IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 21, 2013 Session

ROBERT KEENAN, SR. AND DEBRA B. KEENAN v. BARRY C. FODOR AND DEBORAH A. FODOR

Appeal from the Chancery Court for Cheatham County
No. 14500 Robert E. Burch, Judge

No. M2012-00330-COA-R3-CV - Filed February 26, 2014
No. M2012-02623-COA-R3-CV - Filed February 26, 2014

The Keenans and the Fodors are neighbors who share access to their respective properties through an elaborate stone and metal gate that had been constructed on an easement of way over the Keenans' property by the prior owner of the Fodors' property. After a period of relative harmony, a dispute over the ownership of the gate led to a lawsuit. The trial court and this court ruled that the gate was personalty, not a fixture, and belonged to the Fodors, who were given authority to move it. The trial court's order also set out some ground rules for the shared use of the gate pending its removal. Disagreements over the gate continued, resulting in two additional legal actions. The first was a motion for civil contempt filed by the Fodors alleging that the Keenans had violated the judicially-ordered ground rules for the use of the gate. For their part, the Keenans filed a motion to compel the Fodors to remove the gate from the easement and place it on their own property. In one proceeding, the court found that the Keenans were in contempt of its orders. In the other, it declined to order that the gate be removed. We reverse the finding of contempt, but we affirm the trial court's determination that the Fodors are not obligated to remove the gate. We also hold, however, that the Fodors are not entitled to exclude the Keenans from the free use of their own property by keeping the gate locked.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Chancery Court Reversed in Part, Affirmed as Modified

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Kristin J. Fecteau, Nashville, Tennessee, for the appellants, Robert Keenan, Sr. and Debra B. Keenan.

Tara L. Swafford, Lauren Cooney, Franklin, Tennessee, for the appellees, Barry C. Fodor and Deborah A. Fodor.

OPINION

The Fodors and Keenans are neighbors. The predecessors-in-interest of the Fodors had erected a large stone and metal gate with sidewalls on an ingress and egress easement that crossed property owned by the Keenans. Eventually, a dispute arose over the ownership of the gate. The ownership issue was decided when this court affirmed the trial court's holding that the gate was personalty and belonged to the Fodors. Further disputes arose over the use of the gate, and those disputes provide the provenance of this appeal.

I. JUDICIAL DETERMINATION OF GATE OWNERSHIP

To resolve the dispute, the Keenans filed a Complaint to Quiet Title contending that the gate should be considered a permanent fixture and that, as the owners of the realty it was affixed to, they were the gate's owners. For their part, the Fodors asked for a declaratory judgment that they were the true owners of the gate and a declaration that they could move the gate if they so chose.

The trial court ruled that the gate was not a fixture, but was personalty owned by the Fodors because "it was constructed for the purpose of allowing it to be removed." The court further held that the Keenans were "equitably estopped to assert ownership of a gate they neither built nor paid for." The court's order was memorialized in an order and judgment filed on June 15, 2011.

The Keenans appealed, and this court affirmed the trial court's judgment. *Keenan v. Fodor*, M2011-01475-COA-R3-CV, 2012 WL 3090303 (Tenn. Ct. App. July 30, 2012) (no Tenn. R. App. P. 11 application filed). It is important to note that this court's decision addressed the only issue on appeal: who owned the gate. As we stated:

> The issue in this case is the ownership of the gate. The case **does not involve** easement access or placement of the gate. Both parties agree that the issue of ownership is largely determined by whether the gate is correctly characterized as a fixture. The trial court held that the gate was not a fixture, but, instead, was personalty and was owned by the Fodors.

Keenan, 2012 WL 3090303, at *5.

We, like the trial court, held that the gate was personalty and belonged to the Fodors;

i.e., it was not a fixture that belonged to the owner of the real property on which it was placed. That holding was largely based upon the evidence that the gate was specifically constructed so that it could be moved.

II. SUBSEQUENT DISPUTES

In its judgment in the original case, the trial court addressed the request by the Fodors that, as owners of the gate, they be allowed to move it. The trial court ordered that the Fodors could remove the gate if they chose to, as long as they restored the underlying land to its original state.

