

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RICHARD G. ALEXANDER and  
CAROL H. ALEXANDER,

Plaintiffs,

Case No. 2010-112599-CH  
Hon. Wendy Potts

v

BRUCE RYDING and  
DIANNE RYDING,

Defendants.

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**OPINION AND ORDER RE: DEFENDANTS' MOTION FOR RE-HEARING OR  
RECONSIDERATION UNDER MCR 2.119(F) BASED ON COURT'S OPINION AND  
ORDER RE: BENCH TRIAL ISSUED JANUARY 23, 2015**

At a session of Court  
Held in Pontiac, Michigan On  
      MAR 16 2016      

This matter is before the Court on Defendants' Motion for Re-Hearing or Reconsideration Under MCR 2.119(F) Based on Court's Opinion and Order Re: Bench Trial Issued January 23, 2015<sup>1</sup>. The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

In review of Defendants' motion, the Court relies on MCR 2.119(F)(3), which provides, in relevant part:

[A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the

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<sup>1</sup> The parties stipulated to waiving an actual trial and allowing the Court to determine the matter on the parties' respective trial briefs.

court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

“The grant or denial of a motion for reconsideration rests within the discretion of the trial court.” *Charbeneau v Wayne Cty. Gen. Hosp.*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

In their motion, Defendants argue that the Court made an inaccurate factual and legal conclusion regarding the asphalt paving encroachment by Plaintiffs on Defendants’ property. Defendants reference the Court’s finding in the Opinion and Order Re: Bench Trial as follows:

As for the paving, because it had not existed for more than fifteen years before this dispute arose in 2010, the Alexanders cannot claim prescriptive use of the property as a paved driveway. Thus, they are entitled to paving only if it (1) is necessary for their enjoyment of the easement and (2) does not unreasonably increase the burden on the Rydings’ property.

According to Defendants, the Court erred in relying on the above two-part test in *Mumrow v Riddle*, 67 Mich App 693, 699; 242 NW2d 489 (1976), to find that Plaintiffs are entitled to utilize the easement as a paved driveway. In this matter, Defendants claim that asphalt paving material was applied to Plaintiffs’ driveway as well as to areas beyond the prescriptive easement. As such, the entire paved area does not qualify as the prescriptive easement. Since the *Mumrow* two-part test pertains to repairs or improvements of an easement by prescription, Defendants assert that the Court cannot rely on *Mumrow* to essentially extend the prescriptive easement to include the encroached, paved area. Defendants maintain that Plaintiffs’ driveway needs to be reconfigured or reconstructed to either remove the asphalt paving material from the encroached area or to compensate Defendants for the encroachment.

Additionally, Defendants assert that the Court should have ruled against Plaintiffs as to the issue of paving the prescriptive easement under the second factor of the *Mumrow* test. In support of this argument, Defendants defer to the deposition testimony of Diane Ryding that the

volume of trespassing became burdensome once the easement was paved. The Court observes that Defendants raised this same argument in their amended trial brief. While Defendants' argument demonstrates that they disagree with the Court's ruling, it does not demonstrate palpable error.

Defendants next argue that the Court committed palpable error when it stated the following: “[h]owever, the Rydings’ argument relies on the law governing prescriptive easements, and they cite to no authority that a servient estate owner can acquire a prescriptive easement over property subject to an express easement.”

Upon review of Defendants’ amended trial brief, the Court confirms the prior finding that Defendants failed to cite to any legal authority in support of their argument<sup>2</sup> that they had established a prescriptive easement over Plaintiffs’ 20 foot wide easement. “It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Under MCR 2.119(F)(2), the Court will exercise its discretion and order Plaintiffs to file a Response to Defendants’ Motion by April 7, 2016 in order to address the specific issue of the asphalt paving encroachment that allegedly extends beyond the geographical scope of Plaintiff’s easements.

As to all other arguments raised, it is evident that Defendants have failed to demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the parties’ respective trial briefs must result from correction of the error.

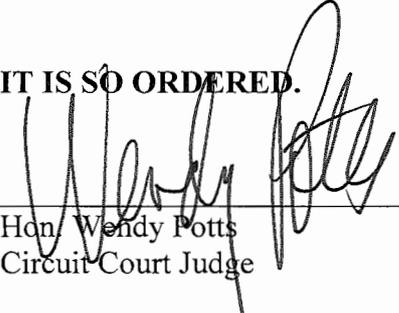
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<sup>2</sup> See page 7 of Defendants’ Trial Brief.

With the exception of the asphalt paving encroachment issue, Defendants' Motion for Re-Hearing or Reconsideration Under MCR 2.119(F) Based on Court's Opinion and Order Re: Bench Trial Issued January 23, 2015 is denied.

Dated: MAR 16 2016

**IT IS SO ORDERED.**



Hon. Wendy Potts  
Circuit Court Judge