STATE OF MICHIGAN

COURT OF APPEALS

PAUL J. GERLETTI and CATHERINE GERLETTI,

Plaintiffs/Counter Defendants-Appellants,

v

WILLIAM G.FOGARTY and SHARON A. FOGARTY,

Defendants/Counter Plaintiffs-Appellees.

UNPUBLISHED
January 24, 1997

No. 192206
Oscoda Circuit Court
LC No. 95-002289-CH

Before: Jansen, P.J., and Young and R.I. Cooper,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment of no cause of action, which was entered following a bench trial, in this suit to establish the right of the use of a driveway through the imposition of a prescriptive easement. We affirm.

In 1969, plaintiffs purchased ten and one-half acres of unenclosed land in Oscoda County. This land was accessible only by an old two-track road that was in poor condition and was rarely used. The road crossed unenclosed and unimproved property that was used by the State of Michigan for logging and that was sold by the State to defendants in 1989. Plaintiffs used this road and made improvements to it, but feared that they might some day be denied access to the road. Thus, they sought to quiet title to the road, alleging that they had obtained a prescriptive easement to use the road.

Plaintiffs first argue that the trial court erred in finding that plaintiffs had made no claim of right to the road and therefore, did not acquire an easement by prescription. Because the road was located on wild land, which is land in a state of nature that is unimproved and uncultivated, Black's Law Dictionary (6th ed), plaintiffs were required, by a word or act beyond mere use, to give notice to the State of their claim of right to the road. *DuMez v Dykstra*, 257 Mich 449, 451; 241 NW 182 (1932). Plaintiffs did not do so. The evidence established only that the State's agent, Albert J. Coates, Jr., may have had notice of plaintiffs' use but not that plaintiffs were asserting a claim of right. It is assumed that owners of

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* Circuit judge, sitting on the Court of Appeals by assignment.

wild lands give tacit permission to others to cross these lands. *Id*. Therefore, plaintiffs' use of a road located on wild land did not demonstrate that the use was hostile, which is one of the showings required to establish a prescriptive easement. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995).

Plaintiffs next argue that the trial court committed clear error in finding that they had attempted to purchase the property over which the road ran. Conflicting evidence was presented regarding whether plaintiffs had attempted to purchase the entire parcel or only the portion of the parcel that lay directly north of plaintiffs' property. Where two versions of an event are presented, the trial court does not commit clear error when it chooses between them. *Beason v Beason*, 435 Mich 791, 801; 460 NW2d 207 (1990).

Finally, plaintiffs argue and defendants concede that the trial court erred in finding that plaintiffs had attempted to purchase an easement from the State to use the road. However, because the court correctly determined on other grounds that plaintiffs had made no claim of right to the road, this error did not affect the end result, which was that plaintiffs did not obtain a prescriptive easement to use the road.

Affirmed.

/s/ Kathleen Jansen
/s/ Robert P. Young, Jr.
/s/ Richard I. Cooper