

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

CAROLINE C. BRITTINGHAM
MAGISTRATE IN CHANCERY

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DE 19947

September 25, 2026

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RE: *William F. Skotta, Jr., Trustee of the William F. Skotta, Jr. Revocable Trust
Dated January 25, 2007 and Mary D. Skotta, Trustee of the Mary D. Skotta
Revocable Trust Dated January 25, 2007 v. Arthur L. Mears, Sr.*
C.A. No. 2024-1085-CCB

Dear Counsel:

Pending before me is a petition for declaratory judgment and related relief regarding a dispute between neighboring property owners. The parties' disagreement centers on the use and maintenance of Persimmon Tree Lane (the "Lane"), a private, unpaved farm lane in Georgetown, Sussex County, Delaware. This report addresses the sole remaining issue in this matter: the proportionate share of the Lane's maintenance and restoration costs to be borne by each party. For the reasons set forth below, I conclude that Mary and William Skotta (the "Petitioners") shall bear seventy-five percent (75%) of the maintenance and restoration costs and Arthur Mears (the "Respondent") shall bear twenty-five percent (25%).

I. Background¹

Petitioners own and operate a commercial poultry farm located at 21090 Persimmon Tree Lane (the “Subject Property”).² Respondent owns the adjoining property over which the Lane runs and the Lane itself.³ Although the parties historically coexisted without litigation, disagreements regarding the maintenance and use of the Lane ultimately resulted in this action.

Petitioners purchased the Subject Property on February 14, 2003.⁴ At the time of their purchase, the property contained six commercial poultry houses that had been constructed over several decades.⁵ Historically, the property was devoted to agricultural use, including poultry production, by Petitioners’ predecessors in title.⁶

Petitioners’ deed conveyed the Subject Property together with rights of ingress and egress referenced in several recorded plats and deeds.⁷ The deed contains the following clause:

TOGETHER WITH the right of ingress and egress as set forth in an Orphan’s Court Map in Book 39, Page 341, and as confirmed in the following plots: (1) Plot Book 46, Page 167, (2) Plot Book 18, Page

¹ I refer to the June 25, 2026 trial transcript, *see* Docket Item (“D.I.”) 69, as “Tr. ____.” I refer to Petitioners’ Post-Trial Memorandum as “Pet’rs’ Post-Trial Mem.” I refer to Respondent’s Post-Trial Memorandum as “Resp’t’s Post-Trial Mem.”

² D.I. 1.1 ¶ 3. The Subject Property is designated as Sussex County Tax Parcel No. 1-33-10.00-1.00. *Id.*

³ D.I. 1.1 ¶ 15; D.I. 12.1 ¶ 13(D)-(E).

⁴ D.I. 1.1 ¶ 3.

⁵ D.I. 1.1 ¶ 9.

⁶ D.I. 1.1 ¶¶ 7, 8.

⁷ D.I. 1.1 ¶ 23; D.I. 1.12.

118, Plot Book 59, Page 147, Deed Book 1582, Page 284, and Deed Book 869, Page 54.⁸

However, no written agreement existed defining the parties' respective rights and responsibilities concerning the use and maintenance of the Lane.⁹ Both parties acknowledged at trial that the Lane provides Petitioners' only practical means of ingress and egress to the Subject Property,¹⁰ and that Petitioners have the right to access the Subject Property through the Lane.¹¹

The Lane is a private, unpaved farm lane approximately fourteen feet in width and approximately two-tenths of a mile.¹² In addition to Petitioners' and their tenants' use, the Lane provides access to Respondent's agricultural property and to residences occupied by Respondent's tenants and family members.¹³

Following Petitioners' purchase of the Subject Property in 2003, they continued operating the poultry farm as it had existed previously. However, in 2018,

⁸ D.I. 1.1 ¶ 23 (citation modified); D.I. 1.2.

⁹ Pet'rs' Post-Trial Mem. at 3, 5.

¹⁰ While there was conflicting testimony at trial, both parties admitted that the Lane is not the Petitioners' sole means of ingress and egress to the Subject Property. D.I. 1.1 ¶ 31; D.I. 12.1 ¶¶ 30-31; Tr. 106:15-21.

¹¹ D.I. 1.1 ¶¶ 13-14, 16, 18, 19; D.I. 12.1 ¶ 13(A). The parties jointly stipulated that "[f]or purposes of this trial only" the Petitioners' right of access on the Lane is an easement. D.I. 52 ¶ 1. Regardless, I find that an express easement exists in this case. "A property owner may create an express easement across her land within the language of a deed." *Acierno v. Goldstein*, 2005 WL 3111993, at *7 (Del. Ch. Nov. 16, 2005). Such language should demonstrate "the grantor's intent to create a right in the nature of an easement." *Alpha Builders, Inc. v. Sullivan*, 2004 WL 2694917, at *4 (Del. Ch. Nov. 5, 2004). It is well-established that the Delaware Statute of Frauds, 6 Del. C. § 2714(a), "requires that a writing, signed by the party to be charged with granting the interest, exist before any action to enforce a conveyance occurs." *Id.* Petitioners' deed contained the requisite language evidencing the grantor's intent to convey an express easement. D.I. 1.1 ¶ 23; D.I. 1.2. ¶ 23. The referenced plats and deeds confirm the right of way identified in the grant is Persimmon Tree Lane.

¹² D.I. 1.1 ¶ 13; Tr. 129:8-13; Resp't's Post-Trial Mem. at 7.

¹³ D.I. 1.1 ¶ 14; D.I. 12.1 ¶ 14.

Petitioners decommissioned two older poultry houses and constructed three replacement houses.¹⁴ The overall number of poultry houses increased from four to seven, and the replacement houses were larger than the structures they replaced.¹⁵ As a result, the annual volume of poultry produced on the farm increased from 75,600 chickens to approximately 160,000 chickens, resulting in additional deliveries of chicks, feed, propane, fuel, litter, and increased live-haul truck traffic associated with the commercial poultry operation.¹⁶

Beginning in approximately 2023, disagreements concerning the parties' respective rights and obligations intensified. Respondent communicated concerns regarding the increasing commercial use of the Lane and the condition of the roadway.¹⁷ In August 2023, Respondent, through counsel, asserted that while prior residential access had been permitted, the historical use did not contemplate the level of commercial agricultural traffic generated by Petitioners' expanded poultry operation.¹⁸ Respondent also proposed an alternative means of access across neighboring property, although no recorded easement or written agreement

¹⁴ D.I. 1.1 ¶ 11; Tr. 234:4-20.

¹⁵ Tr. 146:20; 253:13-17; 254:9-10.

¹⁶ Tr. 253:13-254:10; 255:7-256:15. Petitioner William Skotta testified that the Subject Property previously contained four older chicken houses, each with a capacity of approximately 18,900 chickens. Tr. 253:18. The figure of 75,600 chickens is derived from the combined capacity of those four chicken houses.

¹⁷ Tr. 68:7-17.

¹⁸ D.I. 1.1 ¶ 28.

authorized such access, and the proposed route crossed an area used for crop production.¹⁹ Petitioners had not previously used the alternative means of access.²⁰

In October 2024, Respondent installed gate posts adjacent to the Lane.²¹ Although Respondent did not close or lock the gate across the Lane, Petitioners became concerned that access to the Subject Property would be restricted.²² Petitioners' poultry integrator, Mountaire Farms, also expressed concern regarding continued access to the farm if the dispute remained unresolved.²³ This ultimately led to the Petitioners filing the Petition on October 24, 2024.²⁴

The Respondent filed an Answer on December 23, 2024.²⁵ The Respondent filed a Reply to Petitioners' Motion for a Preliminary Junction and a Reply to Petitioners' Motion to Expedite on August 27, 2025.²⁶ The parties then engaged in discovery.²⁷ Trial was initially scheduled for February 17, 2026, but was continued to allow the parties time to negotiate a resolution.²⁸ Ultimately, the parties were unable to negotiate a resolution and trial occurred on June 25, 2026.²⁹ Following

¹⁹ D.I. 1.1 ¶ 31; D.I. 12.1 ¶ 33; Tr. 61:19-22; 108:3-109:2.

²⁰ D.I. 1.1 ¶ 33; Tr. 235:1-8.

²¹ D.I. 1.1 ¶ 42; Tr. 72:9-24; 73:11-17.

²² D.I. 1.1 ¶ 43; Tr. 73:24; 286:8-18.

²³ D.I. 1.1 ¶ 44.

²⁴ D.I. 1.1.

²⁵ D.I. 12.1.

²⁶ D.I. 16, 17.1.

²⁷ D.I. 27, 34, 35, 38, 41.1, 43, 47, 48, 54.1.

²⁸ D.I. 33.

²⁹ D.I. 57.

trial, the parties submitted post-trial memoranda on August 10, 2026 and August 11, 2026.³⁰

II. Analysis

A. Maintenance of the Lane

The first issue before the Court is how to determine the proportionate cost for future Lane maintenance to be paid by the dominant and servient landowners. “[A]n easement consists of two separate estates: the dominant estate which has the benefit of the easement and to which it is attached, and the servient estate on which the easement is imposed or rests.³¹ The Petitioners have title to the dominant estate, while the Respondent retains title to the servient estate. Generally, “the owners of a servient estate burdened by an easement in favor of a dominant estate may use the premises as they choose, but may not interfere with the proper and reasonable use by the owner of the dominant estate.”³²

“The manner, frequency, and intensity of the use may change over time to take advantage of developments in technology and to accommodate normal development of the dominant estate or enterprise benefited by the servitude. Unless authorized by the terms of the servitude, the holder is not entitled to cause

³⁰ D.I. 76, 77.1.

³¹ *Edgell v. Divver*, 402 A.2d 395, 397 (Del. Ch. May 14, 1979); see 28 C.J.S. Easements § 1.

³² *Vandeleigh Indus., Inc. v. Storage Partners of Kirkwood, LLC*, 901 A.2d 91, 96 (Del. 2006) (citation modified) (citing *Copeland v. Jackson*, 1996 WL 526163, at *1 (Del. 1996)).

unreasonable damage to the servient estate or interfere unreasonably with its enjoyment.”³³ Delaware case law provides that, absent an agreement allocating maintenance obligations, parties jointly entitled to use property subject to an easement bear responsibility for the reasonable costs of maintaining that property in proportion to their respective use.³⁴

The parties have not cited, and my research has not found, any Delaware case that squarely deals with the issue presented here, namely, the allocation of responsibility between a servient estate owner and dominant estate owner for the maintenance and repair of an easement. In an analogous situation, however, the Delaware Supreme Court looked to the Restatement (Third) of Property: Servitudes (the “Restatement”), and specifically § 4.9, for guidance in dealing with an issue

³³ *Green v. Templin*, 2010 WL 2734147, at *9 (Del. Ch. July 2, 2010) (citing RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.10).

³⁴ See *Sandie, LLC v. Plantations Owners Ass’n, Inc.*, 2012 WL 3041181, at *9 (Del. Ch. July 25, 2012) (“In equity, those entitled to use land subject to an easement jointly have obligations for maintenance proportional to their use.”); see also *Ayres v. Walker*, 1991 WL 225054, at *6 (Del. Ch. Oct. 4, 1991) (requiring joint users of a dirt road to share reasonable future maintenance expenses). This approach also comports with decisions from other jurisdictions apportioning easement maintenance and repair costs according to the parties’ respective use and circumstances. See *Bayersdorfer v. Winkler*, Nos. 860, 871, 2003 WL 21456633, at *1 (Ohio Ct. App. 2003) (affirming an order allocating 80% of ongoing maintenance costs to the easement holders and 20% to the servient owners, while allocating the costs of restoring the easement to usable condition 60% and 40%, respectively); *Larabee v. Booth*, 463 N.E.2d 487, 492 (Ind. Ct. App. 1984) (affirming an equal allocation of maintenance costs where both the dominant and servient estate owners used the driveway and recognizing that, when both use an easement, a court may apportion repair costs between them); *Bina v. Bina*, 239 N.W. 68, 71 (Iowa 1931) (allocating 40% of reasonable repair costs to the party whose use constituted approximately 40% of the road’s total use and 60% to the party whose use constituted approximately 60%).

involving easements.³⁵ Accordingly, I look to the relevant section of the Restatement, § 4.13, for guidance in resolving the present dispute.

Restatement § 4.13 comment d provides: “In allocating costs between the owner of the servient estate and the holders of easements or profits, factors that should be considered include the values of their respective contributions to construction and improvement of any facilities for enjoyment of the easement or profit, including the value of the land contributed by the servient owner, and the amount paid for the easement. In addition, the frequency and intensity of use made by each and the value of any other contributions that enhance the value of the servitude or the servient estate should be taken into account.”³⁶

Both parties asserted that they have contributed to the maintenance of the Lane. Respondent testified that his maintenance efforts included grading the Lane using his own equipment and experience, adding material to the Lane as needed, and maintaining the Lane’s crown.³⁷ However, Respondent alleged that he ceased maintaining the Lane approximately four or five years before trial after disagreements arose concerning Petitioners’ maintenance methods, including their use of clamshells and other materials that, in Respondent’s opinion, failed to

³⁵ *Vandeleigh Indus., Inc. v. Storage Partners of Kirkwood, LLC*, 901 A.2d 91, 100-01 (Del. 2006) (citing RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.9).

³⁶ RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.13.

³⁷ Tr. 57:4-59:20; 68:21-23; 115:3-14.

preserve the Lane's condition.³⁸ Petitioners likewise testified that they have performed maintenance, including the addition of clamshells and crusher run³⁹ to the Lane.⁴⁰

The parties sharply disputed whether the Lane presently requires restoration or only routine maintenance. Respondent's witness, Dean Anderson ("Anderson"), of A.P. Croll & Son, testified that he has twenty-three years of experience in road construction preparation, and that, in his opinion, the Lane has deteriorated as a result of the volume and weight of the commercial poultry traffic and no longer maintains an adequate crown for drainage.⁴¹ Anderson testified that the negative crown can lead to water being trapped, causing rapid deterioration of the Lane.⁴² Anderson further testified that restoration of the Lane would require the placement of additional aggregate-base material, grading, and continuing annual maintenance.⁴³

³⁸ Tr. 33:2-8; 69:17-23; 70:13-19.

³⁹ Crusher run, also known as Graded Aggregate Base (GAB), Dense Grade Aggregate, or ABC Stone, is the "industry-standard material" for creating a solid, compacted base for driveways and walkways. It is a mixture of angular crushed stone and fine stone dust. When compacted, the larger stones provide structure and the fine dust fills in any voids, making it the "go-to" material for projects needing a firm foundation such as gravel or paved driveways to prevent cracks and potholes. See Daniel Crowley, *Crusher Run Gravel Guide for a Solid Project Base*, Hello Gravel (Jan. 16, 2026), <https://hellogravel.com/guides/crusher-run-project-base/>. The Court notes that the parties at times refer to crusher run as "Crush-N-Run." D.I. 1.1 ¶ 21; D.I. 12.1 ¶ 26.

⁴⁰ Tr. 246:10-247:7 278:2-16; 298:1-9.

⁴¹ Tr. 196:2-7; 200:22-201:11.

⁴² Tr. 219:24-220:3.

⁴³ Tr. 207:23-208:13.

Based upon his experience, Anderson estimated that, in the worst-case scenario without a reconstruction, annual costs would amount to approximately \$5,087.52 in materials and approximately \$9,000.00 in labor, although he acknowledged that maintenance needs necessarily fluctuate depending upon weather conditions and seasonal use.⁴⁴ If the parties were to completely rebuild the Lane, Anderson estimated the cost would be \$15,938.12, which would result in lower annual maintenance costs depending on the cost of Graded Aggregate Base.⁴⁵

Petitioners disputed Respondent's characterization of the Lane's condition. Petitioners claimed that the Lane has consisted of a clamshell surface since approximately 2006 and requires only ordinary maintenance rather than restoration or improvement.⁴⁶ Petitioners contend that Delaware law obligates users of a shared easement to maintain the roadway in proportion to their use, but does not require the dominant estate to finance improvements or upgrades desired by the owner of the servient estate.⁴⁷

The parties jointly bear the responsibility of maintaining the Lane. The Court next considers how the reasonable cost of maintenance should be allocated between the parties. The Restatement factors direct the Court to consider the parties'

⁴⁴ Tr. 198:2-6; 200:17-21; Resp't's Trial Ex. at 47.

⁴⁵ Tr. 204:8-16; 209:2-3; Resp't's Trial Ex. at 49-55. Anderson also testified that, if the landowners performed the maintenance themselves, the annual maintenance costs could be cut in half. Tr. 222:5-15.

⁴⁶ Tr. 292:18-293:3; Pet'rs' Post-Trial Mem. at 3-4.

⁴⁷ Pet'rs' Post-Trial Mem. at 5.

respective contributions to the roadway, the frequency and intensity of their respective uses, and other contributions that enhance the value of the servitude.⁴⁸

As to Respondent's contributions to the Lane, Respondent testified that in addition to maintaining the Lane by grading the roadway and adding stones bought by his previous neighbor, he expanded the Lane from what had previously been a six-to-eight-foot "two-rut road" into an approximately eight-to-fourteen-foot wide lane in 1996.⁴⁹ Respondent testified that his family has owned property along the Lane for generations and that he personally maintained the Lane for many years.⁵⁰ When Petitioners moved to the Subject Property, Respondent placed approximately seven tractor-trailer loads of millings on the Lane.⁵¹ Moreover, Respondent's son-in-law, Garon Warner ("Warner"), testified that he and Respondent redid the Lane with about six to ten loads of millings in roughly 2011 or 2012 and reestablished the crown.⁵² Warner also testified that he and Respondent graded the Lane and put new millings down in or around 2016.⁵³ Warner testified that he plowed the Lane for snow multiple times over the years.⁵⁴ According to Respondent, he continued

⁴⁸ RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.13(d).

⁴⁹ Tr. 46:15-50:24; 52:6-23.

⁵⁰ Tr. 22:18-24; 25:19-23.

⁵¹ Tr. 31:20-32:10. Petitioner testified that millings are ground-up asphalt blacktop that were used by the parties to fill in potholes on the Lane. Tr. 134:5-9; Tr. 136:6-7.

⁵² Tr. 132:24-133:16.

⁵³ Tr. 115:3-116:1.

⁵⁴ Tr. 118:19-119:11.

maintaining the Lane until approximately four or five years before trial, when Petitioners began performing maintenance using clamshells.⁵⁵

The record does not establish that Petitioners made any comparable contribution that enhanced the value or utility of the servitude beyond sporadic maintenance. Petitioner William Skotta testified that when the Petitioners first moved in, they put clamshells down with Respondent's help.⁵⁶ In 2024, Petitioners bought six loads of crusher run, costing approximately \$6,225, and put it on the road at the Respondent's request.⁵⁷ Petitioners estimated that they have spent approximately \$15,000 during their ownership of the Subject Property on snow removal, grading, and materials, including red clay, clamshells, and crusher run.⁵⁸ No evidence was presented at trial to corroborate those claimed expenses.⁵⁹

Respondent acknowledged that Petitioners placed a thin layer of stone on the Lane in recent years, filled potholes by hand, and removed snow.⁶⁰ Respondent testified that, in his view, those efforts were not performed in a manner that properly maintained the Lane.⁶¹

⁵⁵ Tr. 29:14-24.

⁵⁶ Tr. 236:4-14.

⁵⁷ Tr. 237:12-21; 249:1-4; 249:24-250:6.

⁵⁸ Tr. 246:4-16.

⁵⁹ Tr. 250:9-20.

⁶⁰ Tr. 33:9-20; 42:5-7; 119:4-5; 268:10-14.

⁶¹ Tr. 41:12-16; 69:2-6; 70:13-19.

Both parties use the Lane, with Petitioners acknowledging that their poultry operation constitutes the predominant use of the Lane.⁶² Petitioner Mary Skotta admitted that their use of the Lane, considering both the weight and volume of traffic and the resulting wear and tear, accounts for approximately sixty-five (65%) to seventy-five (75%) percent of its use.⁶³ Petitioners testified that trucks servicing the poultry operation include eighteen-wheel vehicles.⁶⁴ Because the Lane is approximately fourteen feet wide, those trucks may be required to move toward or beyond the edge of the travel surface when encountering vehicles traveling in the opposite direction, which can displace stone and contribute to deterioration of the roadway.⁶⁵

Travis Ralph (“Ralph”), a grow-out manager with Mountaire Farms, LLC (“Mountaire”), testified that he oversees chicken production carried out by contract growers, including the Petitioners.⁶⁶ As a part of his role, he visits the farms of the contract growers, but did not recall ever visiting the Petitioners’ property.⁶⁷ Ralph’s testimony focused on the Mountaire deliveries to the Petitioners’ property based on records Mountaire uses to track incoming and outgoing deliveries. According to those records and Ralph’s testimony, there were: eighteen live hauls on October

⁶² Tr. 44:6-18; 45:7-19; 82:8-83:14; 91:13-15; 99:5-13; 298:3-6.

⁶³ Tr. 298:3-9.

⁶⁴ Tr. 36:5-10.

⁶⁵ Tr. 38:17-22; 39:22-24; 117:21-118:18.

⁶⁶ Tr. 172:3-12.

⁶⁷ Tr. 172:13-14; 172:21-173:14.

