SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1922-21

RICHARD J. TORPEY,

Plaintiff-Appellant,

v.

GERALDINE F. KERRIGAN,
a/k/a GERALDINE STANLEY,

Defendant-Respondent,

and

CARRINGTON MORTGAGE SERVICES, LLC, a foreign corporation, and SECRETARY OF HOUSING AND URBAN DEVELOPMENT, a government entity,

Defendants.

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Argued September 20, 2023 – Decided October 30, 2023

Before Judges Gummer and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Chancery Division, Ocean County, Docket No.

C-000178-20.

James J. Curry, Jr., argued the cause for appellant.

Michael B. York argued the cause for respondent (Novins, York & Jacobus, attorneys; Michael B. York, on the brief).

PER CURIAM

In this action to quiet title, plaintiff Richard I. Torpey appeals from an order finding he has lifetime easement rights, rather than an easement in perpetuity, on a small lot defendant Geraldine F. Kerrigan now owns. Plaintiff argues the trial court erred in finding the duration of the easement is limited to the lifetimes of plaintiff and his wife and made incorrect factual findings in reaching its conclusion that a prior agreement between plaintiff and his neighbor and previous owner to use this lot evidenced an intent to create a lifetime easement. We reverse and remand for entry of a judgment finding plaintiff was conveyed an easement in gross for the benefit of him, his wife, and their children for as long as one of them resided on their property on 1412 Bryant Avenue.

I.

As found by the court, the underlying facts are not in dispute. This case is about the interpretation of the language contained in various instruments conveying interest in the small corner lot at issue, including the deed executed

in 1999 when plaintiff and his now-deceased wife sold their one-half interest in the property to his longtime friend and former neighbor, Doris Wilson, while reserving an easement.

Plaintiff and his wife purchased property located at 1412 Bryant Avenue, Toms River in 1969. Their friends, Gilbert and Doris Wilson (the Wilsons), owned the lot and home adjacent to the small corner lot at issue. According to the Tax Map of the Township of Dover, the corner lot was identified as Block 720-9, Lots 358 and 359.

Since the 1970s, plaintiff and his family have used one-half of the corner lot as a parking area for their cars and boats. In 1978, the owner of the corner lot listed that property for sale, and plaintiff, his wife, and the Wilsons purchased it, with the couples each owning a one-half interest in common and the spouses having a tenancy by the entirety. The couples later added a fence to divide the lot; plaintiff's area is referred to as the southern area.

In 1999, Doris Wilson sought to sell the Wilson property following her husband's death. She asked plaintiff to deed over his and his wife's one-half share of the corner lot so she could consolidate the property—her home and the corner lot—to make it more attractive to potential buyers.

An August 19, 1999 deed conveying plaintiff's and his wife's fee interest in the corner lot expressly provided that: "[t]he Grantors Richard I. Torpey and Mary M. Torpey, his wife, hereby reserve[] unto themselves an easement in perpetuity for the use of the southern half of the property, . . . measuring 50' by 60', to use the easement area for access and for light and air." An amended deed dated December 30, 1999, contained the same easement language. When they executed the amended deed, plaintiff was sixty-eight years old and his wife was a year or two older.

In June 2000, Doris Wilson sold the combined property, including the corner lot, to Frank and Karen Killian (the Killians). At the time of purchase, the Killians were advised that there was a perpetual easement on the property. During the thirteen years before the Killians sold the property to defendant Geraldine Kerrigan, plaintiff continuously used the easement area to "park cars and multiple boats" and "kept the easement area neat and groomed."

