

STATE OF MICHIGAN
COURT OF APPEALS

KALKASKA COUNTY BOARD OF COUNTY
ROAD COMMISSIONERS,

Plaintiff/Counterdefendant-
Appellee,

and

GARNET MORIARTEY and MARY
MORIARTEY,

Intervening Plaintiffs-Appellees,

v

MARTIN J. NOLAN II and AMY L. NOLAN,

Defendants/Counterplaintiffs-
Appellants.

UNPUBLISHED
November 30, 2001
APPROVED FOR
PUBLICATION
January 25, 2002
9:05 a.m.

No. 221976
Kalkaska Circuit Court
LC No. 94-005086-CH

Updated Copy
April 12, 2002

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Following a bench trial, defendants appeal as of right from the trial court's entry of an injunction declaring that a roadway or trail crossing defendants' rural acreage constituted a portion of Squaw Lake Road, a public road under the jurisdiction of plaintiff Kalkaska County Board of County Road Commissioners, and enjoining defendants from erecting or maintaining any barricades across the road. We affirm.

Defendants first contend that the trial court erred in concluding that Squaw Lake Road, including the disputed trail crossing their property, is the same road described in a 1935 McNitt act notice. 1931 PA 130, repealed by 1951 PA 51, § 21. The notice referred to a road starting at the quarter line on the south side of township section twenty-one and extending north three miles. At trial, it was undisputed that the presently paved portion of Squaw Lake Road was the only road commencing at the described location. A surveyor's examination of the area indicated that the trail on defendants' land was the only north-south extension of that road in existence

when the McNitt notice was published, and both a 1927 land economic survey and a 1935 survey showed only one road or trail going north through section twenty-one in the same location as the trail on defendants' property. The location of the north-south road appearing in an aerial photograph taken in 1938 coincided with the most recent survey of the trail on defendants' land. Under these circumstances, we cannot conclude that the trial court clearly erred in finding that the McNitt notice could refer to only one road, the disputed trail. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). While defendants presented testimony suggesting that the trail described in the McNitt notice must have been a logging trail west of defendants' property, the trial court found this testimony unpersuasive, confusing, or lacking credibility. This Court will not second-guess the trial court's credibility determinations. MCR 2.613(C) ("[R]egard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.").

Defendants next argue that the trial court erred in finding that the disputed trail qualified as a public highway by user. This Court reviews de novo the legal requirements for establishing a highway by user, but reviews the trial court's factual findings for clear error. A finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made. *Cimock v Conklin*, 233 Mich App 79, 84; 592 NW2d 401 (1998).

The highway by user statute, MCL 221.20, treats property subject to it as impliedly dedicated to the state for public use. *City of Kentwood v Sommerdyke Estate*, 458 Mich 642, 652; 581 NW2d 670 (1998). Establishing a public highway pursuant to the highway by user statute requires (1) a defined line, (2) that the road was used and worked on by public authorities, (3) public travel and use for ten consecutive years without interruption, and (4) open, notorious, and exclusive public use. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 554-555; 600 NW2d 698 (1999).

Concerning the first element, the trial court found that, beginning as early as 1938 through the present, the disputed trail clearly was visible in aerial photographs and that videotapes showed "a defined and definite roadway immediately off the paved portion of Squaw Lake Road . . . continuing through to its northern terminus at Starvation Lake Road." After reviewing the exhibits, we are convinced the trial court did not clearly err in making this finding.

Regarding the second element, the trial court found that plaintiff had "worked on the entirety of Squaw Lake Road from Twin Lake Road north to Starvation Lake Road, from time to time and place to place, as a need was apparent and resources would permit, from 1947 to the present time." We reject defendants' argument that the court's analysis was flawed because it looked at maintenance efforts directed at the entire length of Squaw Lake Road rather than concentrating on the portion of the trail on their property as a discrete segment of the roadway. "It is not essential that every part of a highway should be worked in order to evidence the intention of the public authorities to accept and maintain the entire highway." *Neal v Gilmore*, 141 Mich 519, 527; 104 NW 609 (1905). While defendants correctly observe that other cases cited by plaintiff involved statutory or common-law land dedications instead of highway by user, we emphasize that *Neal* was decided under the highway by user statute. *Id.* at 526. We conclude that the trial court did not err in considering maintenance efforts undertaken by plaintiff beyond

the segment of Squaw Lake Road crossing defendants' property and did not clearly err in finding that the county had maintained the road for well over ten years.

With respect to the final highway by user elements of open, notorious, and exclusive public use for ten consecutive years, the trial court found that the road was used as a public thoroughfare for twenty-seven to thirty-one consecutive years and that the persons who used the road never requested permission to do so because they understood that it was a county road. The law does not fix the number of persons who must travel on a road to establish its existence by user. Rather, to constitute a highway by user it is sufficient if the road was traveled as much as the circumstances of the surrounding population and their business required. *Roebuck v Mecosta Co Rd Comm*, 59 Mich App 128, 131; 229 NW2d 343 (1975). This Court in *Roebuck* affirmed a finding that use of a road for hunting and recreational purposes satisfied the public use requirement. *Id.* In this case, ample testimony reflected that the public openly and exclusively used the disputed trail for recreational and business purposes without permission for at least ten consecutive years. We are not left with a definite and firm conviction that the trial court erred in its findings regarding public use.

Because the record contains evidence establishing each highway by user element, we conclude that the trial court did not clearly err in finding that the disputed trail constituted a public highway, and that the court properly enjoined defendants from placing barricades across the road.¹

Affirmed.

/s/ Hilda R. Gage
/s/ Kathleen Jansen
/s/ Peter D. O'Connell

¹ In light of our conclusion, we need not address defendants' argument that intervening plaintiffs did not obtain a prescriptive easement across the trail.