CHESHIRE LAND TRUST, LLC
v. TIMOTHY CASEY ET AL.
(AC 36311)

Sheldon, Prescott and Harper, Js.

Argued January 13—officially released April 28, 2015

(Appeal from Superior Court, judicial district of New Haven, Housing Session, Zemetis, J.)

James M. Miele, for the appellants (named defendant et al.).

Andrew S. Knott, for the appellee (plaintiff).

Opinion

PRESCOTT, J. In this summary process action, the defendants Timothy Casey and Ives Farm, LLC,[1] were ordered evicted from farmland owned by the plaintiff, Cheshire Land Trust, LLC. On appeal, the defendants advance two principal claims.[2] First, they claim that the trial court improperly found that the plaintiff had unequivocally notified them that it was terminating their leases. Second, they claim that the court improperly determined that Casey was not, as the result of an easement by implication, entitled to continue using the farmland. We disagree with each of these claims and, therefore, affirm the judgment of possession rendered by the trial court in favor of the plaintiff.

The following facts, as found by the court, are relevant to our resolution of this appeal. Betty Ives owned a large farm, which included a residence, located at 1585 Cheshire Street in Cheshire. In 1986, Casey approached her about leasing some of her farmland. The two of them entered into an oral agreement that provided, among other things, that Casey could work the land on the property and use the farm's only greenhouse. Ives, in turn, agreed to fund the costs of seed, soil, tools, utilities, tractors, and any overhead associated with farming the land. Both of them would split the profits, after expenses, from the sale of any farm produce.

In the twenty years that followed the formation of their agreement, six additional greenhouses were constructed on the property. Of these six additional greenhouses, two were constructed using funds provided by Casey. Ives funded the construction of the remaining four. Ives additionally paid for the site preparation, underground electrical power, water, plumbing, irrigation systems, ventilating fans, and oil powered furnaces necessary to operate the greenhouses.

Casey and Ives' contractual arrangement continued until Ives' death in 2006. In her will, she "[gave] and bequeath[ed]" to Casey "all of the greenhouses located on [her] property, two of which he already owns, and all farm machinery and equipment including the generator, tractor and trucks, to be his absolutely." Ives further "[gave], devis[ed] and bequeath[ed]" in her will all of her real property, "together with any sheds, barns and other out buildings located on said property, but exclusive of any greenhouses located thereon," to the "Cheshire Land Trust, Inc.," "subject to any easements which may have been imposed upon said property prior to [Ives'] death."

Shortly thereafter, in 2007, the defendants began leasing portions of the farm from the plaintiff. Specifically, Casey leased part of the farm for use as his residence. Ives Farm, LLC, a limited liability company of which Casey is the sole member, leased approximately forty-

seven acres of tilled farmland, which included agricultural buildings, as well as acreage for the seven greenhouses. The defendants remained the plaintiff's tenants for approximately four years. At that time, the plaintiff, citing nonpayment of rent and termination of tenancy by lapse of time, served the defendants with notices to quit possession of the property. When the defendants failed to leave the property, the plaintiff initiated this summary process action against them seeking an eviction.

At trial, the defendants admitted that they had failed to pay rent in accordance with the terms of the leases and that their respective tenancies had expired by lapse of time. They contended, however, that they were entitled to continue using the property for at least two reasons. First, they claimed that the plaintiff had failed to provide them unequivocal notice that it was terminating their leases.[3] Second, they claimed that Casey was entitled to an easement by implication as a result of, inter alia, his need to access and use the greenhouses on the property.

In a comprehensive and well reasoned memorandum of decision, the trial court rejected both of the defendants' arguments. Specifically, the court determined that the plaintiff had unequivocally notified the defendants, in a letter dated October 22, 2010, that it was terminating their lease agreements, and that it had not subsequently equivocated about its intent to proceed with evicting them. The court additionally rejected Casey's claim to an easement by implication after concluding that the basis on which he predicated his need for the easement—to access the greenhouses on the property—lacked factual support. Particularly, the court concluded that the farm's greenhouses were not fixtures, but were instead removable personal property. Accordingly, the court rendered judgment of possession in favor of the plaintiff on the basis of both claims asserted in its complaint, and this appeal followed. Additional facts will be set forth as necessary.