On September 24, 2013, defendant purchased the property from the Killians. There is no dispute that defendant knew of the easement prior to purchasing the property. Defendant "then moved in and removed the fence" demarcating the easement area and eventually permitted her tenants to park cars

on the entire corner lot. Plaintiff filed this action to quiet title and for enforcement of the easement in the 1999 deed.[1]

On September 27, 2021, plaintiff moved for summary judgment, arguing that, as a matter of law, he was entitled to a perpetual easement on the southern half of the corner lot. On January 24, 2022, the court granted plaintiff summary judgment, finding:

> Plaintiff, Richard I. Torpey, had reserved to himself an easement in perpetuity that portion of Block 720-9, Lots 358 and 359, of premises commonly known as 103 Poe Avenue, Toms River, Ocean County, New Jersey, for an area consisting of a 50' x 60' easement to the southerly half of Lot 354 in Block 720 of the Official Toms River Tax Map which is delineated in the survey of the property prepared by Frank D. Desantis dated September 17, 2013 which is located at the intersection of Bryant and Poe Avenues, separated from the rest of the property as shown as a wood post and rail fence (the survey is annexed hereto and made a part of this [o]rder). The easement is in perpetuity for the use of vehicle parking and storing of boats and/or boat trailer(s).
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> [(Emphases in original).]

The court also prohibited defendant from interfering with plaintiff's use of the easement area. On March 4, 2022, defendant filed an appeal. On March 14,

[1] Initially, plaintiff's complaint included two counts: one count to quiet title and another count for adverse possession. Plaintiff later abandoned the adverse-possession claim.

2022, the court filed an amplification pursuant to Rule 2:5-1(b) modifying the duration of plaintiff's easement from in perpetuity to the lifetime of plaintiff and his spouse.

On May 18, 2022, plaintiff moved under Rule 2:5-5(a) to settle the record. We granted a limited remand "so that the judge may rule on [plaintiff's] motion for reconsideration of the amplification." On July 11, 2022, the court issued an order directing the parties to appear for a hearing on July 15, 2022. At that hearing, the court heard testimony from plaintiff to "determine the meaning of the phrase 'themselves' and 'perpetuity'" in the language of the deed granting the easement "in order to determine if it was intended to include all of Mr. Torpey's family or just Mr. and Mrs. Torpey."

At the hearing, plaintiff testified that he had told Mrs. Wilson that in exchange for giving her their share of the property, they "would want an easement to continue to use the property in perpetuity." He intended that the easement area would be used by him, his wife, "and our family." He testified he would not have signed the deed if it did not include the term "in perpetuity" because, "[w]e would have been giving up a valuable parking area in exchange for nothing." He understood the phrase "themselves . . . in perpetuity" to mean "[t]hat it would go on either forever or as long as we continued to own, my

family continued to own the property. At the time we had three or four children still living at home with us and one living across the street." When asked what he had understood "in perpetuity" to mean, plaintiff explained, "we wanted this to be in our family a long, long time, as long as we had children on the property." When asked if he understood "themselves" to mean him and his "kids," plaintiff answered, "[y]es."

On July 18, 2022, the court issued an order and first amended amplification. The court modified its January 24, 2022 order finding the deed granted plaintiff an easement in perpetuity. The court instead determined the deed granted plaintiff an easement for his and his wife's natural lives and not one in perpetuity as the easement lacked "words of succession normally attendant a conveyance intending to run with the land in perpetuity," the easement referenced plaintiff and his wife, but not "the Torpey family" or "Torpey property"; perpetual contracts are disfavored; and there is "no evidence that the [plaintiff and his deceased wife] intended the instrument to benefit anyone but themselves."

Furthermore, the court noted what it considered inconsistencies in plaintiff's testimony, stating:

> On the other hand, there is evidence supporting Plaintiff's proposition that the easement was intended

> to continue with the land. Mr. Torpey testified that he believed the deed would provide a perpetual right that would run with the land, indeed he testified that is the reason he conveyed the property without consideration. However, Mr. Torpey also expressed his intention that his family be permitted to continue using the lot after him and he would agree to that interpretation.

Ultimately, the court concluded that "[a]lthough the use of the term [in perpetuity] applied to" plaintiff and his deceased wife, it "seems incongruent and ambiguous, [and] the testimony of Mr. Torpey did not provide sufficient evidence for the Court to make wholesale changes to the language of the instrument."

Following this determination, plaintiff moved for leave to file a cross-appeal as within time; we granted that motion. Defendant later withdrew her appeal, and only plaintiff's cross-appeal is before us.

