STATE OF MICHIGAN

COURT OF APPEALS

LAKESIDE IRON, INC.,

Plaintiff-Appellee,

v

UPFRONT & COMPANY, INC.,

Defendant-Appellant.

UNPUBLISHED
November 12, 1996

No. 190823
LC No. 92-027947-CH

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Following a bench trial, defendant appeals as of right a judgment of the circuit court granting plaintiff a nonexclusive prescriptive easement across an alley on defendant's property. We affirm.

Plaintiff owns the Lakeside building in Marquette. The rear of the Lakeside building abuts defendant's alley. The alley provides exclusive vehicular access to the Lakeside building's back door.

Bannan Janitorial has been a tenant of the Lakeside building since 1969. Since at least 1970, Harold Kesti, in his capacity as either an employee or owner of Bannan, has consistently used defendant's alley several times a day to access the back door of the Lakeside building. Because of the size of its equipment, the back door is the only entrance large enough for Bannan's employees to move its equipment in and out of the Lakeside building. When Kesti purchased Bannan in 1986, plaintiff's predecessor gave Kesti a key to the building's back door and told him that he could continue using the alley as he had since 1970. Although both defendant and its predecessors were aware of Bannan's constant use, neither party objected or asked Bannan to stop using the alley.

After defendant partially blocked access to the alley, plaintiff's predecessors in title brought this action to quiet title to the alley. Based primarily on Bannan's long-standing, consistent use, plaintiff claims to have obtained a prescriptive easement over the alley for the benefit of its current and future tenants. Sitting as the trier of fact, the trial court found that plaintiff and their predecessors have consistently used the alley for at least 25 years. Further, the trial court determined that this use was hostile to defendant's title because plaintiff and their tenants used the alley under a claim of right.

Accordingly, the trial court awarded plaintiff and all plaintiff's current and future tenants an easement across defendant's alley for ingress and egress to the Lakeside building's rear entrance.

On appeal, defendant first claims that the trial court clearly erred in finding that plaintiff obtained a prescriptive easement over defendant's alley. We disagree. Although we review a trial court's equitable determinations de novo, *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993), we review the trial court's factual findings for clear error. MCR 2.613(C); *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A factual finding is clearly erroneous if it is unsupported by evidence or where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Townsend v Brown Corp of Ionia, Inc*, 206 Mich App 257, 263; 521 NW2d 16 (1994).

In *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995), this Court held:

> To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years. *Thomas v Rex A Wilcox Trust*, 185 Mich App 733, 736-737; 463 NW2d 190 (1990). An easement by prescription requires similar elements, except exclusivity. *St Cecilia Society v Universal Car & Service Co*, 213 Mich 569, 576; 182 NW 161 (1921). Mutual use or occupation of property with the owner's permission is insufficient to establish adverse possession. *Rozmarek v Plamondon*, 419 Mich 287, 294; 351 NW2d 558 (1984). Further, permissive use of property, regardless of the length of the use, will not result in an easement by prescription. *Banach v Lawera*, 330 Mich 436, 441; 47 NW2d 679 (1951).

Applying these principles to the present case, we hold that the trial court did not clearly err in finding that plaintiffs met the elements of a prescriptive easement. As the trial court recognized, there was conflicting evidence whether defendant's predecessor permitted plaintiff's predecessors to use the alley. The trial court did not clearly err in deciding to believe plaintiff's evidence and reject the credibility of defendant's affidavit that its deceased predecessor in interest expressly permitted plaintiff's predecessors to use the alley. Also, the "mutual use" doctrine cited by defendant is inapplicable because there exists no evidence that the alley was either "owned half and half by the adjoining lots nor was it maintained for the joint benefit of both properties. . . ." *Cheslek v Gillette*, 66 Mich App 710, 715; 239 NW2d 721 (1976); see *Banach, supra* at 442; *Hopkins v Parker*, 296 Mich 375, 379, 296 NW 294 (1942); *LeRoy v Collins*, 176 Mich 465, 475; 142 NW 842 (1913); *Wilkinson v Hutzel*, 142 Mich 674, 676-677; 106 NW 207 (1906).

Furthermore, evidence that plaintiff's predecessor told Kesti that he could continue using the alley as had Bannan's prior owner supports the trial court's ruling that plaintiff continuously possessed the alley throughout the statutory period. Indeed, "[a] tenant's user inures to the benefit of the landlord

if the landlord has conferred upon the tenant any authorization of such use." *Gay v Wilson*, 327 Mich 265, 271; 41 NW2d 500 (1950); cf. *Stewart v Hunt*, 303 Mich 161, 163-164; 5 NW2d 737 (1942). Finally, regardless whether Kesti or his predecessor thought the alley was publicly owned, evidence that plaintiff and its predecessors and tenants maintained and constantly used the alley without asking permission supports the trial court's conclusion that plaintiff was under a claim of right and, hence, adverse to defendant's title. Contrary to defendant's claim, it is the possessor's adverse actions and intentions, not his beliefs, that are dispositive in determining whether the possession was pursuant to a claim of right. See *Connelly v Buckingham*, 136 Mich App 462, 468-469; 357 NW2d 70 (1984); see *Ashley v Waite*, 33 Mich App 420, 423; 190 NW2d 370 (1971).

Next, defendant argues that plaintiff should be estopped from claiming an easement by prescription because its predecessor in interest blocked an alternative route to the alley by expanding Lakeside building several years earlier. We disagree. Even assuming that the expansion by plaintiff's predecessor could estop plaintiff from claiming a prescriptive easement, but see *Cook v Grand River Hydroelectric Power Co*, 131 Mich App 821, 828; 346 NW2d 881 (1984), defendant cannot now claim that the past expansion of the Lakeside building bars plaintiff's claim where defendant's predecessors did not object to the expansion despite knowing about Bannan's continuous use. Cf. *Dep't of Public Health v Rivergate Manor*, 452 Mich 495; 550 NW2d 515 (1996).

Finally, defendant claims that the trial court erred in failing to limit the scope of the easement for use by Bannan. We disagree. Again, Bannan's use inured to the benefit of the landlord, *Gay*, *supra* at 271. Therefore, plaintiff, as owner of the Lakeside building, is the rightful benefactor of the easement and entitled to extend the easement to its current and future tenants. Further, the easement was properly limited in scope to include only the rights that Lakeside tenants and predecessors exercised during the statutory period, see *Platt v Ingham Co Rd Comm*, 40 Mich App 438, 440-441; 198 NW2d 893 (1972), and the trial court correctly declined to speculate on what future circumstances may terminate the easement.

Affirmed.

/s/ Roman S. Gribbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin