

**ROBERT LITTLE and BARBARA LITTLE, Plaintiffs-Appellants, v STEVEN KIN,
ROSALYN KIN, THOMAS TRIVAN, and DARLENE TRIVAN, Defendants-
Appellees.**

Docket No. 121037.

SUPREME COURT OF MICHIGAN

468 Mich. 699; 664 N.W.2d 749; 2003 Mich. LEXIS 1461

**April 9, 2003, Argued
July 9, 2003, Decided
July 9, 2003, Filed**

PRIOR HISTORY: [***1] Oakland Circuit Court, Alice L. Gilbert, J. Court of Appeals, WHITE, P.J., and SAWYER and SAAD, JJ.

Little v. Kin, 249 Mich. App. 502, 644 N.W.2d 375, 2002 Mich. App. LEXIS 107 (2002).

DISPOSITION: Judgment of Court of Appeals affirmed; case remanded to trial court with directions.

LexisNexis(R) Headnotes

COUNSEL: Berry & Reynolds PC (by David W. Berry and Ronald E. Reynolds) [Farmington Hills, MI] for the plaintiffs-appellants.

Cox, Hodgman & Giarmarco, P.C. (by William H. Horton, Mark E. Wilson, and Kaveh Kashef) [Troy, MI], for the defendants-appellees.

Amicus Curiae:

Law, Weathers & Richardson, P.C. (by Clifford H. Bloom) [Grand Rapids, MI], for the Michigan Lake & Stream Associations, Inc.

JUDGES: Chief Justice Maura D. Corrigan, Justices Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly, Clifford W. Taylor, Robert P. Young, Jr., Stephen J. Markman. KELLY, J., concurs in the result only.

OPINION: BEFORE THE [**750] ENTIRE [*700] BENCH

MEMORANDUM OPINION

We granted leave to appeal to consider the scope of defendants' easement "for access to and use of the riparian rights to Pine Lake." 467 Mich. 898 (2002). Having reviewed the issues involved, we agree with the judgment of the Court of Appeals. n1

n1 **249 Mich. App. 502; 644 N.W.2d 375 (2002).**

[**2]

However, we write briefly to clarify the trial court's duties on remand.

First, the trial court must determine whether the easement contemplates the construction and maintenance of a dock by defendants. In answering this question, the trial court shall begin by examining the text of the easement. Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. See, e.g., *Gawrylak v Cowie*, 350 Mich. 679, 683; 86 N.W.2d 809 (1957). If the text of the easement is ambiguous, extrinsic evidence may be considered by the trial court in order to determine the scope of the easement. n2

n2 We note that the Court of Appeals stated that "in deciding the scope of defendants' rights

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under the easement, the trial court must consider the language in the easement itself *and* the circumstances existing at the time of the grant" 249 Mich. App. 502, 644 N.W.2d 375 (emphasis added). This directive is clearly inconsistent with the well-established principles of legal interpretation as stated above and is thus incorrect.

[***3]

[*701] If the easement grants defendants the right to construct or maintain a dock, the trial court must determine whether the particular dock at issue is permissible under the law of easements. Under our well-established easement jurisprudence, the dominant estate may not make improvements to the servient estate if such improvements are unnecessary for the effective use of the easement or they unreasonably burden the servient tenement. *Crew's Die Casting Corp v Davidow*, 369 Mich. 541; 120 N.W.2d 238 (1963); *Unverzagt v. Miller*, 306 Mich. 260, 265; 10 N.W.2d 849 (1943); *Mumrow v Riddle*, 67 Mich. App. 693, 700; 242 N.W.2d 489 (1976). Accordingly, if the trial court concludes that the easement grants defendants the right to construct or maintain a dock, it must then determine (1) whether the dock is necessary for defendants' effective use of their

easement and (2) whether the dock unreasonably burdens plaintiffs' servient estate.

To the extent consistent with this opinion, the judgment of the Court of Appeals is affirmed. The case is remanded to the trial court for further proceedings.

Maura D. [*4] Corrigan**

Michael F. Cavanagh

Elizabeth A. Weaver

Clifford W. Taylor

Robert P. Young, Jr.

Stephen J. Markman

CONCURBY: Marilyn Kelly

CONCUR: KELLY, J.

I concur in the result only.

Marilyn Kelly