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.
_____/

OPINION AND ORDER RE: PLAINTIFFS' MOTION FOR RECONSIDERATION

At a session of Court
Held in Pontiac, Michigan On
MAR 1 6 2016

This matter is before the Court on Plaintiffs' Motion for Reconsideration of the Court's January 23, 2015 Opinion and Order Re: Bench Trial[1]. The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

In review of Plaintiffs' 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 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).

[1] The parties stipulated to waiving an actual trial and allowing the Court to determine the matter on the parties' respective trial briefs.

In their motion, Plaintiffs argue that the Court:

1) Seemingly ruled that the easement Plaintiffs purchased with their property for ingress and egress can be impeded by Defendants so long as it does not completely prevent their ingress and egress;
2) Erred in finding that the berm does not impermissibly burden Plaintiffs' use of their express easement; and
3) Was unclear with respect to the treatment of unintended trespassers who are not invitees of Plaintiffs'.

In the Opinion and Order Re: Bench Trial, the Court limited its analysis to three issues: (1) do Plaintiffs have a prescriptive easement over the portion of their driveway that extends beyond the express easement; (2) does Plaintiffs' use of the easement exceed the scope of their easement rights; and (3) does Defendants' use of their burdened property interfere with Plaintiffs' rights.

In their motion for reconsideration, Plaintiffs first contend that the Court's Opinion and Order Re: Bench Trial permits Defendants to impede the ingress and egress of Plaintiffs' easement as long as they do not completely prevent Plaintiffs' ingress and egress.

Upon review of the Opinion and Order Re: Bench Trial, the Court determined that "the Rydings' current use of their burdened property does not interfere with the Alexanders' rights. The Court cautions, however, that this ruling should not be interpreted as giving the Rydings free reign to add to the berms or landscaping materials and future changes to the burdened property could be inconsistent with the Alexanders' rights."

It is evident that the Court made a determination only as to Defendants' *current* use of their burdened property and effectively advised Defendants to observe the easement rights of Plaintiffs in the future. The Court's ruling in no way diminished the geographical scope of the easements and

Plaintiffs' corresponding rights as determined by prior orders and the Opinion and Order Re: Bench Trial.

Next, Plaintiffs assert that the Court erred in finding that the berm does not impermissibly burden Plaintiffs' use of their express easement. The Court observes that Plaintiffs' argument presents the same issue ruled on by the Court in its Opinion and Order Re: Bench Trial. While Plaintiffs' argument demonstrates that they disagree with the Court's ruling, it does not demonstrate palpable error.

Regarding Plaintiffs' first two arguments, the Court finds that Plaintiffs 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.

Concerning Plaintiffs' request for clarification as to the treatment of uninvited trespassers, the Court refers to the Opinion and Order Re: Bench Trial, which provides that "the Alexanders' easements over the Rydings' property, whether express or permissive, does not extend to allowing guests to roam the property or to use any part of it other than the driveway." The Court finds that Plaintiffs have no obligation or duty to confront or contend with uninvited individuals trespassing on the subject property.

With the exception of the aforementioned clarification, Plaintiffs' Motion for Reconsideration is denied.

IT IS SO ORDERED.

Dated: MAR 16 2016

Hon. Wendy Potts
Circuit Court Judge