

A large tract of land is owned by a religious order. The order erected a large residential building on the land where its members reside. The order's land is surrounded by rural residential properties and its only access to a public way is afforded by an easement over a strip of land 30 feet wide. The easement was granted to the order by deed from a woman who owned one of the adjacent residential properties. The order built a driveway on the strip, and the easement was used for 20 years without incident or objection.

Last year, as permitted by the applicable zoning ordinance, the order constructed a 200-bed nursing home and a parking lot on its land, using all of the land that was available for such development. The nursing home was very successful, and on Sundays visitors to the nursing home overflowed the parking facilities on the land and parked all along the driveway from early in the morning through the evening hours. After two Sundays of the resulting congestion and inconvenience, the woman erected a barrier across the driveway on Sundays preventing any use of the driveway by anyone seeking access to the order's land. The order objected.

The woman brought an appropriate action to terminate the easement.

In this action, for whom will the court likely hold?

- A. The order, because expanded use of the easement does not terminate the easement.
- B. The order, because the woman's use of self-help denies her the right to equitable relief.
- C. The woman, because the order excessively expanded the use of the dominant tenement.
- D. The woman, because the parking on the driveway exceeded the scope of the easement.

Explanation:

Permissible use of easement

Type	Easement holder's use	Servient owner's use
Express easement	Uses intended by parties OR reasonably necessary to use/enjoy easement if intent is unknown Expansion of use permitted	Use consistent with easement's terms AND does not unreasonably interfere with its use/enjoyment
Easement by prior use	Limited to scope of prior use No expansion of use	
Easement by necessity	Normal uses needed for dominant estate (eg, ingress/egress, utility lines) Expansion of use permitted	
Prescriptive easement	Limited to scope of adverse use during prescriptive period No expansion of use	

An **easement** is generally a nonpossessory right to use another's land (ie, servient estate) for a **specific purpose**. Unless limited by the express terms of the easement, the easement holder has the right to use the servient estate in any manner that is reasonably necessary to use and enjoy the easement—eg, building a driveway on the easement and using the driveway for parking (**Choice D**).

An easement also anticipates reasonable and natural development of the easement holder's land (ie, dominant estate). Therefore, the **easement holder may increase** the manner, frequency, and intensity of the **easement's use**—so long as that increase does **not unreasonably damage or interfere** with the use or enjoyment of the **servient estate**.

Here, the order reasonably developed its land as permitted by the zoning ordinance by constructing a 200-bed nursing home and parking lot on it. This caused an increase in the intensity and frequency of the easement's use. But that use was not excessive because there is no evidence that it *unreasonably* damaged or interfered with the woman's servient estate (**Choice C**). Even if it did, [available remedies](#) would include self-help abatement (eg, blocking off the easement), damages, or an injunction—not termination or forfeiture of the easement (**Choice B**).

Educational objective:

An easement holder may increase the manner, frequency, or intensity of an easement's use so long as that increase does not unreasonably damage or interfere with the use or enjoyment of the servient estate.

References

Restatement (Third) of Property: Servitudes § 4.10 (Am. Law Inst. 2000) (easement holder's right to use easement).

Restatement (Third) of Property: Servitudes § 4.9 (Am. Law Inst. 2000) (servient owner's right to use servient estate).

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