Plaintiff avers he has a perpetual easement by deed reservation, the court erred in relying on the lack of the term "heirs" in the deed, and because the court found that there was an easement with a dominant estate, it should then run with the land rather than for the life of plaintiff and his wife.

II.

We conduct a de novo review of a grant of summary judgment, applying the same standard as the motion judge. Samolyk v. Berthe, 251 N.J. 73, 78

(2022). The standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (quoting R. 4:46-2(c)). "Summary judgment should be granted . . . 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). We do not defer to the trial court's legal analysis, RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018), including the interpretation of contracts, Serico v. Rothberg, 234 N.J. 168, 178 (2018). See also Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 190 (App. Div. 2008) ("Interpretation and construction of a contract is a matter of law for the court subject to de novo review."). Moreover, the court's "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995).

We "accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)); see also Slutsky v. Slutsky, 451 N.J. Super. 332, 343-44 (App. Div. 2017). Deference is particularly appropriate where those findings depend on credibility evaluations made after a full opportunity to observe the witnesses. State v. Hubbard, 222 N.J. 249, 262, (2015); Cesare v. Cesare, 154 N.J. 394, 412 (1998).

In its July 18, 2022 amended amplification, the court began with an acknowledgment that the record—including plaintiff's preliminary statement, statement of facts contained in plaintiff's motion for summary judgment, certifications submitted in support of the motion, and plaintiff's testimony—consists of largely uncontested facts. The court next defined the central issue to be decided as—"the nature of [p]laintiff's easement rights. The specific question requires the [c]ourt to determine if the easement provides an exclusive right to [p]laintiff to use the easement for parking cars and storing boats." The focus of plaintiff's cross-appeal is the duration of the easement. We reverse the aspect of the July 18, 2022 order finding the duration of the easement was limited to the lifetimes of plaintiff and his wife.

Plaintiff's central argument is that he seeks "enforcement of the explicit terms in a [d]eed in which the [p]laintiff, as [g]rantor, retained an easement in perpetuity for the purpose of parking of cars and storing of boats on a vacant [fifty by sixty foot] lot." Plaintiff contends the court "erroneously applied common law that had been repealed and superseded by statute requiring magic language and the transfer of a fee interest." Plaintiff maintains the plain language in the deed is sufficient for the court to have found—as it did in its original January 24, 2022 order—that the easement was in perpetuity.

Defendant maintains plaintiff's argument is disingenuous and inaccurate in suggesting the court solely relied on antiquated case law. Rather, defendant avers "[t]he court properly took into account [plaintiff's] on the record statements that he only believed the easement lasted for the life of him, his wife, and his children."

Both parties agree that the issue on appeal is one of legal interpretation of the deed in question, and absent any ambiguity that presents a question of fact, the interpretation of a deed is a question of law for the court, which we must review de novo. Serico, 234 N.J. at 178; Hofer v. Carino, 4 N.J. 244, 250 (1950).

III.

"An easement is a right, distinct from ownership, to use in some way the land of another, without compensation." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). "A grantor may, by covenant in a deed," create an easement to "restrict the use of land conveyed for the benefit of land retained and bind the grantee and [their] successors in title who take with notice." Perelman v. Casiello, 392 N.J. Super. 412, 418 (App. Div. 2007); see also 13 N.J. Practice, Real Estate Law And Practice § 18:2 (3d ed. 2023) (citing 26A C.J.S. Deeds § 379 (2023)) (noting servitudes may be created by deed if they are "clearly defined and have a contractual basis").

Moreover, there are "two types of easements, easements appurtenant and easements in gross. The distinction is 'that an easement appurtenant requires a dominant tenement to which it is appurtenant, whereas an easement in gross belongs to its owner independently of his ownership or possession of any specific land.'" Rosen v. Keller, 411 N.J. Super. 439, 450 (App. Div. 2010) (quoting Vill. of Ridgewood v. Bolger Found., 104 N.J. 337, 340 (1986)).

