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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

KRISTIN BLAKE,

Plaintiff and Respondent,

v.

TIMOTHY PARKER et al.,

Defendants and Appellants.

B225915

(Los Angeles County
Super. Ct. No. SC069583)

APPEAL from a judgment of the Los Angeles Superior Court. Lisa Hart Cole,
Judge. Affirmed.

Law Offices of Robert Bruce Parsons and Robert B. Parsons for Defendants and
Appellants.

Benedon & Serlin, Gerald M. Serlin and Douglas G. Benedon for Plaintiff and
Respondent.

This appeal arises from a dispute between neighboring property owners concerning certain easements. We affirm.

BACKGROUND

Kristin Blake sued Timothy and Kerry Parker concerning the easements, which run across the Parkers' property. The Parkers cross-complained against their real estate brokers and the previous owners of their property. The parties' claims were tried to the court, which issued a statement of decision and entered a final judgment. Blake appealed, but the Parkers did not. On appeal, Blake did not challenge the trial court's specification of the location of any of the easements. Rather, she raised the following four issues: (1) She argued that the trial court erred by determining that one of the easements (the "Wallner easement") had a variable width of no more than 20 feet, when the relevant deed stated that the easement is 20 feet wide. (2) She argued that the trial court erred by not requiring the Parkers to remove various items that impinge on the Wallner easement or impede Blake's use of the easements. (3) She argued that the trial court erred by permitting the Parkers to maintain gates on the Wallner easement. And (4) she argued that the trial court erred by refusing to award general damages. We agreed with Blake's first three arguments but rejected the fourth. We accordingly reversed in part and directed the trial court to modify the judgment consistent with our opinion. In all other respects, we affirmed the judgment. (See generally *Blake v. Parker* (July 28, 2009, B202363) [nonpub. opn.])

On remand, Blake filed a peremptory challenge against the trial judge pursuant to Code of Civil Procedure section 170.6. The challenge was accepted, and the matter was assigned for all purposes to a new judge.

Blake submitted a proposed modified judgment for entry by the court. The Parkers filed objections to Blake's proposed modified judgment. The Parkers' central contention was that "[t]he Parkers won the appeal and their position has been vindicated," and that pursuant to our previous opinion "[t]he case has been remanded to re-position the [Wallner] easement" to a different location.

The court sustained some of the Parkers' objections, overruled the remainder, vacated the previous judgment, and entered a modified judgment. The court rejected the Parkers' contention that one of the court's tasks on remand was to reposition the Wallner easement, concluding that our previous opinion "specifically does not relocate the Wallner easement nor does it instruct the trial court to do so." The court further observed, "[T]he location of the easement was apparently not an issue raised in Blake's appeal, nor was there any other related appeal that raised that issue. This court is not aware of any authority that would allow it to reopen the case and change [the previous trial judge's] rulings on issues that were not reversed by the [a]ppellate decision. Similarly, if this court were to unilaterally reopen the case to take evidence on the location of the easement, as urged by the Parkers, this court would be exceeding the scope of the instructions issued by the [a]ppellate [c]ourt."

The Parkers timely appealed from the modified judgment.

DISCUSSION

On appeal, the Parkers argue that the trial court erred by not conducting an evidentiary hearing to determine the location of the Wallner easement. They contend that our previous opinion "does nothing to locate the Wallner Easement" and that in order to be 20 feet wide (pursuant to our previous opinion) the easement must be relocated. The argument lacks merit. The superior court's original judgment specified the location of the Wallner easement. The Parkers did not appeal from that judgment, and Blake's appeal did not challenge the location of the easement. Our opinion reversed the judgment in certain respects *not including* the specification of the location of the easement, and our opinion affirmed the judgment in all other respects, which include the specification of the location of the easement. The trial court therefore correctly concluded that it was not at liberty to modify the specification of the Wallner easement's location. And because the Parkers could have challenged that specification by appealing from the original judgment but chose not to, they cannot challenge that specification now. (See, e.g., *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 251-252.) The Parkers cite no authority to the contrary.

The Parkers also argue that Blake's peremptory challenge against the trial judge on remand was improper. The argument is procedurally barred. The trial court's ruling on a peremptory challenge under Code of Civil Procedure section 170.6 is reviewable only by means of a petition for writ of mandate filed within 10 days of notice of entry of the order, not by appeal. (Code Civ. Proc., § 170.3, subd. (d).) The Parkers did not file a writ petition, and if we were to construe their appeal as a writ petition seeking review of the ruling on the peremptory challenge, it would be untimely. The Parkers cite no authority to the contrary.

The Parkers seek leave to file a late reply brief, in which they argue for the first time that the legal description of the location of one of the easements (the "Flare" easement) in the modified judgment does not match the legal description in the original judgment, and that the change is neither mandated nor permitted by our prior opinion. The Parkers' request for leave to file a late reply brief is denied. We reiterate, however, that the trial court correctly interpreted our previous opinion, which did not direct or allow the trial court to modify the legal description of the location of the Flare easement. We also note that the record accordingly demonstrates that the trial court did not intend to modify the legal description of the location of the Flare easement. Therefore, insofar as the legal description of the location of the Flare easement in the modified judgment differs from the legal description in the trial court's original judgment (as it appears to), the difference constitutes a clerical error. (See *Bell v. Farmers Ins. Exchange* (2006) 135 Cal.App.4th 1138, 1144.) The trial court may correct clerical errors at any time, either on motion of a party or on the court's own motion. (Code Civ. Proc., § 473, subd. (d); *Ames v. Paley* (2001) 89 Cal.App.4th 668, 672-673.)

Blake's motion for sanctions is denied.

DISPOSITION

The judgment is affirmed. Blake shall recover her costs of appeal.

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ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.