A. The Contempt Action

The trial court also recognized the potential for additional problems during the time the Keenans and the Fodors continued to share the use of the gate, and ordered:

> **. . .** that the gate is necessary for security as there are portions of Defendants' driveway that are not easily viewable and can be used for extracurricular activities. Therefore the gate will not be left open for any reason except for periods not to exceed one hour on occasion of gatherings at Plaintiffs' residence. It is the intention of the Court to allow the gate to remain open so that guests can arrive. If there are guests that are early or late over the one hour, the gate should be closed, and Plaintiffs can allow these guests in individually.

It did not take long for conflict to arise. The Keenans hosted a surprise birthday party for their son to which they invited eighty guests. To make it easier for late-arriving guests to enter, Mr. Keenan placed a sign at the call box on the gate which read "To Open Gate Push #7525 on KeyPad, Welcome to Perry's big 40." When Mr. Fodor drove up to the gate and saw the sign, he became upset and removed it. Mr. Keenan witnessed the removal, and an argument began.

While the parties have offered differing accounts of exactly what followed, it is undisputed that Mr. Keenan demanded the return of his sign, that Mr. Fodor refused, and that Mr. Keenan deliberately blocked Mr. Fodor's car from advancing further by planting himself on a chair in front of it. Mr. Keenan alleges that Mrs. Fodor subsequently struck him with Mr. Fodor's car, knocking him into a ditch and causing injury. Mrs. Fodor denied that this occurred.

Thereafter, Mr. Fodor reprogrammed the gate with a new code. He did not disclose

the new code to the Keenans, but furnished them with three electronic clickers that they could use to open the gate. The Keenans felt that they were being deprived of free access to their own property, so they removed the shrubbery they had planted alongside the gate and laid down gravel and railroad ties to create a new access to their home that bypassed the gate.

Before we filed our opinion in the original case, the Fodors brought an action for civil contempt against the Keenans. They alleged that the Keenans had violated the trial court's order by publicly posting the code to the gate and thereby allowing the Keenans' late-arriving guests to enter without being individually ushered in by their hosts. They also alleged that by removing the shrubbery so that cars could bypass the gate, the Keenans compromised the Fodors' security and their privacy.

The contempt hearing was conducted on November 22, 2011, and the trial court held that the Keenans were in contempt of its final order. The Keenans appealed.

B. The Injunction Action

Shortly after this court filed its opinion affirming the trial court's order on the ownership issue, the Keenans' attorney sent a letter to the Fodors asking them to move the gate onto their own property. The attorney construed the trial court's final order in the prior case to mean that the Fodors were obligated to move the gate. The letter went on to say that if the Fodors did not move the gate by September 15, 2012, the Keenans would charge them $50 per day in rent from that date forward.

The Fodors responded with a letter rejecting both the Keenans' request and their characterization of the trial court's ruling. They asserted that the trial court simply found that they had the right to move the gate, but that it did not require them to do so. They further stated that, even though they had asked the court to declare that they could move the gate, they had no plans to move it "at the present time" and declared that they had no intention of paying rent to the Keenans. They did, however, state that they were willing to enter into a usage agreement for the gate for the benefit of any potential purchasers of the Keenans' property, and they invited the Keenans to propose the terms for such an agreement. The Keenans did not respond.

On September 7, 2012, the Keenans filed in the trial court a "Motion to Enforce and Application for Injunctive Relief." They appended to the document a transcript of the trial court's ruling from the bench in the original dispute, a memorandum of law, two affidavits, and other materials. The argument in their memorandum largely relied on a statement made by the trial court during its ruling from the bench in the initial case: "the Defendants may remove the gates so long as they restore the land to its original state. This Court is not

prepared to rule that the owner of the dominant estate has a right to erect gates upon the easement of the dominant estate in this case."

The trial court conducted a hearing on the Keenans' motion. The Keenans argued that because the Fodors asked in the earlier proceeding to be allowed to move the gate, they should be estopped from arguing that they are not required to move it. For their part, the Fodors contended that the Keenans' insistence in the earlier case that the gate remain where it is estops them from arguing that it should be moved. In other words, both sides reversed their previous positions in the new proceedings.

At the conclusion of argument by both sides, the trial court ruled from the bench in favor of the Fodors and denied the requested injunction, refusing to order the Fodors to move the gate. In response to a question by the Keenans' attorney, the court stated that her clients were entitled to build a road around the gate so long as it did not interfere with the privacy and security of the Fodors' property. Its ruling was memorialized in an order filed on October 29, 2012. The Keenans appealed.[1]

III. THE JUDGMENT OF CONTEMPT

The power of courts to inflict punishment for disobedience of their orders has long been recognized as essential to the protection and existence of the courts and to the proper administration of justice. *Konvalinka v. Chattanooga-Hamilton County Hospital Authority*, 249 S.W.3d 346, 354 (Tenn. 2008) (citing *Winfree v. State*, 135 S.W.2d 454, 455 (Tenn. 1940); *State v. Galloway*, 45 Tenn. 326, 331 (1868)).

In Tennessee, the application of the contempt power is governed by statute. *Id*; *Black v. Blount*, 938 S.W.2d 394, 397 (Tenn. 1996). The scope of that power and the punishments and remedies available for contemptuous acts are set out at Tenn. Code Ann. § 29-9-101 to -108. *See*, *also*, *Furlong v. Furlong*, 370 S.W.3d 329, 336 (Tenn. Ct. App. 2011). Our Supreme Court has defined the elements of a civil contempt based upon an alleged disobedience of a court order as follows:

> First, the order alleged to have been violated must be "lawful." Second, the order alleged to have been violated must be clear, specific, and unambiguous. Third, the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order. Fourth, the person's violation of the order must be "willful."

[1]We have chosen to determine both the contempt appeal and the appeal from the denial of an injunction in one opinion, even though the appeals have different docket numbers.

Konvalinka v. Chattanooga-Hamilton County Hospital Authority, 249 S.W.3d at 354-55.

The Keenans do not dispute that the trial court's order was lawful. They contend, however, that the order was not clear, specific, and unambiguous. They also deny that their actions violated the order. The question of whether the order was sufficiently clear and whether the Keenans violated it are closely related, and we will discuss them together.[2]

A court's order should be clear enough that a party would not have to guess whether any action it considers taking would constitute a violation of that order. As our Supreme Court has stated, "[a] person may not be held in civil contempt for violating an order unless the order expressly and precisely spells out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden." *Konvalinka,.* 249 S.W.3d at 355. Further, "[a]mbiguities in an order alleged to have been violated should be interpreted in favor of the person facing the contempt charge." *Id* at 356.

The order the Keenans are alleged to have violated provided, in relevant part:

> [T]he gate will not be left open for any reason except for periods not to exceed one hour on occasion of gatherings at Plaintiffs' residence. It is the intention of the Court to allow the gate to remain open so that guests can arrive. If there are guests that are early or late over the one hour, the gate should be closed, and Plaintiffs can allow these guests in individually.

Thus, the question becomes whether the Keenans could or should have known that their conduct violated some clear, express, and precise provision of the order. To some extent, that involves the question of the interpretation of the provision allowing the Keenans to "let guests in individually," as well as the terms "open" and "closed," in the context of an electronic gate.

The behavior at issue was the way the Keenans arranged for the entry of a large number of invited guests to a surprise birthday party for their son. Since not all guests would arrive during the one hour the gate was left open, Mr. Keenan placed a sign at the call box on the gate which read "To Open Gate Push #7525 on KeyPad, Welcome to Perry's big 40."

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[2]Alternatively, the Keenans argue that even if they violated the court's order, the violation was not willful, because they did not intend to violate the order or to annoy the Fodors, but merely to facilitate the arrival of their guests. Within the context of a civil contempt proceeding, however, a willful act does not mean one that is undertaken for a bad purpose, but rather one that is intentional or voluntary rather than accidental or inadvertent. *Konvalinka v. Chattanooga-Hamilton County Hospital Authority*, 249 S.W.3d at 355 (citing *State ex. rel. Flowers v. Tenn. Trucking Ass'n.*, 209 S.W.3d 602, 612 ((Tenn. Ct. App. 2006)).