"An easement appurtenant is created when the owner of one parcel of property (the servient estate) grants rights regarding that property to the owner of an adjacent property (the dominant estate)." Ibid. "The easement appurtenant 'enhances the value of the dominant estate and cannot exist separate from the

land itself.'" Ibid. (quoting Vill. of Ridgewood, 104 N.J. at 340). An easement appurtenant runs with the land; "those benefits would survive any subsequent conveyance or devise by the original grantee." Khalil v. Motwani, 376 N.J. Super. 496, 502 (App. Div. 2005). "An easement in gross, by contrast, benefits no specific parcel owned by another; it is independent of and unconnected to the ownership or possession of any particular tract." Vill. of Ridgewood, 104 N.J. at 340.

Much like restrictive covenants, a grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. See Caullett v. Stanley Stilwell & Sons, Inc., 67 N.J. Super. 111, 115 (App. Div. 1961) (citing 3 Williston on Contracts § 620, at 1787-88 nn.5-6 (rev. ed. 1936)) (noting "a restrictive covenant is in its inception a mere contract, subject to the interpretative doctrines of contract law which focus on the parties' mutual purpose"). The terms of the instrument and the parties' intent are the lodestars that guide this analysis. See Perelman, 392 N.J. Super. at 418 (noting that determining whether an easement "runs to the successors of the original grantee requires examining the intent of the original grantor and grantee.").

For a written easement, the primary source of the parties' intent is what is written within the four corners of the deed. Oldfield v. Stoeco Homes, Inc., 26

N.J. 246, 257 (1958). Yet, if that language is ambiguous, the court may consider extrinsic circumstances, such as the circumstances of an easement's creation. Caullett, 67 N.J. Super. at 114-15; accord Borough of Princeton v. Bd. of Chosen Freeholders of Cnty. of Mercer, 333 N.J. Super. 310, 325 (App. Div. 2000), aff'd, 169 N.J. 135 (2001). "The court's goal is to ascertain the 'intention of the parties to the contract as revealed by the language used, taken as an entirety . . . the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain.'" Borough of Princeton, 333 N.J. Super. at 325 (omission in original) (quoting Cruz-Mendez v. ISU/Ins. Servs., 156 N.J. 556, 570-71 (1999)).

Generally, "[q]uestions concerning the extent of the rights conveyed by an easement require a determination of the intent of the parties as expressed through the instrument creating the easement, read as a whole and in light of the surrounding circumstances." Rosen, 411 N.J. Super. at 451. An easement may "be created for a fixed term or for the accomplishment of a specific purpose," although the "extent of the easement created by a conveyance is fixed by the conveyance." Eggleston v. Fox, 96 N.J. Super. 142, 147 (App. Div. 1967). Although "[t]he construction of a deed is a question of law[,] . . . [w]hen an ambiguity is present, . . . a factual issue is presented and extrinsic evidence can

be considered to aid the construction effort." Stransky v. Monmouth Council of Girl Scouts, Inc., 393 N.J. Super. 599, 608-09 (App. Div. 2007) (citing Hofer, 4 N.J. at 250).

After hearing testimony on July 15, 2022, the court issued the first amended amplification on July 18, 2022, explaining it had:

> initially found that the words were clear in that "themselves" referred to Richard and Mary and that the easement ended with the death or sale by them. At reconsideration, [p]laintiff asserted that the term "themselves" is modified by "perpetuity" and creates a right that should run with the land benefitting future owners or in the alternative, attached to the Torpey family.

The court further found the easement lacked "words of succession normally attendant a conveyance intending to run with the land in perpetuity," as the easement referenced plaintiff and his wife, but not "the Torpey family" or "Torpey property." The court further stated perpetual contracts are disfavored and there was "no evidence that the Torpeys intended the instrument to benefit anyone but themselves." Applying this analysis, the court concluded, "the language of the instrument provides only that the right was reserved for [plaintiff and his wife]." Turning to extrinsic evidence, the court opined that:

> the evidence at summary judgment was not dispositive: Mr. Torpey had testified

> inconsistently on the issue at his deposition. As a result, the [c]ourt, applying the standards for summary judgment, found a question of fact as to the meaning of the terms when it took testimony on July 15, 2022.

