Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-281

NOVEMBER TERM, 2001

Thomas D. and Sylvia A. McEntegart	}	
	}	
v.	}	APPEALED FROM:
	}	
Carol G. Ballou	}	Rutland Superior Court
	}	
	}	DOCKET NO. S0540-99RcC
	}	
	}	Trial Judge: Richard W. Norton
	}	
	}	

In the above-entitled cause, the Clerk will enter:

In this real property dispute, defendant challenges the Rutland Superior Court's order in plaintiffs' favor on the location of a right of way over defendant's property. Plaintiffs cross appeal alleging error in the court's denial of their request for damages they claim resulted from defendant's obstruction of the right of way. Neither party disputes plaintiffs' right to cross defendant's property; the dispute centers on where the easement should be located. We affirm.

Before setting out the relevant facts, we note that the court's order was difficult to review because most of the factual findings fell woefully short of the standard required for appellate review. Most of the findings were recitations of the parties' positions, testimony and other evidence presented during trial. We have reversed orders based on such "findings" because they cannot support the court's legal conclusions. See, e.g., Krupp v. Krupp, 126 Vt. 511, 514 (1967). We have eliminated from our consideration, and factual recitation below, the court's findings that merely summarize the witnesses' testimony and other record evidence. As discussed below, we find that the remainder of the court's findings were sufficient, although just barely so, to support its decision. We turn now to the facts.

Defendant purchased her property in Mt. Holly, Vermont on February 13, 1989 by warranty deed from Lloyd N. Paine, III. The property is subject to an easement for the benefit of an adjacent lot now owned by plaintiffs. The grant did not identify the easement's location, but the easement allows plaintiffs to access their property, which has no road frontage, from Town Highway No. 24. The deed granted to plaintiffs' immediate predecessors in title also referred to the easement and described it as "being forty feet in width beginning on the westerly side of Town Highway 24 in the southeasterly corner of lands of [defendant] and running westerly and then turning northerly to the lands of the Grantor being conveyed herein."

In May 1996, excavation work was done to relocate a driveway purportedly built on the easement previously so that it turned northerly at a point on defendant's property closer to Town Highway 24. On February 28, 1997, roughly one month before plaintiffs purchased their property, defendant executed a document entitled Acknowledgment of Right of Way and Easement ("Acknowledgment Deed") which was prepared by defendant's attorney. Its purpose was to provide a utility easement for the placement of electric poles and wires for plaintiffs' property as well as to describe the right of way granted by Lloyd N. Paine, III. Defendant was paid $4,000 by plaintiffs and the prior owners of their property for the rights set forth in the Acknowledgment Deed. The deed described the utility right of way and in addition, stated that defendant "does hereby acknowledge the creation and existence of that certain right of way referred to herein and as set forth in that certain deed from Lloyd N. Paine, III to" defendant.

In the summer of 1997, plaintiffs performed improvements on the driveway by placing Sure Pac from the culvert by

Town Highway 24 up the driveway approximately 100 feet, and cleaning and smoothing it out for about 1200 feet. In addition, they removed trees to expand the opening by the road. They later cleared out some tree stumps in 1997 and 1998 after defendant complained.

Defendant first complained to plaintiffs about the driveway in late 1997. She later reduced her complaint to writing in a letter to plaintiffs dated July 16, 1998. She informed plaintiffs that she believed the driveway should take a "strong right turn" into their property rather than the more gradual existing turn. The dispute came to a head in the summer of 1999 when plaintiffs discovered the driveway had been blocked by a log and later by boulders. The blockage prevented plaintiffs from using the driveway to carry materials for a small cabin they had planned to build on their property. On September 22, 1999, plaintiffs filed suit against defendant for trespass, seeking a preliminary injunction to restrain defendant from interfering with plaintiffs' access to, and use of, the driveway, and compensatory damages. Plaintiffs also asked for a declaration that the easement's location was where the driveway was then presently situated. After a bench trial, the court entered judgment for plaintiffs on the location of the easement, but denied their request for damages. Defendant thereafter appealed, and plaintiffs filed their cross appeal.