The defendants raise two principal claims on appeal. First, they claim that the court improperly determined that the plaintiff had unequivocally notified them that it was terminating their leases. Second, they claim that the court improperly determined that Casey was not entitled to an easement by implication. We disagree with both of these claims.

I

The defendants first claim that the court improperly determined that the plaintiff had unequivocally notified them that it was terminating their leases. Specifically, they contend that the plaintiff's October 22, 2010 letter to the defendants, in which the plaintiff directed them to vacate the property by the end of the following month, did not constitute unequivocal notice because

it described an avenue through which the defendants could potentially continue to use the property.[4] The defendants further contend that even if the plaintiff had provided them with unequivocal notice of its intent to terminate their leases, its subsequent actions called that intent into question and thereby rendered its prior notice equivocal. We do not agree.

We begin our analysis by setting forth the standard of review. "Summary process is a special statutory procedure designed to provide an expeditious remedy. . . . It enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms. . . . Summary process statutes secure a prompt hearing and final determination. . . . Therefore, the statutes relating to summary process must be narrowly construed and strictly followed." (Internal quotation marks omitted.) *Getty Properties Corp.* v. *ATKR, LLC*, 315 Conn. 387, 405–406, 107 A.3d 931 (2015).

"Service of a valid notice to quit, which terminates the lease and creates a tenancy at sufferance . . . is a condition precedent to a summary process action . . . . It is well settled that breach of a covenant to pay rent does not automatically result in the termination of a lease . . . rather, it gives the lessor a right to terminate the lease which he may or may not exercise. . . . In order to effect a termination, the lessor must perform some unequivocal act which clearly demonstrates his intent to terminate the lease . . . . [T]here is almost no limit to the possible words or deeds which might constitute the unequivocal act necessary to terminate the lease. . . . Whether there has been a termination or voluntary surrender of a lease is to be determined by the intention of the parties, and thus, it is usually a question of fact for the [trier]." (Citations omitted; internal quotation marks omitted.) Id., 407.

"Questions of fact are subject to the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence . . . we give great deference to its findings." (Internal quotation marks omitted.) *Cornfield Associates Ltd. Partnership* v. *Cummings*, 148 Conn. App. 70, 76, 84 A.3d 929 (2014), cert. denied, 315 Conn. 929, A.3d (2015).

The following additional facts found by the trial court are relevant to our resolution of the defendants' claim. The plaintiff advised the defendants in a letter dated October 22, 2010, that their leases would terminate on November 30, 2010. The relevant text of the letter pro-

vides: "Both the lease on the Ives farm house and the lease on the Ives farm agricultural lands between the [plaintiff] and yourself ha[ve] expired and been on a month to month basis. You have not made the lease payments for an extended period of time. Therefore, this is to notify you that the business relationship between yourself and the [plaintiff] is terminated. We are requesting immediate payment of all past due amounts. We are in the process of contracting with another entity for the use of the house, agricultural buildings and agricultural lands (including the land under the existing greenhouses). To make an effective transition we are providing the summary below and the options available to you. You have until 5:00 o'clock p.m. Friday October 22, 2010 to inform us if you have selected the alternative option. If you have not selected it by that time, the default option is to be implemented."

Immediately below this language appeared three boxes. The first box, labeled "[s]tatus," contained the following text: "The Land Lease and Residence Lease has expired *and will not be renewed*. Significant back payments are owed." (Emphasis added.) Adjacent to this box were two additional boxes appearing under the heading, "[o]ptions." The first of these two boxes, labeled "[d]efault," contained the following text: "Relocate residence. & move equipment and the green houses by November 30, 2010." The second box, labeled "[a]lternative," stated: "Sell the greenhouses to the [plaintiff]. Value of greenhouses equals amount owed. Work out house use, equipment storage and potential employment with new leasee."

In advancing their claim that the plaintiff's letter did not constitute unequivocal notice that the plaintiff was terminating their leases, the defendants rely on this court's decision in *Centrix Management Co., LLC* v. *Valencia*, 132 Conn. App. 582, 587, 33 A.3d 802 (2011). In that case, we observed that "providing a tenant with a new lease agreement or with an invitation to enter into a new rental agreement after a notice to quit has been served is inconsistent with an unequivocal notice to quit." Id. The defendants contend that because the plaintiff offered them a choice between vacating the premises and subleasing the property from a prospective tenant, its notice was equivocal under the principle observed in *Centrix Management Co., LLC*.