Returning to the language of the deed, the court further stated that, "[a]t common law unless the words 'and his heirs' were used in grants of realty no fee simply or fee tail could arise no matter how clear the grantor's intent . . . [r]egardless of the intention of the parties . . . ." The court next concluded that the same requirement applies to easements and "to create an estate in fee, the necessary words of inheritance must be used, and in general their place cannot be supplied by any other words of perpetuity," citing 2 Thompson on Real Property, Thomas Editions § 17.06 (2022).

Plaintiff maintains "the language in perpetuity suggested a right of indefinite duration, which clearly would survive the deaths of" plaintiff and his wife. Plaintiff asserts he has a perpetual easement by deed reservation and criticizes the court's decision as one based on old common law rules that the Legislature superseded via statute. On this point, plaintiff argues, "the magic words 'heir' need not be included to convey an interest in land greater in duration than a life estate," relying on two statutes N.J.S.A. 46:3-13 and N.J.S.A. 3B:3-39. The first statute provides:

> Every deed conveying lands shall, unless an exception be made therein, be construed to include all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, both in law and equity, of the grantor, including the fee simple if he had such an estate, of, in and to the premises conveyed, with the appurtenances, and the word "heirs" shall not be necessary in any deed to effect the conveyance of the fee simple . . . .
>
> [N.J.S.A. 46:3-13 (emphasis added).]

Plaintiff argues by analogy to the second statute, N.J.S.A. 3B:3-39, averring that although it applies specifically to wills, it is instructive on the proposition that the word "heirs" is not required:

> When a devise of real estate within this State to any devisee omits the words "heirs and assigns" and the will contains no expressions indicating an intent to devise only an estate for life, or the real estate is not further devised after the death of the devisee, the devise shall be deemed to pass an estate in fee simple to the devisee as if the real estate had been devised to the devisee and to his heirs and assigns forever.
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> [(N.J.S.A. 3B:3-39).]

Plaintiff asks this court to read N.J.S.A. 46:3-13 "in conjunction" with N.J.S.A. 3B:3-39 to find "the magic words 'heirs' need not be included to convey an interest in land greater in duration than a life estate under New Jersey law." Alternatively, plaintiff argues that "even prior to the statute which created modern New Jersey law, deeds and mortgages which failed to include the magic

words but which clearly intended to create a fee simple were often reformed to correct the defect."

On this point, we agree the term "heir" is no longer required to create a perpetual easement and note that many archaic conventions, such as needing a fee tail to denote something other than a life estate, have been done away with by legislative fiat. See N.J.S.A. 46:3-15. Without that convention, the deed is again ambiguous in duration, as the term "unto themselves" and "in perpetuity" appear inconsistent.

Plaintiff challenges the court's finding that New Jersey law disfavors perpetual contracts by arguing "perpetual contract performance," not perpetual easements, are disfavored. However, language and intent controls, and although perpetual restrictive covenants are disfavored and "strictly construed where there is ambiguity," Perelman, 392 N.J. Super. at 419, a court may still find that:

> [a]bsent intent to impose a burden of limited duration or for the benefit of an individual, changed conditions that frustrate the purpose of the restriction, or equities that make enforcement unjust or require modification, covenants that the parties intend to burden one part for the benefit of another property are deemed to be servitudes that run with the land benefited and burdened and transfer with its ownership.
>
> [Ibid.]

In the same vein, an intent for an easement to expire may be expressed "by any appropriate words" but is "usually manifested by a limitation which contains the words, 'so long as,' 'until' or 'during,' or a provision that upon the happening of a stated event," the interest will expire. Eggleston, 96 N.J. Super. at 146-47.

Here, the written easement is ambiguous, as it evidences an "intent to impose a burden of limited duration," while simultaneously doing the opposite, granting an easement in "perpetuity." In its first amended amplification, the court emphasized that "[t]he Grantors Richard I. Torpey and Mary M. Torpey, his wife hereby reserves unto themselves an easement . . . " was only effective during the life of the grantors, Richard and Mary Torpey. However, while the grant states, "unto themselves," suggesting a life estate, it also states plaintiff and his wife "reserve[] unto themselves an easement in perpetuity," and "in perpetuity" is commonly defined as "[f]orever; without end," Black's Law Dictionary 945 (11th ed. 2019).

Because the language in the deed is ambiguous and subject to different interpretations, we next address the use of extrinsic evidence, where plaintiff argues the court erred by finding he had "testified inconsistently" regarding the terms of the easement and asks this court to "exercise original fact-finding jurisdiction since this finding . . . is not supported by adequate, substantial[,] or

credible evidence." On the other hand, defendant's brief argues the court's decision properly reflects "the intention of the parties," including plaintiff's testimony that he believed the easement lasted for his life, his wife, and his children.

The court found plaintiff's testimony "did not provide sufficient evidence for the [c]ourt to make wholesale changes to the language of the instrument." The court reasoned there was nothing in the instrument and no indication that plaintiff and his wife had intended to identify their children as beneficiaries, and as a result, "the rights granted under the instrument must end with Mr. Torpey."

Plaintiff argues that his testimony at deposition and trial has been entirely consistent and that the court's factual findings as to the duration of the easement are in error. He also avers that although he "believed the easement lasted for the life of him, his wife, and his children," the court either misread or misconstrued the record to find otherwise.

The court placed great emphasis on plaintiff's testimony and, in its first amended amplification, stated plaintiff "believed the deed contained a covenant reserving an easement that provided rights that would run with his land in perpetuity . . ." but also found plaintiff was willing, at trial, "to limit the reservation for only his and his children's lives, so long as they own the home."

The record also shows plaintiff testified during his deposition that he "thought that [his] six children would . . . own this property for hundreds of years."

Therefore, plaintiff's testimony supports the notion that the written easement did not "[intend] to impose a burden of limited duration." Perelman, 392 N.J. Super. at 419. Thus, plaintiff's testimony at trial regarding his willingness to alter the terms of the easement may be properly and reasonably viewed as a potential concession only and is not dispositive of the ultimate issue on appeal.

Because the plain meaning of the easement language is subject to multiple interpretations, we consider extrinsic evidence to determine the intent of the parties to the easement. In reviewing the extrinsic evidence, we conclude the intent was to retain an easement for plaintiff and his family, which included then his wife and his children, for as long as one of them resided on their property on 1412 Bryant Avenue. During the hearing, plaintiff repeatedly referenced his children and their use of the corner-lot property and his desire that they be able to continue to use the corner-lot property; he never mentioned any grandchildren or other future heirs. Thus, we hold that the court erred by concluding the easement expires with the passing of plaintiff and his wife.

We further note that the court found "that the alleged easement is appurtenant to the Torpey's property" and that "the evidence shows that the use, parking cars and alike, benefits the Torpey's parcel," and in doing so, the court appears to have interpreted this as an appurtenant easement ending with the lives of plaintiff and his wife. However, this is contrary to our case law, as appurtenant easements run with the land: "those benefits would survive any subsequent conveyance or devise by the original grantee." Khalil, 376 N.J. Super. at 502. In addition, the portion of the corner lot at issue was not adjacent to the property plaintiff and his wife owned on 412 Bryant Avenue. Thus, the court erred in finding the easement to be appurtenant and not in gross.

We therefore conclude that the court erroneously relied upon outdated common law in finding that absent words of succession, including "heir," the easement would last only for the lifetime of plaintiff and his wife and misconstrued plaintiff's testimony in concluding that he and the Wilsons had intended the easement to be limited to his and his wife's lifetimes. Additionally, we discern that the court also erred in defining the easement as appurtenant, rather than in gross. Thus, we find his testimony and the extrinsic evidence requires an interpretation of the 1999 deed such that it granted an easement in

gross for Mr. Torpey, his wife and their children for as long as they own the property located at 1412 Bryant Avenue in Toms River.

We reverse and remand for the entry of judgment finding that in gross exists on Block 720-9, Lots 358 and 359, permitting plaintiff and his children to use the easement until they no longer own the property at 1412 Bryant Avenue, Toms River, New Jersey.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.