STATE OF MICHIGAN

COURT OF APPEALS

STEVE GORHAM,

Plaintiff-Appellee,

v

JAMES R. OWENS and STEPHANIE OWENS,

Defendants-Appellants.

UNPUBLISHED

No. 199846
Ionia Circuit Court
LC No. 95-016721-CH

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

SMOLENSKI, P.J. (dissenting).

I respectfully dissent.

The trial court found that parking on the gravel driveway by plaintiff and his predecessors was adverse or hostile because defendants and their predecessors never gave their permission to do so.

As explained in *Swartz v Sherston*, 299 Mich 423; 300 NW 148 (1941):

> "Peaceable occupation or use by acquiescence or permission of the owner cannot ripen into title by adverse possession, no matter how long maintained. Hostility is of the very essence of adverse possession." [*Id.* at 428 (quoting *Ruggles v Dandison*, 284 Mich 338, 342; 279 NW 851 (1938).]

The evidence in this case indicates that defendants and their predecessors passively allowed plaintiff and his predecessors to park on the gravel driveway. Cf. *Swartz, supra*; *Ruggles, supra*. There is no evidence indicating that, at least until 1994, plaintiff and his predecessors ever parked on the gravel driveway in such a manner that would indicate that they claimed it as a right, particularly where the evidence indicated that vehicles were routinely moved upon request. Cf. *Swartz, supra*; *Ruggles, supra*.

Accordingly, I would hold that the trial court's finding that parking by plaintiff and his predecessors was adverse or hostile was clearly erroneous or, alternatively, constituted an erroneous application of the law to the facts. Defendants should not be punished because they and their

predecessors attempted to be good neighbors. I would reverse the judgment granting plaintiff a prescriptive easement to park on the gravel driveway.

/s/ Michael R. Smolenski