16, 2024;⁶⁸ twenty live hauls on October 28, 2024;⁶⁹ eighteen live hauls on February 4, 2025;⁷⁰ ten live hauls on February 11, 2025;⁷¹ nine live hauls on February 12, 2025;⁷² twelve live hauls on May 5, 2025;⁷³ twenty live hauls on May 14, 2025;⁷⁴ eighteen live hauls on July 25, 2025;⁷⁵ and nineteen live hauls on August 6, 2025.⁷⁶

Over a span of just ten months, live hauls took place on nine separate dates, totaling 144 live hauls.⁷⁷ Each live haul consisted of two trips down the Lane: one entering and one exiting, with most trucks recorded as a gross weight of 80,000 pounds.⁷⁸ Ralph testified regarding other Mountaire deliveries to the Petitioners' poultry operation including deliveries for feed, rodent baiting, litter application, fuel and general maintenance.⁷⁹ Ralph also testified that Mountaire's contract with Petitioners requires Petitioners to maintain the access road properly.⁸⁰

The frequency and intensity with which the Respondent used the Lane is more consistent with residential use than commercial use. Respondent testified that the

⁶⁸ Tr. 182:1-2.

⁶⁹ Resp't's Trial Ex. at 25-26.

⁷⁰ Resp't's Trial Ex. at 24.

⁷¹ Tr. 181:3-4.

⁷² Tr. 180:24-181:1.

⁷³ Tr. 180:3-13.

⁷⁴ Tr. 179:16-180:2.

⁷⁵ Tr. 176:13-19.

⁷⁶ Tr. 175:2-22.

⁷⁷ The amount of 144 live hauls is based on the recorded data from Mountaire's M-Tech system which is used to track incoming and outgoing deliveries. In his testimony, Ralph clarified that the M-Tech system consolidates all the transactions for that particular day. This means there could be multiple loads on one day, but the system records it as one load that one day. Tr. 182:11-22.

⁷⁸ Tr. 174:20-175:18; 180:14-18.

⁷⁹ Tr. 184:23-185:21.

⁸⁰ Tr. 188:9-18.

use is limited to his own use in connection with the farm;⁸¹ use by his daughter who lives nearby, and her family and visitors, including for recreational activities such as riding four-wheelers, hunting, and playing on the farm;⁸² use by his second cousin and their senior residents who live at the base of the Lane;⁸³ and use by his two tenants who rent the residence on the Lane.⁸⁴ Additionally, there are other related uses associated with the property, such as access by service vehicles like dumpster trucks or oil delivery trucks.⁸⁵

The evidence establishes that Petitioners' heavy commercial traffic from their poultry operation places a materially greater burden on the Lane than the residential and agricultural traffic attributable to Respondent and those accessing Respondent's property. The Lane is not merely a means of access to the poultry operation; it is an integral part of the daily functioning of the Petitioners' business. Without reliable access for the trucks and tractor trailers responding to the poultry operation, Petitioners cannot sustain the regular deliveries necessary to keep the poultry business operating. Moreover, Ralph testified at trial that integrators like Mountaire require producers, like the Petitioners, to maintain the access and egress to their farm.⁸⁶ Thus, to ensure the continued viability of their poultry operation, Petitioners

⁸¹ Tr. 24:20-23; 45:7-11; 78:8-14.

⁸² Tr. 44:6-18.

⁸³ Tr. 93:9-95:10.

⁸⁴ Tr. 45:12-14; 81:16-82:13.

⁸⁵ Tr. 45:15-17; 91:13-15; 99:5-13.

⁸⁶ Tr. 188:9-18.

should recognize the importance of maintaining the Lane in a condition capable of accommodating heavy commercial traffic without encountering unnecessary bumps in the road.

“In equity, those entitled to use land subject to an easement jointly have obligations for maintenance proportional to their use.”⁸⁷ Petitioners, as owners of the dominant estate, shall be responsible for seventy-five percent (75%) of the reasonable third-party costs actually incurred for future maintenance based on their proportional use constituting approximately seventy-five percent (75%) of the Lane’s total use. Respondent, as owner of the servient estate, shall be responsible for twenty-five percent (25%).⁸⁸

B. Restoration of the Lane

The next issue before the Court is whether the Lane’s current condition requires restoration beyond ordinary recurring maintenance. If so, the question becomes how to determine the proportionate share of restoration costs to be paid by the dominant and servient landowners.