The trial court held that the Keenans were in contempt of its earlier order "by posting the security code to the gate on the gate."[3] The court also opined that the Keenans had not considered the Fodors' concern for security and that "they are not terribly empathetic to the needs and feelings of other people." The court reasoned that because the whole idea of a gate is for security, "a person of common sense would know that posting the gate security code for everyone to see would diminish the security of the gate. It is like a person posting the combination to a safe right next to the safe."[4]

However, the order did not direct the Keenans to protect the security of the Fodors' property at all times or attempt to place that burden on them. Nor does the order require the Keenans to be "empathetic" to the needs of the Fodors. It seems to us that both sides could have shown a great deal more empathy to the needs of the others. However, that is not a basis for a finding of contempt. Similarly, the Fodors argue that the Keenans could have used other means to allow guests in. However, that is not the question either, nor is it relevant to the test to be applied.

The proof indicates that, aside from the one hour period specified by the trial court, the gate remained closed except when a guest used the code to let himself in. We cannot conclude that this arrangement violated a clear, express, and precise directive in the order. The language of the order did not give the Keenans reasonable notice that their actions on the night of the party would violate the trial court's order.

Similarly, because it is not clear that the trial court's order prohibited the Keenans from posting the code on the gate during their party to allow late arriving guests to enter individually, it is therefore equally unclear whether by doing so the Keenans violated that order. We must interpret any ambiguity that arose from the application of the trial court's

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[3]Additionally, after Mr. Fodor changed the code on the gate and did not give the new code to the Keenans, they removed the shrubbery they had planted alongside the gate and created a new access to their home that bypassed the gate. The court also held the Keenans were in contempt of the final order "by creating a road around the gate." The trial court stated that the Keenans were "thumbing their noses at the Court and treating the gate as if it did not exist." However, there is nothing in the final order addressing use of another access or removal of the shrubs the Keenans had planted. The earlier ruling had resolved only the ownership of the gate, finding it to be personalty; it did not address the rights of Keenans to access their own property without using the gate. The actions of the Keenans did not violate a clear, specific, or precise order of the court. Accordingly, we must reverse the finding of contempt based upon the creation of an access way around the gate.

[4]The court ordered the Keenans to remove all gravel and railroad ties around the gate within ten days, to restore the area to its original condition, and to reimburse the Fodors for the $500 cost of having the security code changed. It also awarded the Fodors their attorney fees and costs in the amount of about $10,000.

order in favor of the Keenans.

Accordingly, we hold that the Keenans' conduct did not violate the trial court's order, and we reverse the trial court's order finding that the Keenans were in contempt of its previous order. We also reverse the $500 award to the Fodors for the cost of changing the code on the gate as well as the award of attorney fees and costs.

IV. THE REQUEST FOR INJUNCTIVE RELIEF

In the second appeal, the Keenans ask us to reverse the trial court's denial of their request that the court order the Fodors to move the gate off the easement that crosses the Keenans' land. The trial court denied the motion on the basis that the Keenans were equitably estopped to request the removal of the gate.

In the original action in this dispute, the Fodors had asked the court for a declaration that they could move the gate, a request that the Keenans opposed since they claimed ownership of the gate.[5] The Keenans now argue that by its ruling in the earlier proceeding, the trial court intended to have the Fodors move their gate from the Keenans' easement to their own property and, thus, that the Keenans are entitled to an order requiring such a move. The Keenans point to several statements by the trial court during its ruling from the bench to support their contention that the court's earlier ruling directed that the Fodors move the gate.[6]

Regardless of any oral statements made from the bench, it is the trial court's final written order that is determinative. A court speaks only through its written orders. *Ladd by Ladd v. Honda Motor Co., Ltd.*, 939 S.W.2d 83, 104 (Tenn. Ct. App. 1996). In any event, we find no substantively significant difference in the written and oral holdings. The trial court also clarified the meaning of its earlier order by explaining that the Keenans'

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[5]The Fodors originally intended to move the gate to their property and closer to their house, and in that situation the Keenans would not have needed to use the gate. It appears that the Fodors found the cost of such a move to be prohibitive.

[6]For example, in the underlying case the trial court stated that "[t]his Court rules that the defendants may remove the gates so long as they restore the land to its original state. This Court is not prepared to rule that the owner of the dominant estate has a right to erect gates upon the easement of the dominant estate in this case," and also that "[p]ending the moving of the gates, the Court finds that the gates are – are necessary for security," The Fodors point out that the final order in the initial case actually reads "Defendants may remove the gates if Defendants choose to so long as they restore the land to its original state." The Keenans argue that the added language, "if Defendants choose to" was inserted by the Fodors' attorney during the drafting of the order and does not accurately reflect the import of the court's ruling from the bench.

acquiescence to the construction of the gate and their long-term use of it estopped them from requesting that the Fodors move the gate; therefore, the court did not intend to compel any such move.

