

[Cite as *Archer v. Engstrom*, 2009-Ohio-2479.]

COURT OF APPEALS  
TUSCARAWAS COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

DAVID ARCHER, ET AL.

Plaintiffs-Appellants

-vs-

KENNETH ENGSTROM, ET AL.

Defendants-Appellees

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. William B. Hoffman, J.

Case No. 08AP060042

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County Court  
of Common Pleas, Case No.  
2005CV110734

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

May 21, 2009

APPEARANCES:

For Plaintiffs-Appellants

For Defendants-Appellees

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SOCRATES SPACE  
714 N. Wooster Ave.  
Dover, Ohio 44622

*Hoffman, J.*

{¶1} Plaintiffs-appellants David and Melanie Archer appeal the May 28, 2008 Judgment Entry of the Tuscarawas County Court of Common Pleas in favor of Defendants-appellees Kenneth and Michelle Engstrom.

#### STATEMENT OF THE FACTS AND CASE

{¶2} On November 16, 2005, Appellants initiated this action in the Tuscarawas County Court of Common Pleas against Appellees requesting injunctive relief from trespass, removal of survey stakes, misuse of easement, and obstruction of access.

{¶3} The parties are adjacent lot owners in the Village of Sugarcreek, Ohio. Both parties acquired their lots from a common grantor.

{¶4} Appellees Kenneth and Michelle Engstrom are the owners of residential Lot 832, which they purchased from Clare and Theresa Blauch in 1991. At the time of the transfer, Blauch retained ownership of Lot 833, an adjacent lot. However, the deed granted Appellees a three year option for the purchase thereof.

{¶5} Lot 832 has a concrete driveway in place, extending from the house to an existing gravel drive on Lot 833.

{¶6} On July 5, 1994, Appellees acquired a Deed of Easement granting a twenty-five foot easement for ingress and egress over adjacent Lot 833. The easement spans the 155 foot length of the lot. The Deed of Easement reads:

{¶7} “The Grantees [sic.], do hereby GRANT, BARGAIN, SELL AND CONVEY unto the said Grantees, their heirs and assigns, a twenty-five (25) foot easement for ingress and egress to Lot 832.”

{¶8} Appellants subsequently purchased residential Lot 833.

{¶19} Subsequent to Appellant's purchase, Appellees landscaped a strip of land owned by Appellants extending from the public street to the driveway, a distance of approximately twenty feet. Appellees did not obtain Appellants' permission for the landscaping, which includes shrubbery, trees and mulch.

{¶10} Appellants demanded Appellees remove the landscaping from the easement. Appellees refused, and this action ensued.

{¶11} Following a bench trial, the trial court entered judgment in favor of Appellees, via Judgment Entry of May 28, 2008.

{¶12} Appellants now appeal, assigning as error:

{¶13} "I. THE COURT'S DECISION THAT APPELLEES ARE NOT TRESPASSERS IN THAT THEY HAVE USED THEIR EASEMENT OF RIGHT OF INGRESS AND EGRESS FOR OTHER PURPOSES IS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶14} "II. THE COURT'S DENIAL OF APPELLANTS' REQUEST FOR MANDATORY INJUNCTIVE RELIEF BY ORDERING APPELLEES TO REMOVE ALL LANDSCAPING MATERIALS PLACED ON APPELLANTS' LAND WAS AN ABUSE OF DISCRETION AND CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶15} Both assignments of error asserted by Appellants raise common and interrelated related issues; therefore, we will address the arguments together.

{¶16} The holder of an easement is entitled to a use that is reasonably necessary and consistent with the purposes for which the easement was granted, and must impose the least possible burden upon the property. Thompson on Real Property, *Easements* § 426. The holder of the fee may do anything not inconsistent with the

enjoyment of the easement, *Langhorst v. Riethmiller* (1977), 52 Ohio App.2d 137. The holder of an easement may use it for any normal use which is not forbidden by law or unreasonably interfering with the rights of the landowner. *Thompson, supra*, § 427.

As the easement at issue was for ingress and egress only, Appellees landscaping of property owned by Appellants was not a use reasonably necessary nor consistent with the purpose of the easement. Accordingly, we find the trial court erred in denying Appellants' claims.

{¶17} The May 28, 2008 Judgment Entry of the Tuscarawas County Court of Common Pleas is reversed, and the matter remanded to the trial court for further proceedings in accordance with this opinion and the law.

By: Hoffman, J.

Farmer, P.J. and

Gwin, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer  
HON. SHEILA G. FARMER

s/ W. Scott Gwin  
HON. W. SCOTT GWIN

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JUDGMENT ENTRY

Case No. 08AP060042

For the reasons stated in our accompanying Memorandum-Opinion, the May 28, 2008 Judgment Entry of the Tuscarawas County Court of Common Pleas is reversed, and the matter remanded to the trial court for further proceedings in accordance with our opinion and the law. Costs to Appellees.

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer  
HON. SHEILA G. FARMER

s/ W. Scott Gwin  
HON. W. SCOTT GWIN