We find the defendants' argument unpersuasive for two reasons. First, the plaintiff's letter, reasonably construed, contained no invitation to the defendants to enter into a new lease agreement with the plaintiff. At most, the letter explained that the defendants could attempt to "[w]ork out" an arrangement for "house use, equipment storage and potential employment" with a new incoming tenant. That arrangement, however, would have to be between the defendants and the new lessee, as the plaintiff plainly stated that its lease with

the defendants is over and "will not be renewed."

Second, even if we assume that the plaintiff's letter could be construed as inviting the defendants to enter into a new lease, that invitation would not have rendered the plaintiff's notice equivocal because it was accompanied by language clearly communicating that eviction would occur in the absence of an agreement to the contrary. In *Centrix Management Co., LLC*, we recognized "the important public policy of encouraging pretrial settlements . . . ." *Centrix Management Co., LLC* v. *Valencia*, supra, 132 Conn. App. 590 n.4. Thus, we concluded that a landlord may "try to settle a case after service of a notice to quit, [provided the landlord] inform[s] the tenant that the summary process action is going forward and that unless a full settlement is reached between the parties, the eviction action will proceed to conclusion." Id., 590. This approach, we determined, "strikes the appropriate balance between allowing settlement discussions to continue and helping to ensure that the tenant is not unsure as to whether he or she still may be evicted pursuant to the pending action." Id., 590 n.4.

The plaintiff's letter clearly explained that, if the defendants failed to make arrangements with the plaintiff's new tenant for continued use of the premises, the "[d]efault" option—which required the defendants to vacate the premises—would be implemented. This statement, taken together with the plaintiff's unambiguous declaration that the defendants' lease would not be renewed, alerted the defendants that the plaintiff would proceed with an eviction action unless they reached an agreement with the new lessee.

The defendants nevertheless contend that even if the plaintiff initially notified them that it was unequivocally terminating their leases, its subsequent actions rendered that notice equivocal. At trial, Casey testified that he attempted to negotiate an agreement with T& D Growers, LLC, a prospective tenant, for continued use of the property. He was unwilling, however, to agree to the terms proposed in a sublease between T&D Growers, LLC, and the defendants. When Casey informed the plaintiff's treasurer, David Schrumm, of the impasse in negotiations between T&D Growers, LLC, and himself, Schrumm allegedly issued an ultimatum to Casey that he either sign the proposed sublease within thirty-five minutes or the plaintiff would follow through with its eviction action. Thereafter, at a meeting between Casey, Schrumm, and the owner of T&D Growers, LLC, Joe Arisco, Arisco promised Casey, without objection from Schrumm, that he would alter the language of proposed lease documents to accommodate Casey's concerns. Despite this assurance, however, no agreement was reached.

The defendants claim that Schrumm's comments, and his apparent acquiescence in Arisco's promise to alter

the language of the proposed lease, constituted equivocation as to the plaintiff's intent to proceed with evicting the defendants.[5] We do not agree that such a conclusion necessarily follows from the evidence adduced at trial. To the contrary, the court was free to find, as it did, that Schrumm's comments actually constituted a clear and unequivocal warning to the defendants that the plaintiff intended to proceed with evicting them should they decline to reach an agreement with T&D Growers, LLC. That determination is consistent with our conclusion in *Centrix Management Co., LLC*, that a landlord is not prohibited from attempting to settle a tenancy dispute with a tenant provided it informs the tenant that eviction will result should settlement efforts fail. Accordingly, we conclude that the court's factual determination that the plaintiff had unequivocally notified the defendants that it was terminating their leases was not clearly erroneous.

II

The defendants next claim that the court improperly determined that Casey was not entitled to an easement by implication. In support of this claim, the defendants advance the following two part argument. First, they contend that the greenhouses are fixtures and, therefore, part of the devised real property. Second, they argue that because the greenhouses are part of the farm realty, an easement by implication was both intended by Ives and necessary for Casey to access them. We conclude that the court's finding that the greenhouses were not fixtures was not clearly erroneous. Consequently, we reject the defendants' claim that the court improperly determined that Casey was not entitled to an easement by implication.

Our analysis of the defendants' claim begins with a review of the fundamental legal principles pertaining to easements. "It is well settled that [a]n easement creates a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the rules authorized by the easement. . . . [T]he benefit of an easement . . . is considered a nonpossessory interest in land because it generally authorizes limited uses of the burdened property for a particular purpose. . . . [E]asements are not ownership interests but rather privileges to use [the] land of another in [a] certain manner for [a] certain purpose . . . ." (Internal quotation marks omitted.) *Stefanoni* v. *Duncan*, 282 Conn. 686, 700, 923 A.2d 737 (2007). Easements may be created by, inter alia, express grant; *Martin Drive Corp.* v. *Thorsen*, 66 Conn. App. 766, 773, 786 A.2d 484 (2001); implication; *Utay* v. *G.C.S. Realty, LLC*, 72 Conn. App. 630, 636–37, 806 A.2d 573 (2002); necessity; *Montanaro* v. *Aspetuck Land Trust, Inc.*, 137 Conn. App. 1, 27–28, 48 A.3d 107, cert. denied, 307 Conn. 932, 56 A.3d 715 (2012); and prescription. *Frech* v. *Piontkowski*, 296 Conn. 43, 54–55, 994 A.2d 84 (2010).

"Easements are classified as either easements appurtenant or easements in gross. . . . Two distinct estates are involved in an easement appurtenant: the dominant to which the easement belongs and the servient upon which the obligation rests. . . . An easement appurtenant must be of benefit to the dominant estate but the servient estate need not be adjacent to the dominant estate. . . . An easement appurtenant lives with the land. It is a parasite which cannot exist without a particular parcel of realty. An appurtenant easement is incapable of existence separate and apart from the particular land to which it is annexed. . . . [An easement appurtenant] inheres in the land and cannot exist separate from it nor can it be converted into an easement in gross. . . . An appurtenant easement cannot be conveyed by the party entitled to it separate from the land to which it is appurtenant." (Citation omitted; internal quotation marks omitted.) *Hyde Road Development, LLC* v. *Pumpkin Associates, LLC*, 130 Conn. App. 120, 125, 21 A.3d 945 (2011).

An easement in gross, on the other hand, "is one [that] does not benefit the possessor of any tract of land in his use of it as such possessor. . . . An easement in gross belongs to the owner of it independently of his ownership or possession of any specific land. Therefore, in contrast to an easement appurtenant, its ownership may be described as being personal to the owner of it." (Internal quotation marks omitted.) *Zirinsky* v. *Carnegie Hill Capital Asset Management, LLC*, 139 Conn. App. 706, 714, 58 A.3d 284 (2012). "An easement in gross is an easement with a servient estate but no dominant estate. Because no dominant tenement exists, the easement right does not pass with the title to any land." (Footnote omitted.) 25 Am. Jur. 2d 679, Easements and Licenses § 10 (2014).

The defendants concede that the type of easement they seek—an implied easement in gross—is one not previously recognized in this state. They maintain, however, that no logical or legal reason prevented the court from granting them one. We note that there is a dearth of extrajurisdictional case law addressing this matter. The few judicial decisions we have found suggest that easements by implication are, by their nature, necessarily *appurtenant*. See, e.g., *Patterson* v. *Buffalo National River*, 76 F.3d 221, 224 (8th Cir. 1996) ("[e]asements by implication and by necessity are appurtenant easements"); *United States* v. *Balliet*, 133 F. Supp. 2d 1120, 1126 (W.D. Ark. 2001) (same); *Horowitz* v. *Noble*, 79 Cal. App. 3d 120, 132, 144 Cal. Rptr. 710 (1978) ("an implied easement is necessarily an appurtenant easement" [internal quotation marks omitted]); *Lutz* v. *Krauter*, 553 N.W.2d 749, 753 (N.D. 1996) (same).[6]

Connecticut case law seems to agree with that conclusion. Both our Supreme Court and this court have consistently discussed easements by implication with

reference to a dominant estate, a characteristic inherently incompatible with an easement in gross. See *McBurney* v. *Paquin*, 302 Conn. 359, 366–67, 28 A.3d 272 (2011) ("an implied easement arises when it is intended by the parties . . . and when the easement is reasonably necessary for the use and normal enjoyment of the *dominant estate*[*s*]" [emphasis added; internal quotation marks omitted]); *Thomas* v. *Collins*, 129 Conn. App. 686, 692–93, 21 A.3d 518 (2011) (same); *Gemmell* v. *Lee*, 59 Conn. App. 572, 577, 757 A.2d 1171 (same), cert. denied, 254 Conn. 951, 762 A.2d 901 (2000); 25 Am. Jur. 2d, supra, § 10 p. 679 ("[a]n easement in gross is an easement with a servient estate *but no dominant estate*" [emphasis added]). Moreover, "implied easements are disfavored in Connecticut and are allowed to a very much more limited extent than in many other states." (Internal quotation marks omitted.) *Kenny* v. *Dwyer*, 16 Conn. App. 58, 65, 546 A.2d 937, cert. denied, 209 Conn. 815, 550 A.2d 1084 (1988). This principle cautions against expanding their scope without a compelling basis.