In pertinent part, the trial court's earlier final order on the ownership of the gate stated, "[Fodors] may remove the gates if [they] choose to so long as they restore the land to its original state." We find nothing in this language that requires the Fodors to remove the gate from the easement. While the trial court's determination that the gate was personalty, as well as its declaration that the gate could be moved by its owners, may suggest that it believed the Fodors were likely to move the gate once the court determined that it belonged to them, there is no directive that it actually be moved. The choice was left to the Fodors.

Thus, the Keenans' argument that the court must enforce its earlier order by requiring the Fodors to move the gate is without merit.

As an additional ground for the grant of an injuction, the Keenans argue that, as a matter of law, they were entitled to a mandatory injunction to compel the Fodors to move the gate because of the lack of legal authority allowing a party to keep personal property without permission on real property owned by another. To resolve this issue and the issue regarding the trial court's order that the gate remain locked, it is necessary first to examine the rights of easement holders and the rights of holders of the fee.

A. Easements and Respective Rights

"An easement is a right an owner has to some lawful use of the real property of another." *Cellco P'ship v. Shelby County*, 172 S.W.3d 574, 588 (Tenn. Ct. App. 2005) (quoting *Pevear v. Hunt*, 924 S.W.2d 114, 115 (Tenn. Ct. App.1996)). One who possesses an easement has an enforceable right to use real property that belongs to another for a specific use. *Bradley v. McLeod*, 984 S .W.2d 929, 934 (Tenn.Ct.App.1998) (citing *Brew v. Van Deman*, 53 Tenn. (6 Heisk.) 433, 436 (1871)).

There does not appear to be any dispute that the Fodors have an easement for ingress and egress over property owned by the Keenans. Thus, in the terms traditionally assigned in this situation, the Fodors hold the dominant estate, and the Keenans hold the servient estate. An easement carries rights and restrictions applicable to the owner of the easement (the dominant estate) and rights and restrictions applicable to the owner of the property underlying and adjoining the easement (the servient estate).

The rights of neither party are " absolute, irrelative, and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both the

easement and the servient estate." *Carroll v. Belcher*, 1999 WL 58597, at *1 (Tenn. Ct. App. Feb. 9, 1999) (quoting 10 TENNESSEE JURISPRUDENCE, *Easements* § 6 (1994)). The rights of each party must be examined in the context of the entire situation and should be balanced so as to protect the rightful use by each party of his or her interest. *Rogers v. Roach*, No. M2011-00794-COA-R3-CV, 2012 WL 2337616, at *8-9 (Tenn. Ct. App. June 19, 2012).

It is well settled that, because an easement is limited to the purposes for which it was created, an owner of an easement "cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden." *Adams v. Winnett*, 156 S.W.2d at 357 (quoting 17 AM. JUR. 996, sec.98); *Shew v. Baugus*, 227 S.W.3d at 576-77.

> In other words, an easement appurtenant to a dominant tenement can be used only for the purposes of that tenement; it is not a personal right, and cannot be used, even by the dominant owner, for any purpose unconnected with the enjoyment of his estate. The purpose of this rule is to prevent an increase of the burden upon the servient estate . . . . 9 R.C.L., 786, sec. 43; Jones on Easements, secs. 99 and 100.

Shew v. Baugus, 227 S.W.3d at 576-77 (quoting *Cellco P'ship*, 172 S.W.3d at 596 (quoting *Adams v. Winnett*, 156 S.W.2d at 357)).

The owners of the land under and surrounding an easement, the servient estate, while he may use his property in any manner consistent with the existence of the easement, . . . cannot make any alterations in his property by which the enjoyment of the easement will be materially interfered with and has no legal right to interfere with an easement holder's enjoyment and use of the easement. *Charles v. Latham,* 2004 WL 1898261 (Tenn. Ct. App. Aug. 25, 2004) (citing *Cooper v. Polos*, 898 S.W.2d 237, 242 (Tenn. Ct. App. 1995)). *See also*, 28A C.J.S. *Easements* § 175 (1996).

B. Gates on Easements

A number of Tennessee cases have dealt with the rights and restrictions of ingress and egress easement holders and owners of the real property over which the easement runs. Many have dealt specifically with those rights where gates or fences were involved. However, in almost all of those cases the gates and fences were erected by the real propery owners (holders of the servient estate) and objected to by the holders of the easement (dominant estate). In the case before us, the opposite factual situation is presented.[7]

[7] Additionally, the case before us presents an unusual situation in that the gate has been determined (continued...)

Where there are claims of interference with the use of an access easement by gates or fences, generally, the question is whether, under the specific facts presented, the fence or gate is necessary to the use and enjoyment of the landowner's land and whether it does not unreasonably interfere with the easement holder's use of the right of way. *Reynaud v. Koehler*, 2005 WL 1868816, *2 (Tenn. Ct. App. Aug. 8, 2005). For example, "an owner of land subject to a right-of-way easement may maintain gates, if necessary to his use and enjoyment and where such obstructions do not unreasonably interfere with the use of the way." *Cole v. Dych*, 535 S.W.2d 315, 320 (Tenn. 1976).

In the leading case of *Mize v. Ownby*, 225 S.W.2d 33 (Tenn. 1949) the property owner had installed a gate across the easement to keep his cattle in. The holder of the easement found it burdensome to open and close the gate every time he entered or left his premises, and he wanted to replace it with a cattle guard at his own expense. The property owner filed an action for a mandatory injunction to prevent the easement holder from installing the cattle guard.

Our Supreme Court agreed with this court that the substitution of cattle guards was a reasonable way to eliminate the annoyance of opening and closing gates and would not likely injure the property owner's cattle. The court also noted that the easement holder promised to pay the damages if any livestock was injured by the cattle guard, and to remove the guard and reinstall the gate if such injury occurred. It accordingly determined that the property owner was not entitled to the requested injunction. But the court also stated that the property owner was entitled to "apply to the trial court for a restoration of the gates" if the cattle guards fell into disrepair or failed to perform their intended function." *Mize v. Ownby*, 225 S.W.2d at 35.

In reaching its decision, the Court applied a rule that respects the rights of both the property owner and of the easement holder.

> It is a general rule that the owner of an easement of way may prepare, maintain, improve, or repair the way in a manner and to an extent reasonably calculated to promote the purposes for which it was created or acquitted, causing neither an undue burden upon the servient estate, nor an unwarranted interference with the rights of common owners or the independent rights of others.

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[7](...continued)
to be personalty rather than a fixture attached to the land.

Mize v. Ownby, 225 S.W.2d at 35 (quoting an A.L.R. annotation to *Guillet v. Livernois*, 8 N.E.2d at 922).

The owner of an easement of way is entitled to make certain improvements to the right of way related to its purpose. "One owning a right of way may take the necessary steps in preparing an easement for proper use, including grading, graveling and paving." *Schmutzer v. Smith*, 679 S.W.2d 453, 455 (Tenn. Ct. App. 1984). Accordingly, "[t]he owner of an easement cannot materially increase the burden of it upon the servient estate; but he may make repairs and improvements that do not, in substance, affect its character." *Mize v. Ownby,* 225 S.W.2d at 35 (quoting JONES ON EASEMENTS, § 827, p. 665). *See*, *also*, *Shew v. Baugus*, 227 S.W.3d at 576–77.

In weighing the rights of holders of an easement and owners of the property under or around the easement, the guiding principle seems to be that the rights of each party to the use of the easement may be limited by the effect the exercise of those rights has on the other party's ability to exercise his own rights. *See Cox v. East Tennessee Natural Gas Co.*, 136 S.W.3d 626, 627-28 (Tenn. Ct. App. 2003); *Cooper v. Polos*, 898 S.W.2d 237 (Tenn. Ct. App. 1995); *Carroll v. Belcher*, 01A01-9802-CH-00106, 1999 WL 58597 at *3 (Tenn. Ct. App. Feb. 9, 1999).

C. Application to the Present Case

The trial court had expressed some concerns about the rights of the owners of the servient estate herein, the Keenans. In its ruling from the bench in the present proceeding, the trial court recounted its concern:

> In announcing this court's previous ruling, the Court reserved the issue of whether gates may be erected by the owner of the dominant estate upon the servient estate. I considered it at the time to be a novel issue and given the character of the case, I didn't see any need to reach that issue. And this – the facts of this particular case made it even more difficult, you know, if you had two gate posts, that's one thing, then the large wings and so forth, it – it makes it certainly a more complicated issue, but that issue does not need to be reached even now.

Thus, the trial court did not address the relative rights of the owners of the fee, the servient estate, and the holders of the easement, the dominant estate, with regard to the gate and its use. In accordance with the legal principles discussed above, those rights must be

balanced so as to give each party use and enjoyment of their interests, without burdening the other's use and enjoyment.

We do not disagree with the trial court's denial of an injunction requiring the Fodors to move the gate to their property. In balancing the rights of the Fodors and the Keenans, it appears to us that the existence of the gate in its present location does not, in and of itself, change the character of the easement as one of ingress and egress, nor does it place a burden on the Keenans' reasonable enjoyment of their property.

However, it is the locking of the gate by the Fodors and their limiting the Keenans' access to their house and property that is a burden on the servient estate beyond that envisioned by a simple easement of way. By keeping the gate locked while withholding the entry code from the Keenans, the Fodors have increased the burden on the Keenans' use of their own property.[8] Without the security code, the Keenans cannot allow authorized guests and family members onto their property unless they are at home to open the gate. They point out that when they are not home, ". . . this quickly becomes a problem if a maintenance man, housekeeper, neighbor, friend, adult child or any other invitee needs to get to the Keenans' home." Additionally, the Keenans are required to carry with them at all times the "clicker" supplied by the Fodors in order to return home.

All these restrictions and consequences constitute an unreasonable interference with the Keenans' rights to full use and enjoyment of their property. They impose an undue burden on the Keenans beyond the Fodors' interest in an easement for ingress and egress. We are unaware of any provision of Tennessee law that allows the owner of an easement to keep a locked gate on the property of the servient easement, in derogation of the property owners' right to freely enter and leave their own property.

"It is incumbent upon the courts to apply the controlling law, whether or not cited or relied upon by either party." *Nance by Nance v. Westside Hosp*., 750 S.W.2d 740, 744 (Tenn.1988). Accordingly, this Court must "grant the relief on the law and facts to which the party is entitled or the proceeding otherwise requires" and may grant any relief that is "not in

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[8]They further contend that the court order to keep the gate locked amounts to an unconstitutional taking of the private property of one party to give it to another, in violation of Article 1, Section 8 of the Tennessee Constitution. Under Tennessee law, our courts do not decide constitutional questions unless the resolution of such questions is absolutely necessary for the determination of the case and of the rights of the parties. *Haynes v. City of Pigeon Forge,* 883 S.W.2d 619, 620 (Tenn. Ct. App. 1994) (citing *Watts v. Memphis Transit Management Co.*, 462 S.W.2d 495, 48 (Tenn. 1971); *Glasgow v. Fox*, 383 S.W.2d 9, 13-14 (Tenn. 1964)). Since the question before us can be decided on the basis of the general principles applicable to easements, we need not address the Keenans' constitutional argument.

contravention of the province of the trier of fact." Tenn. R.App. P. 36(a) Consequently, appellate courts are empowered to grant whatever relief is required under the law and the facts of an appeal.

We are of the opinion that the best solution would be one that respects the rights of both the Keenans and Fodors to use the disputed gate at its current location. As the trial court recognized, however, the history of enmity between the parties makes it unlikely that the cooperation needed to achieve such a solution would occur.

Nonetheless, in the interest of vindicating the legal right of the Kennans to the full use of their property, we are compelled to vacate that portion of the trial court's order that requires the gate to remain closed and locked virtually all the time, while allowing the Fodors to withhold from the Keenans the security code necessary to open it. The Fodors may not lock the gate to exclude the Keenans from unfettered access to their home and land.

V.

We reverse the trial court's judgment in Appeal Number M2012-00330-COA-R3-CV, finding the Kennans in contempt. We modify the order in Appeal Number M2012-02623-COA-R3-CV, by vacating and deleting the directive that the gate remain locked. We affirm that judgment as modified. We remand this case to the Chancery Court of Cheatham County for any further proceedings necessary. Tax the costs on appeal equally between the appellants and the appellees.

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PATRICIA J. COTTRELL, JUDGE