⁸⁷ *Sandie, LLC v. Plantations Owners Ass’n, Inc.*, 2012 WL 3041181, at *9 (Del. Ch. July 25, 2012).

⁸⁸ This obligation attaches to the property and the property owner based on the current usage. Any material change in the parties’ respective levels of use may warrant a corresponding adjustment to the proportions set forth in this Report.

“The manner, frequency, and intensity of the use may change over time to take advantage of developments in technology and to accommodate normal development of the dominant estate or enterprise benefited by the servitude. Unless authorized by the terms of the servitude, the holder is not entitled to cause unreasonable damage to the servient estate or interfere unreasonably with its enjoyment.”⁸⁹

“When an easement is improperly moved without the consent of both the dominant and the servient estate owner, the Court may [] require reconstruction of the original road.”⁹⁰

Anderson testified that the Lane had lost a good portion of the crown, there were a lot of potholes and truck ruts, and some parts of it had a negative crown causing water to become trapped and rapid deterioration.⁹¹ The evidence at trial establishes that an adequate crown is necessary to promote proper drainage from the travel surface and is particularly important in light of the Lane’s present use.⁹² Without an adequate crown, water does not properly drain from the roadway, contributing to potholes, displacement of aggregate, and further deterioration.⁹³

⁸⁹ *Green v. Templin*, 2010 WL 2734147, at *9 (Del. Ch. July 2, 2010) (citing RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.10).

⁹⁰ *Reynolds v. Dep’t of Nat. Res. & Env’t. Control*, 2019 WL 6724424, at *3 (Del. Ch. Nov. 20, 2019) (citing *Acierno v. Goldstein*, 2005 WL 3111993, at *11 (Del. Ch. Nov. 16, 2005)).

⁹¹ Tr. 201:8-11; 219:15-220:3.

⁹² Tr. 29:2-7; 113:9-24; 157:18-20; 201:8-11; 219:21-220:3.

⁹³ Tr. 29:2-7; 30:6-14; 113:9-24.

Because the Lane serves as the sole practical means of ingress and egress to an active commercial poultry operation and regularly accommodates substantial commercial truck traffic, adequate grading and drainage are necessary to maintain the Lane in a reasonably usable condition.⁹⁴

Petitioners disputed Anderson's characterization of the Lane. Petitioner William Skotta testified that the Lane did not have a crown before he put down the clamshells.⁹⁵ Petitioner Mary Skotta testified that, when Petitioners first purchased the property, there was a hole in the Lane deep enough that the vehicle's bumper would contact the roadway.⁹⁶ Petitioners, however, did not present expert testimony concerning the Lane's condition, an alternative method of restoring the Lane, or an alternative estimate of the reasonable cost of the work that Anderson described. Nor did Petitioners offer other evidence sufficient to show that reestablishing the crown is unnecessary.

Respondent testified that he stopped making repairs to the Lane because Petitioners only wanted to use clamshells to fix the Lane which degraded the road to such an extent that it no longer had a crown in it.⁹⁷ When asked if the Petitioners ever used industry standard materials like crusher run and millings, Respondent

⁹⁴ Tr. 106:15-23; 143:4-20; 157:18-20.

⁹⁵ Tr. 239:16-18.

⁹⁶ Tr. 274:10-13.

⁹⁷ Tr. 29:18-30-14.

testified that, around the time their dispute arose, Petitioners put a thin layer of stone on the road and filled potholes with a shovel.⁹⁸ Respondent further testified that those repairs were not sufficient and that the road needs to be graded.⁹⁹ Continued deterioration of the crown, Respondent testified, occurred when the Petitioners plowed the Lane for snow by plowing all the way down to the surface of the stone layer.¹⁰⁰

On the record presented, the Court finds that reestablishing an adequate crown is necessary to restore the Lane to good working order. The Court does not regard that work as an improvement or enhancement of the Lane. Rather, it is restorative work directed to correcting the present condition of the Lane and returning it to a condition reasonably suitable for its established use. To regrade the Lane incurs a mutual benefit to the parties in that it has the potential to alleviate future costs associated with maintenance.

Petitioners shall be responsible for seventy-five percent (75%) of the reasonable third-party costs actually incurred for the restoration based on their proportional use constituting approximately seventy-five percent (75%) of the Lane's total use. Respondent shall be responsible for twenty-five percent (25%).

⁹⁸ Tr. 33:6-18.

⁹⁹ Tr. 33:6-20.

¹⁰⁰ Tr. 41:3-16.