In any event, the present case does not require us to determine whether implied easements in gross are properly recognized under our law. For reasons we now discuss, we conclude that the trial court's finding that the greenhouses were not fixtures precluded the defendants from obtaining *any* implied easement, whether appurtenant or in gross.

"The principle underlying the creation of an easement by implication is that it is so evidently necessary to the reasonable enjoyment of the granted premises, so continuous in its nature, so plain, visible, and open, so manifest from the situation and relation of the two tracts that the law will give effect to the grant according to the presumed intent of the parties. . . . Thus, in determining whether an easement by implication has arisen, we examine: (1) the intention of the parties, and (2) [whether] the easement is reasonably necessary for the use and normal enjoyment of the dominant estate." (Citation omitted; internal quotation marks omitted.) *Thomas* v. *Collins*, supra, 129 Conn. App. 692–93.[7]

Generally, "[w]e determine whether the grantor intended to establish an easement [by implication] by . . . examin[ing] . . . the deeds, maps and recorded instruments introduced as evidence. Intent as expressed in deeds and other recorded documents is a matter of law." (Internal quotation marks omitted.) *Sanders* v. *Dias*, 108 Conn. App. 283, 290, 947 A.2d 1026 (2008), vacated in part on other grounds, 120 Conn. App. 521, 992 A.2d 1141 (2010); see *McBurney* v. *Cirillo*, 276 Conn. 782, 799, 889 A.2d 759 (2006) ("[t]he issue of whether a map creates an easement by implication is a question of law over which our review is plenary"), overruled in part on other grounds by *Batte-Holmgren* v. *Commissioner of Public Health*, 281 Conn. 277, 284–

89, 914 A.2d 996 (2007). In some cases, however, such as the present one, the court "must look beyond the [relevant documents] to determine whether there exists an easement by implication"; *Sanders* v. *Dias*, supra, 291; and the question thus becomes one of fact subject to the clearly erroneous standard of review. Id.; see *Thomas* v. *Collins*, supra, 129 Conn. App. 692 ("[b]ecause the parties agree that none of the pertinent deeds contains any reference to an easement, we review the court's factual determination that the defendants acquired easements by implication under the clearly erroneous standard"). As previously discussed, "[a] finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence . . . we give great deference to its findings." (Internal quotation marks omitted.) *Cornfield Associates Ltd. Partnership* v. *Cummings*, supra, 148 Conn. App. 76.

The foundation of the defendants' claim to an easement by implication is their assertion that the greenhouses were permanent fixtures on the property. Without that foundation, the defendants' task of establishing that Ives intended to grant Casey an indefinite interest in the farm realty is substantially more difficult. Therefore, we focus our analysis on the trial court's conclusion that the greenhouses were personal property rather than fixtures.

"The question as to whether a particular piece of property is personalty or a fixture is a question of fact." *ATC Partnership* v. *Windham*, 268 Conn. 463, 479, 845 A.2d 389 (2004). "To constitute a fixture, we must look at the character of how the personalty was attached to real estate, the nature and adaptation of the [personalty] to the uses and purposes to which they were appropriated at the time the annexation was made, and whether the annexer intended to make a permanent accession to the realty. . . . The character of the personal property attached to the real estate is determined at the time that the property is attached to the real estate." (Internal quotation marks omitted.) Id., 479–80.

"This standard, which we have reaffirmed consistently, is the method by which we determine whether a piece of personal property has become so connected to realty so as to have lost its character as personalty and become a fixture. The nature of property, however, is such that its status as either personalty or fixture is subject to multiple generations of transformation. Just as it is axiomatic that articles of personal property may, through treatment by those exerting control over the property, become fixtures, the inverse is also true–fixtures may be severed from the underlying realty and

thereby revert back to the status of personalty. With regard to the potential progression of property from fixture to personalty, the general rule is that such severance may be either actual, in the sense of physical separation from the realty and removal from the land, or constructive, as in a situation in which a party objectively manifests its consideration of property as personalty . . . or in which parties agree as between themselves to consider a fixture as personalty." (Citations omitted.) Id., 480.

At trial, Casey testified that the greenhouses consisted of ground posts measuring approximately three to four feet long and spaced four feet apart. On top of the ground posts sat "hoops" over which a long piece of plastic rested. One of these structures can be constructed, with an experienced crew, in a weekend. Each greenhouse was equipped with water, heat, ventilation, and an irrigation system. The greenhouses can be picked up and moved, although doing so would be difficult.

The trial court relied significantly on this testimony in making findings about the nature of the greenhouses and the character of their attachment to the property. In its memorandum of decision, the court determined that "[t]he greenhouses . . . are metal skeletal structures over which a plastic coating is stretched. The metal skeleton was pieced together and secured to the ground with metal stakes. The greenhouses can be disassembled and reassembled elsewhere." Later, in a response to a motion for articulation filed by the defendants, the court further noted that the greenhouses lacked a solid foundation, were capable of being assembled over a weekend by an experienced crew, could be disassembled and removed from the farm, and were not subject to municipal taxation as buildings or permanent structures. Thus, the court concluded that "the attachment of these metal skeletons to the land was of a temporary nature and, while the provision of water and electricity to the greenhouse sites made movement of the structures less likely, the attachment of the greenhouses to the land remained simple metal stakes to the bare ground."

We conclude that the court's findings are supported by Casey's testimony and provide an ample evidentiary basis for its factual determination that the greenhouses were not fixtures. In reaching this conclusion, we are mindful of the defendants' contention that some of the evidence offered at trial may suggest that the greenhouses were, in fact, intended to be fixtures. The defendants argue, for instance, that the length of time the greenhouses have existed on the property and their strong connection to the farm's operations support the determination that Ives intended them to be a permanent part of the realty.[8] Even if we were to agree with these arguments, however, it is well established that

"[c]entral to the factfinding process is the process of drawing inferences, and central to the process of drawing inferences is the notion that *the factfinder is not required to draw only those inferences consistent with one view of the evidence, but may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical.*" (Emphasis added; internal quotation marks omitted.) *PSE Consulting, Inc.* v. *Frank Mercede & Sons, Inc.*, 267 Conn. 279, 307–308, 838 A.2d 135 (2004). In the present case, we cannot conclude that the trial court's conclusions were unreasonable or illogical. We therefore conclude that the court's factual determination that the greenhouses were not fixtures was not clearly erroneous.

Having determined that the court's finding that the greenhouses were not fixtures was not clearly erroneous, we turn to the defendants' easement claim. As previously discussed, to establish their entitlement to an easement by implication, the defendants were required to prove that, at the time that Ives conveyed the greenhouses to Casey, it was so manifest from the surrounding circumstances that she intended for him to have an easement over the farmland for the purpose of accessing and using them. See *Thomas* v. *Collins*, supra, 129 Conn. App. 692–93. We conclude that the court properly determined that the defendants had failed to meet their burden.[9]

The defendants' claim that Ives intended for Casey to have an easement over the farmland to access the greenhouses rests on the premise that the greenhouses are part of the farm realty. They argue that because the greenhouses are fixtures, their conveyance to Casey necessarily carried with it the implication that he would have an easement over the farmland of sufficient scope and duration to continue making use of them. The trial court, however, properly determined that the greenhouses were personal property, not fixtures. As such, the greenhouses are severable from the farm realty and capable of being relocated and used elsewhere. For this reason, we can discern no logical basis why Casey requires a lifelong, nonpossessory interest over the farmland to continue using them. Rather, it appears that his need to access the farmland is temporary, and limited in scope to accomplishing the task of disassembling and removing the greenhouses. In light of this limited and temporary need, we conclude that the court properly determined that the defendants had failed to establish that Ives intended to grant Casey the broad and ongoing right that he claims. Accordingly, we conclude that the court's conclusion that the defendants were not entitled to an easement by implication was not clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Dyan Casey and John Doe also were named as defendants, but they were defaulted for failure to appear and have not participated in this appeal. We therefore refer in this opinion to Timothy Casey and Ives Farm, LLC, as the defendants.

[2] The defendants raise nine claims in their appellate brief. Specifically, they claim that the trial court improperly (1) determined that the plaintiff's written notice to the defendants constituted an unequivocal notice of termination of the lease between Ives Farm, LLC, and the plaintiff; (2) determined that the plaintiff did not equivocate after providing its notice of termination to the defendants; (3) determined that Betty Ives' will expressed the unambiguous intent that greenhouses on the farm not be fixtures; (4) prohibited a witness for the defendants from testifying about whether Ives intended to allow Casey to use the greenhouses on the farm; (5) determined that Casey was not entitled to an easement by implication by applying an incorrect standard; (7) determined that proof of unity of interest was required to establish an easement by implication; (8) determined that an easement by implication cannot be created without the existence of a dominant estate; and (9) concluded that Casey is not entitled to an easement by implication.

We decline to address each of these claims individually for two reasons. First, many of the nine claims raised by the defendants are intertwined with or subsumed by the two principal claims raised in the defendants' appeal, namely, that the court improperly determined that the plaintiff had unequivocally notified them that it was terminating their leases, and that the court improperly determined that they were not entitled to easements by implication. Second, in light of our determination that the court's finding that the greenhouses on the farm were not fixtures was not clearly erroneous, it is unnecessary for us to reach any claims not addressed within our analysis of the defendants' two primary claims.

[3] The trial court also considered and rejected, as a separate ground for finding in the defendants' favor, their claim that after serving its notice to quit, the plaintiff equivocated about its plan to terminate the defendants' leases. We consider this claim to be subsumed within the defendants' claim that the plaintiff failed to provide unequivocal notice that it was terminating the defendants' lease agreements, and, thus, treat the two claims as one.

[4] The defendants also argue that the two notices to quit, which followed the October 22, 2010 letter, did not constitute unequivocal notice that the plaintiff was terminating their leases because the notice issued to Ives Farm, LLC, was untimely pursuant to the terms of its lease with the plaintiff. In light of our conclusion that the trial court properly determined that the defendants received unequivocal notice by way of the plaintiff's letter, we need not address this argument.

[5] The defendants point to other actions by the plaintiff that they claim also evidence equivocation, namely, the plaintiff's failure to initiate eviction proceedings against the defendants by the end of November, 2010, and its participation in the defendants' negotiations with T&D Growers, LLC. Although the trial court's memorandum of decision is silent regarding these factual allegations, presumably the court considered and rejected them factually or found that even if they were proven, they provided an insufficient basis on which to find equivocation. The defendants did not seek an articulation from the court regarding these facts. We are unpersuaded that these facts, even if established, are sufficient to undermine the court's conclusion regarding the lack of any equivocation.

[6] The plaintiff draws our attention to several statutes in other states codifying an ancient common-law right akin to an implied easement in gross. This right appears to be limited, however, to granting access to ancestral gravesites located on private property. See A. Brophy, "Grave Matters: The Ancient Rights of the Graveyard," 2006 BYU L. Rev. 1469 (2006).

[7] We acknowledge that our case law regarding the degree of necessity that a party must demonstrate to obtain an easement by implication has not always been clear. For instance, both our Supreme Court and this court have stated that an easement by implication must be "*so evidently necessary* to the reasonable enjoyment of the granted premises . . . that the law will give effect to the grant according to the presumed intent of the parties." (Emphasis added; internal quotation marks omitted.) *Rischall* v. *Bauchmann*, 132 Conn. 637, 645, 46 A.2d 898 (1946); *Thomas* v. *Collins*, supra, 129 Conn. App. 692. At the same time, our Supreme Court has described the showing that a party must make to obtain an easement by implication under a substantially less exacting standard, specifically, that "the [implied] easement is *reasonably necessary* for the use and normal enjoyment of the dominant estate." (Emphasis altered; internal quotation marks omitted.)

McBurney v. *Cirillo*, 276 Conn. 782, 800, 889 A.2d 759 (2006), overruled in part on other grounds by *Batte-Holmgren* v. *Commissioner of Public Health*, 281 Conn. 277, 284–89, 914 A.2d 996 (2007); *Utay* v. *G.C.S. Realty, LLC*, supra, 72 Conn. App. 637. Our Supreme Court has further stated that to demonstrate that an easement by implication is "reasonably necessary," the party seeking the easement need only establish that it is "*highly convenient and beneficial* for the enjoyment of the portion granted." (Emphasis altered; internal quotation marks omitted.) *McBurney* v. *Cirillo*, supra, 800; *Sanders* v. *Dias*, 108 Conn. App. 283, 294, 947 A.2d 1026 (2008), vacated in part on other grounds, 120 Conn. App. 521, 992 A.2d 1141 (2010).

The explanation for this apparent inconsistency in our case law can be found in our Supreme Court's decision in *McBurney* v. *Cirillo*, supra, 276 Conn. 799–800. In that case, the court explained that "a grant by implication depends *on the intention of the parties* as shown by the instrument and the situation with reference to the instrument, *and it is not strictly the necessity for a right of way that creates it.* . . . In keeping with these principles, in determining whether an easement by implication has arisen, we examine: (1) the intention of the parties, and (2) [whether] the easement is reasonably necessary for the use and normal enjoyment of the dominant estate." (Citation omitted; emphasis altered; internal quotation marks omitted.) Id., 800.

[8] The court additionally examined Ives' will in making its determination that she did not intend some of the greenhouses to be permanent fixtures on the property. The defendants contend that this was improper, and that the court should have considered her intent only at the time that the greenhouses were erected. Specifically, they argue that the court "should have considered the nature and adaptation of the [greenhouses] to the uses and purposes to which they were appropriated at the time the annexation was made, and whether [Ives] intended to make a permanent accession to the realty . . . . Had it done so, based upon the evidence presented, the court could only have concluded that [Ives] intended for the greenhouses to be fixtures." (Citation omitted; internal quotation marks omitted.) The defendants additionally attempted to elicit testimony from Ives' estate planning attorney, Allen Pease, that Ives' intended for Casey to be able to access the greenhouses on the farm. The court did not permit Pease to testify about that issue because it concluded that Ives' will was unambiguous.

Even if we were to agree with the defendants' argument that the court should not have examined Ives' will, their claim nonetheless fails because it was not clear error for the court to have found, for the reasons previously discussed, that the nature of the greenhouses, the manner in which they were annexed to the property, and the uses and purposes to which they were appropriated at the time of their annexation evidenced that they were not intended to be fixtures. Moreover, we reject the defendants' contention that the court improperly prohibited Pease from testifying about Ives' intent. The defendants attempted to establish that Ives' will was ambiguous and, thus, that Pease's testimony was necessary, by relying on evidence beyond the language of the will. It is well established, however, that "[a] court . . . may not stray beyond the four corners of the will where the terms of the will are clear and unambiguous." (Internal quotation marks omitted.) *Bunting* v. *Bunting*, 60 Conn. App. 665, 670, 760 A.2d 989 (2000). Accordingly, the court's ruling prohibiting Pease from testifying about Ives' intent was in accord with the principle that extrinsic evidence "is never admissible for the purpose of showing an intention not expressed in the will itself . . . ." *Shulman* v. *Connecticut Bank & Trust Co.*, 5 Conn. App. 561, 566, 501 A.2d 759 (1985).

[9] The trial court's determination that the defendants failed to prove that Ives intended to grant Casey an easement over the farmland is implicit in its determination that the defendants failed to prove that the easement was reasonably necessary. As previously discussed, the intent of the parties is the principal factor to consider in determining whether an easement by implication exists. See *D'Amato* v. *Weiss*, 141 Conn. 713, 718, 109 A.2d 586 (1954) ("the conception underlying the creation of an easement by implication is that the parties are presumed to have intended the grant of an easement"). In discerning the parties' intent, the necessity for the easement is one significant, though not dispositive, factor to consider. See *Thomas* v. *Collins*, supra, 129 Conn. App. 692 (easement by implication must be, inter alia, "so evidently necessary . . . that the law will give effect to the grant according to the presumed intent of the parties" [internal quotation marks omitted]). Necessity is not, however, a basis independent of the parties' intent on which to find that an easement by implication exists. See *McBurney*

v. *Cirillo*, supra, 276 Conn. 800 ("a grant by implication depends on the intention of the parties . . . and it is not strictly the necessity for a right of way that creates it" [internal quotation marks omitted]); footnote 7 of this opinion. Rather, the fact that an easement was reasonably necessary supports the conclusion that the parties intended to create the easement.