STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2410

William E. Schocker,
Appellant,

vs.

John R. Schocker,
Respondent,

Deanna Y. Schocker,
Respondent.

Filed March 18, 2008
Affirmed
Kalitowski, Judge

Beltrami County District Court
File No. C5-06-767

James C. Fischer, Fischer Law Office, PLLC, 310 South Broadway, P.O. Box 644, Crookston, MN 56716 (for appellant)

John R. Schocker, Deanna Y. Schocker, P.O. Box 99, Blackduck, MN 56630-0099 (pro se respondents)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellant William E. Schocker challenges the district court's $2,500 damage award in favor of respondents John R. Schocker and Deanna Y. Schocker, appellant's

nephew and his wife. Specifically, appellant argues that the district court's finding that appellant exceeded the scope of his easement over respondents' land, thereby causing damage to the road, was not supported by the record. We affirm.

D E C I S I O N

Appellant argues that the district court clearly erred by determining that respondents are entitled to $2,500 in damages. The burden was on respondents, as plaintiffs, to prove damages by a fair preponderance of the evidence. *See Pagett v. N. Elec. Supply Co.*, 283 Minn. 228, 236, 167 N.W.2d 58, 64 (1969). "Findings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. And if the underlying findings of fact made by the district court are sustainable because they are not clearly erroneous, its "ultimate" findings must be affirmed unless they constitute an abuse of discretion. *See Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990).

Thus, this court reviews damage awards under an abuse-of-discretion standard. *Holiday Recreational Indus., Inc. v. Manheim Servs. Corp.*, 599 N.W.2d 179, 183 (Minn. App. 1999). We must view the evidence in the light most favorable to the award granted. *Rayford v. Metro. Transit Comm'n*, 379 N.W.2d 161, 165 (Minn. App. 1985), *review denied* (Minn. Feb. 14, 1986). Moreover, we will not disturb a damage award unless the "failure to do so would be shocking or would result in plain injustice." *See Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 199 (Minn. 1986).

Respondents established that appellant was exceeding the scope of his easement by attempting to expand his use beyond the established roadway. When appellant purchased his property in 1988, he acquired the following easement by an express grant contained in the deed: "Together with an easement for the purposes of ingress and egress to and from the above-described property over and across the roadway as the same is laid out, over and across the remaining portion of said Government Lot 2." The record indicates that the easement is a two-track dirt road that crosses open property and also serves as respondents' driveway. The scope of an easement by grant is determined by its terms. *Bergh & Misson Farms, Inc. v. Great Lakes Transmission Co.*, 565 N.W.2d 23, 26 (Minn. 1997). The extent of an easement by grant is a question of fact. *Alton v. Wabedo Twp.*, 524 N.W.2d 278, 282 (Minn. App. 1994).

Appellant argued that, because the easement was provided for "ingress and egress," he was entitled to expand his use. But "[i]t is well settled that the extent of an easement should not be enlarged by legal construction beyond the objects originally contemplated or expressly agreed upon by the parties." *Bergh*, 565 N.W.2d at 26 (interpreting an ingress-egress easement) (quotation omitted). And while an easement holder enjoys the use of the easement, he or she "must exercise that right reasonably, without doing unnecessary injury to [the servient landowner's] property or business." *Giles v. Luker*, 215 Minn. 256, 260, 9 N.W.2d 716, 718 (1943).

Here, the testimony at trial established that appellant's use exceeded the established roadway and caused injury to respondents' property. In 1996, respondent John Schocker installed a 12-foot culvert to provide appellant better access to his

property, claiming that the road would otherwise become impassable in the fall and spring. But after respondent's installation of the 12-foot culvert, appellant claimed that the roadway's turn was too sharp to allow for his use of the easement. Attempting to remedy this issue, appellant then installed an 8-foot PVC culvert extension that he admitted did somewhat change the bend in the roadway. Respondents objected to appellant's extension of the established easement, explaining that it was necessary to remove the culvert extension appellant had installed because its small PVC pipe would cause the roadway to wash out if it rained. Accordingly, respondents removed this culvert extension. But soon thereafter, appellant replaced the PVC pipe. This cycle of events occurred repeatedly. Appellant testified that "at some point" he replaced the removed PVC pipe with a longer steel pipe which respondents also removed within several days. Respondents argued that appellant was once again expanding the scope of the easement by creating a wider culvert. Respondent John Schocker's brother and both respondents testified that they have had to rebuild the roadway at least three times due to appellant's actions.

The district court found that "[respondents] have suffered damages in the amount of $2,500 for the material and time spent repairing the damage [appellant] has repeatedly caused." Although appellant argues that he has a right to install culverts in order to make the roadway more accessible, he is not entitled to expand the easement beyond its established scope. *See Bergh*, 565 N.W.2d at 26.

Appellant further argues that this award impermissibly compensates respondents for costs related to maintaining the easement and that "[t]he only real damage [to the

roadway] was done by [respondents] when [they] ripped out the culverts." But the testimony at trial established that the damages sought were related to repairing the roadway after appellant's expansion efforts.

Appellant cites *Canada by Landy v. McCarthy* in support of his argument that respondents were required to demonstrate their damages "with reasonable certainty" and failed to do so. 567 N.W.2d 496, 507 (Minn. 1997). But *McCarthy* does not apply here. The *McCarthy* court held that a claimant seeking damages from her landlord due to lead poisoning "must demonstrate with reasonable certainty the nature and probable duration of the injuries sustained," because there was evidence that the victim had been exposed to lead from multiple sources. *Id.* (applying the single indivisible-injury rule). Furthermore, the Minnesota Supreme Court has declined to extend its holding in *McCarthy* beyond claims involving jointly and severally liable tortfeasors. *Rowe v. Munye*, 702 N.W.2d 729, 738-39 (Minn. 2005); *Heine v. Simon*, 702 N.W.2d 752, 763-64 (Minn. 2005).

Generally damages need not be proven with certainty, but awards based on remote, conjectural, or speculative damages are improper. *See Jensen v. Duluth Area YMCA*, 688 N.W.2d 574, 578-79 (Minn. App. 2004) (holding that the claimant must establish a reasonable basis for approximating his loss). Here, respondent John Schocker testified that he suffered approximately $4,000 in damages related to repairing the roadway, including the cost of supplies, and the value of his labor. And although respondents did not submit any documentary evidence to support their claim for damages, the district court specifically found that "[a]lthough the evidence was less

detailed than [it] would have preferred," respondents "met their burden of proving by the greater weight of the evidence" that they have suffered at least $2,500 in damages repairing the roadway. We conclude that the district court's $2,500 damage award in favor of respondents was within its discretion.

Affirmed.