Defendant's arguments on appeal center on her mistaken belief that the trial court did not rely upon or give any evidentiary value to the Acknowledgment Deed. The court granted judgment to plaintiffs on the easement's location, however, based on the language and circumstances surrounding the Acknowledgment Deed. The court found that the purpose of the deed's language "'acknowledging the creation and existence of that certain right of way' was to establish and confirm that the constructed right of way had been in existence since May of 1996." The court concluded that

the Acknowledgment Deed alone is enough to find that the right of way as established on the ground and as supported by the plaintiffs' evidence is the only right of way for access to [plaintiffs'] lot. Both parties are bound by the Acknowledgment Deed which recognized and confirms that the right of way was previously located as constructed across defendant's property.

The court's conclusion is consistent with our precedent which permits parties to agree to the location of an easement if the original grant does not specify its location. LaFleur v. Zelenko, 101 Vt. 64, 71 (1928); Kinney v. Hooker, 65 Vt. 333, 336-37 (1892). Although defendant disputes the court's interpretation of the Acknowledgment Deed as an agreement that the driveway fixed the easement's location, she has failed to show that the court's findings relating to the deed were unsupported by any credible evidence. Reversal is therefore unwarranted. See Begins v. Begins, 168 Vt. 298, 301 (1998).

We also find no error in the court's refusal to award plaintiffs their request for damages. Citing Crabbe v. Veve Assocs., 150 Vt. 53 (1988), plaintiffs argue that they are entitled to damages that result from an intentional obstruction of an easement. In Crabbe, we upheld an award of damages equal to the reduced fair market value of the property caused by an obstruction to an easement. 150 Vt. at 57-58. Plaintiffs contend the court erred because their property was valued at $44,000-$50,000 with an unobstructed easement, but has nominal value without access to the easement. Plaintiffs point to no evidence in the record supporting their assertion, and their request for findings below is silent on the issue. We therefore see no error in the court's failure to find this element of damages. See Prescott v. Smits, 146 Vt. 430, 433-34 (1985) (failure to bring issue to trial court's attention by way of request for finding results in failure to preserve issue for appellate review); Peerless Casualty Co. v. Cole, 121 Vt. 258, 263 (1959) (absence of proper request for particular finding waives appellate review relative to that finding).

We likewise find no error in the court's refusal to award plaintiffs' request for damages representing various expenses such as motel rooms, surveying, and boulder removal. The trial court concluded that these alleged damages were not recoverable because they are the type of costs normally sustained by purchasers or resulting from defending a lawsuit. On appeal, plaintiffs do not challenge the trial court's ruling other than to cite Crabbe v. Veve Assocs., 150 Vt. 53 (1988) for the proposition that damages are appropriate to compensate a property owner for the intentional obstruction of a right of way. Plaintiffs' reliance on Crabbe is unavailing. There, the defendant constructed an apartment building over an easement that had been granted to the plaintiffs' predecessors in title. After considering evidence from both sides, including the defendant's expert testimony, the trial court granted the plaintiffs damages for the reduction in the value of their property caused by the loss of their easement. See id. at 55, 57-58. Here, in contrast, plaintiffs did not lose their easement, and, as noted, the trial court did not err in declining to find a reduction in the value of their property.

Moreover, the only evidence that plaintiffs submitted in support of their claim for damages was a handwritten scrap of paper listing their alleged expenses, without any receipts or other documentary evidence to support the claim, and a table showing national statistics on the increase in construction earnings of private, nonsupervisory workers between January 2000 and January 2001. Plainly, plaintiffs' proffer was insufficient to support their alleged damages, even assuming that the trial court erred in determining that such damages were not recoverable.

Affirmed.

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice