. KNIPFER AND WANDA L. KNIPFER,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Columbia County:  
DANIEL S. GEORGE, Judge. *Affirmed in part; reversed in part and cause  
remanded.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Randel and Wanda Knipfer appeal a judgment granting declaratory relief to Thomas and Barbara Malin and Thomas and Amy Gallagher. The dispute concerns the scope of the Malins' easement across

property belonging to the Knipfers. The court ruled that title to the easement conveyed the right to it, and also ruled that the Knipfers could not place “fencing” across it. We affirm the first of those determinations, but reverse and remand for further proceedings on the fencing issue.

¶2 The Malins owned a landlocked 12-acre parcel south of a large portion of the Knipfers’ 62-acre property, and west of a smaller portion of that acreage. They used it for recreation, and accessed it over a deeded 33-foot-wide easement running across a portion of the Knipfers’ property. At the time of trial, the easement was a grass-covered lane with visible tire tracks. A small part of the Knipfers’ property lies between the easement and the Malins’ north property line. A survey map exhibit indicates that this area is approximately 1.5 to 2.0 acres.

¶3 Both the Malins and the Knipfers allowed a neighbor to graze cattle on their land, and a livestock gate crossed the easement. It was open during the winter, but closed during grazing season to keep the cattle from straying into crop fields on the west side of the Knipfers’ property, or onto the public road to the west.

¶4 The dispute over the easement arose when the Malins agreed to sell their property to the Gallaghers, who planned to build a house and live in it. However, the Gallaghers’ offer was contingent on the right to install and maintain a gravel road over the easement to avoid ingress and egress problems during muddy conditions. The Knipfers objected, resulting in this action for declaratory relief. The issues tried to the court were whether the Gallaghers could install a gravel road, and whether the Knipfers could retain the seasonal gate across the

easement, despite its inconvenience to the Gallaghers once they moved in and began daily travel over the easement.<sup>1</sup>

¶5 In determining the scope of the easement, the trial court relied on the rule that the “owner of an easement may make changes in the easement for the purpose specified in the grant as long as the changes are reasonably related to the easement holder’s right and do not unreasonably burden the servient estate.” *Hunter v. Keys*, 229 Wis.2d 710, 715, 600 N.W.2d 269 (Ct. App. 1999). Applying that standard, the trial court concluded that a gravel road was reasonably related to the purpose of the easement, and would not unreasonably burden the Knipfers. The court also concluded that the Knipfers could not place “fencing” across the easement.

¶6 The trial court reasonably allowed the proposed gravel road. The Knipfers do not contest the reasonable relation between a graveled road and the purpose of the easement. They contend only that installing one would unreasonably burden them. However, the record indicates otherwise. The Knipfers testified that they used the easement strip for access, grazing, horseback riding, and snowmobiling. A ten-foot-wide gravel road such as the Gallaghers intended, within the 33-foot confines of the lane, would only slightly reduce the grazing area of the Knipfers’ property, and have no measurable detrimental impact on their other uses of the easement strip.

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<sup>1</sup> The Gallaghers planned to fence in the Malins’ property, and as part of that plan intended to install a gate where a spur easement abutted their property line. The inconvenience they sought to avoid in this action was making extra stops to open and close the livestock gate as well as their own, during its seasonal use.

¶7 A more substantial question concerns the question of fencing. The Knipfers testified that they intended to graze sheep on their property and that the easement and the 1.5 to 2.0 acres south of the easement provided a significant amount of suitable grazing area. However, without a barrier across the easement where the livestock gate is now located, the Knipfers would have to fence off the easement and the land south of it from their remaining property, and limit grazing to the latter. The parties disagree whether the trial court’s ban on “fencing” across the easement applies to the pre-existing gate, or to any other gate or barrier the Knipfers might want to install. It is not clear to this court, either. We fail to understand the meaning of the ordered ban on fencing across the easement. Our review of the record shows that no one suggested a fence be put across the easement. The issue in apparent need of resolution is that of one or more gates across the easement. We therefore remand on the issue of whether removing or prohibiting gates across the easement would unreasonably burden the Knipfers. Determining the easement’s burden on the servient estate is within the trial court’s discretion. *Richards v. Land Star Group, Inc.*, 224 Wis.2d 829, 844, 593 N.W.2d 103 (Ct. App. 1999). The proper use of discretion requires a demonstrated rational process. *Anderson v. Circuit Court*, 219 Wis. 2d 1, 9, 578 N.W.2d 633 (1998). The trial court should provide a reasoned explanation of its decision.

¶8 Costs are denied to both parties.

*By the Court.*—Judgment affirmed in part; reversed in part and cause remanded.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).



