

STATE OF MICHIGAN  
COURT OF APPEALS

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RONALD D. GERMAN, SUSAN L. GERMAN,  
RACHEL L. NEWMAN, and PATRICIA LEE  
KIGER,

UNPUBLISHED  
May 24, 2007

Plaintiffs-Appellees,

v

No. 274224  
Jackson Circuit Court  
LC No. 05-005225-CH

ERIC S. LEFORGE and TAMMY D. LEFORGE,

Defendants-Appellants,

and

CHASE HOME FINANCE, f/k/a CHASE  
MORTGAGE COMPANY,

Third-Party Defendant.

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Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendants appeal from an order granting summary disposition for plaintiffs pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Actions to quiet title are equitable in nature and are reviewed de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). We also review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Willis v Deerfield Twp*, 257 Mich App 541, 548; 669 NW2d 279 (2003). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the nonmoving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31.

Defendants argue that the trial court erred by granting summary disposition for plaintiffs on their adverse possession claim because plaintiffs did not use the right-of-way in a manner inconsistent with the easement. To establish adverse possession, a claimant must show

possession that is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, continuous, and uninterrupted for a period of 15 years. MCL 600.5801(4); *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). “In Michigan, use of an easement by the owner of the servient estate will not ripen into adverse possession unless such use is inconsistent with the easement.” *Nicholls v Healy (After Remand)*, 37 Mich App 348, 349; 194 NW2d 727 (1971). Owners of a servient estate have an “undoubted right to make any use of the premises not inconsistent with the easement.” *Id.*, quoting *Greve v Caron*, 233 Mich 261, 266; 206 NW 334 (1925).

In *Nicholls*, *supra* at 350, this Court determined that an easement was not extinguished by adverse possession when the servient estate owners installed a fence with a gate, a privy, a bathhouse, and planted two rows of trees on the easement. This Court determined that none of these uses of the property seriously blocked passage on the right-of-way. *Id.* Further, in *Greve*, *supra* at 266-267, our Supreme Court held that the maintenance of a gate and the use of portions of the right-of-way for a garden, a clothes pole, and a toboggan slide, along with the construction of a cesspool under the easement, did not extinguish the easement by adverse possession because the servient owners could use the easement for their own convenience, so long as the use did not prevent the dominant estate owners from using the easement. The Court stated that the dominant estate owners “never had title to the land included in the way, and it was none of their concern what use was made thereof by the owner of the soil so long as such use did not obstruct the way.” *Id.* at 267.

Unlike *Nicholls* and *Greve*, plaintiffs’ use of the easement property here was inconsistent with the easement and seriously blocked passage through the right-of-way. The pictures included in the trial court’s opinion demonstrate that the easement was being used for purposes inconsistent with a right-of-way to Mud Lake that benefited defendants, the dominant estate owners. The pictures show numerous trailers parked on the easement, along with camping paraphernalia, such as picnic tables, decks, canopies, fire pits, and woodpiles. The pictures also show trees, sheds, and various other items including garbage cans and lawn mowers in the “backyards” of the camping sites. The trial court correctly stated that although it may be possible for a person to “zig-zag through the obstacle course of trailers, porches and sheds to the lake, there is no question that use of [the] easement has been seriously interfered with.” The court also recognized that it was not possible to drive a vehicle, pull a boat, or carry a section of dock through the easement. Thus, plaintiffs’ operation of the trailer park on the easement property was inconsistent with the easement and seriously blocked passage through the right-of-way.

Defendants contend that the trailers and decks accompanying the trailers could be disconnected and rolled or carried away. The record shows, however, that campers generally do not occupy the trailer park for short periods of time, but rather, for an entire season at a time or perhaps longer. Plaintiffs presented affidavits of two campers who averred that they have occupied camping sites on the easement for at least 25 years. The trailers are connected to underground plumbing and utility hookups, which evidence a longer period of stay. Thus, although defendants assert that the trailers and camping equipment can easily be moved away, the submitted evidence demonstrates that these items were not intended to, and did not occupy the easement for only short durations of time.

Further, defendants argue that the use of the easement has not been impaired because they have consistently used the easement to access the lake and campers have used the easement for lake access as well. For the easement to be used in a manner inconsistent with a right-of-way, however, passage need not be impossible. Rather, it is sufficient that the use of the easement seriously blocked passage and obstructed the right-of-way. *Greve, supra* at 267; *Nicholls, supra* at 350. The evidence clearly shows that the property was being used for purposes inconsistent with a right-of-way for defendants' benefit to access the lake. Further, the affidavit of Bruce E. Miller, one of defendants' predecessors in interest, shows that he understood that the trailer park occupied the right-of-way, and he never attempted to use the easement to access the lake during the 23 years that he owned his property. Moreover, although campers may access the lake via the easement, they reside on the easement property and thus use the property as living space rather than merely as a right-of-way. Accordingly, we affirm the trial court's grant of summary disposition for plaintiffs on their adverse possession claim. In light of this conclusion, we need not address defendant's additional claims of error.

Affirmed.

/s/ Helene N. White  
/s/ Henry William Saad  
/s/ Christopher M. Murray