C. Attorneys' Fees

Respondent asks that the Court award its attorneys' fees and costs, arguing that Petitioners have caused several delays and prolonged the proceedings, which should be considered bad faith conduct.¹⁰¹ Petitioners oppose Respondent's request and assert that Respondent is not entitled to attorneys' fees because Respondent "identifies no clear evidence of knowingly frivolous claims, falsified records, or intentional, undue delay that caused needless expense."¹⁰²

Delaware follows the "American Rule," which provides that each party is normally responsible for their own attorneys' fees, whatever the outcome of the litigation, absent express statutory language to the contrary or an equitable doctrine exception, such as the bad faith exception.¹⁰³ "The bad faith exception is applied in 'extraordinary circumstances' as a tool to deter abusive litigation and to protect the integrity of the judicial process."¹⁰⁴ This Court imposes the "stringent evidentiary burden of producing clear evidence" of bad faith on the party seeking an award of attorneys' fees.¹⁰⁵ The facts here provide no basis to conclude Petitioners' actions

¹⁰¹ D.I. 75.1.

¹⁰² D.I. 79 ¶ 6.

¹⁰³ See *Shawe v. Elting*, 157 A.3d 142, 149 (Del. 2017) (citation omitted); see also *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245 (Del. 2007). "Delaware courts have awarded attorney's fees for bad faith when parties have unnecessarily prolonged or delayed litigation, falsified records or knowingly asserted frivolous claims." *Kaung v. Cole Nat'l Corp.*, 884 A.2d 500, 506 (Del. 2005) (quoting *Johnston v. Arbitrium (Cayman Is.) Handels AG*, 720 A.2d 542, 546 (Del. 1998)) (citation modified).

¹⁰⁴ *Montgomery Cellular Holding Co. v. Dobler*, 880 A.2d 206, 227 (Del. 2005) (citation omitted).

¹⁰⁵ *Dearing v. Mixmax, Inc.*, 2023 WL 2632476, at *5 (Del. Ch. Mar. 23, 2023) (citation modified).

implicated the bad faith exception to justify the extraordinary action of fee shifting. I decline to shift fees.

III. CONCLUSION

For the reasons set forth above, I find that the Lane shall be restored to good working order, including reestablishing an adequate crown and placing aggregate material as reasonably necessary to accomplish that restoration. Because Respondent owns the Lane and has historically overseen its condition and maintenance, Respondent shall be responsible for arranging for such restoration, and future maintenance, through an independent third-party contractor, unless otherwise agreed to by the parties in writing.¹⁰⁶

Petitioners shall be responsible for seventy-five percent (75%) of the reasonable third-party costs actually incurred for restoration of the Lane, and Respondent shall be responsible for twenty-five percent (25%). The parties shall confer on a timeline outlining the plan for restoration of the Lane and report back to

¹⁰⁶ Petitioners have indicated that they intend to continue performing restoration and maintenance using their own time, labor, and machinery. However, because that approach contributed to the circumstances giving rise to this case, the Court finds that any future restoration and maintenance should be performed by an independent third-party contractor. Respondent shall provide Petitioners with reasonable advance notice of non-emergency restoration or maintenance work for which contribution will be sought and, when reasonably practicable, a written estimate of the anticipated work and cost, followed by documentation of the actual third-party expense incurred. Maintenance shall be undertaken as reasonably necessary based upon the condition of the Lane, weather, traffic, drainage, and other conditions affecting the roadway. Any work undertaken solely to improve or enhance the Lane beyond the condition reasonably necessary to maintain the Lane in good working order shall be at Respondent's sole expense, unless otherwise agreed to by the parties in writing. Respondent shall trim and maintain the trees and branches located on his property adjacent to the Lane as reasonably necessary to prevent such trees and branches from obstructing or interfering with reasonable ingress and egress along the Lane.

the Court within 60 days. Following completion of the restoration, Petitioners shall be responsible for seventy-five percent (75%) of the reasonable third-party costs actually incurred for future maintenance of the Lane, and Respondent shall be responsible for twenty-five percent (25%).¹⁰⁷

This is a final report, and exceptions may be taken under Court of Chancery Rule 144.

Respectfully,

/s/ Caroline C. Brittingham

Magistrate in Chancery

¹⁰⁷ Any material change in the parties' respective levels of use may warrant a corresponding adjustment to the maintenance and restoration proportions set forth in this Report.