

STATE OF MICHIGAN
COURT OF APPEALS

MARK M. BACHA and KAREN M. BACHA,

Plaintiffs/Counter-Defendants-
Appellants,

v

ROSS PROPERTIES, INC.,

Defendant-Appellee,

and

MARK M. CRONMILLER,

Defendant,

and

GOWANIE GOLF CLUB, INC.,

Defendant/Counter-Plaintiff.

UNPUBLISHED

February 4, 2010

No. 286632

Macomb Circuit Court

LC No. 2006-002763-CZ

Before: Shapiro, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

In this property dispute, plaintiffs appeal as of right the trial court's order denying their motion for partial summary disposition and granting defendants' motion for summary disposition, thereby dismissing all of plaintiffs' claims. Plaintiffs also appeal the trial court's previous order denying their motion for judicial disqualification. We affirm in part, reverse in part, and remand for trial.

I. Summary of Facts and Proceedings

The instant case involves a property dispute over Outlot C of the Gowanie Gardens subdivision. Outlot C sits between Lots 16 and 17 of the subdivision. Defendant Ross Properties conveyed Lot 16 to James and Jessie Cook on August 2, 1948. Lot 17 is owned by defendant Mark Cronwiller. Ross Properties retained ownership of Outlot C in order to access an adjacent golf course. The record is unclear, but the Cooks apparently built the existing

residence and garage in 1952 with the garage facing Outlot C. The Cooks accessed their garage from Crocker Boulevard by a driveway running over the disputed property. According to Ross Properties' owner, Jean Axford, Ross Properties always permitted the owners of Lot 16 to use the disputed property. On January 30, 1964, Ross Properties and the Cooks executed a lease and easement agreement that leased the "westerly" half of Outlot C to the Cooks for "ingress and egress to the easterly side of their residence."¹ Plaintiffs assert that the Cooks stopped paying rent on the lease before the Cooks sold their residence to William and Nikki the McPhersons² and defendants concede that "at some point [] payment of half of the property taxes eventually ceased." The lease provided:

by the execution of this lease, the lessees recognize the fee title of the lessor in and to said Outlot C and waive and disclaim any right, or interest therein adverse to the title of the lessor, either presently matured or to accrue in the future.³

In 1982, the McPhersons purchased Lot 16 from the Cooks. William McPherson denied having any knowledge of the 1964 lease and easement agreement. During his deposition, he drew a vertical line on Outlot C where the concrete driveway ended and testified that the Cooks told him that their property extended to the edge of the concrete portion of the driveway and that there was an easement for the driveway for "[a]nything east of the concrete." Both McPhersons provided affidavits that stated that they "were told by the Cooks that the east property line extended to the edge of the concrete that ran from our garage." However, McPherson also provided some seemingly contradictory testimony. Although he indicated that he "didn't know anything about that terminology outlot C," he agreed that he understood "that the outlot was not [his] property." He also testified that the Cooks represented to him "that it was an easement and that it did not belong to [him] but that [he] could use it as [his] driveway" but that "if the

¹ Although the agreement describes Outlot C as "lying westerly" of lot 16 and speaks of the "westerly half" of Outlot C, lot 16 and Outlot C are not positioned in a due North-South direction, but rather run Northwest-Southeast. Further, the division is not an exact half, but roughly half, using a dividing line created by extending the end of the concrete portion of the driveway into a line running lengthwise across Outlot C. However, for the sake of clarity and consistency with the record, we will continue to use the terms "westerly" and "easterly" "halves" to describe the division of Outlot C, with the "westerly half" being the portion extending from lot 16 to the extended cement line, and the "easterly half" running from the extended cement line to lot 17.

² All references to McPherson in the singular are to William only, with plural references meaning both William and Nikki, and any references to Nikki only will be by full name.

³ Two things are clear from this language. First, the time of adverse possession could only begin when the McPhersons purchased the land, as any actions taken by the Cooks were explicitly disclaimed. Second, because the lease defined the lessees as the Cooks and did not include in that definition the Cooks' successors in interest, nor did it indicate that it "ran with the land," the lease and easement agreement is inapplicable to the McPhersons or the Bachas absent some showing that either the McPhersons or Bachas executed an amendment or extension of the agreement.

property was sold, that that would be a road” to access the golf course. McPherson had believed that the golf course owned the property.

Plaintiffs purchased Lot 16 from the McPhersons in August 2000. Plaintiff Mark Bacha testified that Nikki McPherson told him “that the limits of their property as they knew it extended to the edge of the concrete approach that leads to the driveway” but that “the portion of the property east of the concrete is not legally yours.” Bacha testified that although his deed only referenced Lot 16, based on Nikki McPherson’s representations, he “concluded that the Cooks had become the adverse possessor already of that portion of the property and that they had become the true and rightful owners and that it was necessary for me to continue on and get title quieted.”

On September 24, 2002, Bacha recorded an affidavit of interest in Outlot C, claiming that plaintiffs possessed, used or maintained Outlot C “for residential purposes associated with the use of our home including, but not limited to, access to our home, construction and maintenance of a drive, landscaping and irrigation.” He further claimed title to Outlot C based on adverse possession. Although it is unclear what precipitated it, on June 27, 2006, plaintiffs initiated legal action against Ross Properties and Gowanie Golf Club claiming legal title to Outlot C based on adverse possession. Plaintiffs later amended their complaint to include counts for easement by prescription, easement by necessity, and acquiescence.

Plaintiffs also sought to disqualify Macomb Circuit Judges Richard L. Caretti and Donald G. Miller because both judges were members of the Gowanie Golf Club. Both motions were granted. Plaintiffs moved to remove the case from case evaluations, asserting that case evaluation was fruitless given the equitable nature of the claim. The trial court denied the motion. A mediation panel issued an evaluation award which Ross Properties and Gowanie Golf Club subsequently moved to strike, complaining that the case evaluation panel had improperly granted equitable relief, disclosing to the trial court that the panel had awarded title of Outlot C to plaintiffs in exchange for \$60,000. Plaintiffs opposed the motion to strike and moved to disqualify Macomb Circuit Judge Switalski based on the disclosure of the case evaluation, pursuant to MCR 2.403(N)(4). The trial court denied both the motion to strike and the motion to disqualify.

Plaintiffs then moved for summary disposition on their adverse possession claim to the westerly half of Outlot C. Defendants filed their own motion for summary disposition as to all of plaintiffs’ claims. The trial court took the motions under advisement and ultimately denied plaintiffs’ motion, granted defendants’ motion, and dismissed all of plaintiffs’ claims. Plaintiffs now appeal.

II. Standard of Review

We review de novo a trial court’s ruling on a motion for summary disposition pursuant to MCR 2.116(C)(10), considering the pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmovant. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 41-42; 672 NW2d 884 (2003). We also review de novo equitable actions, such as those to quiet title, but review the trial court’s findings of fact for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). However, because this is summary disposition,

there should be no findings of fact. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005).

III. Adverse Possession of Westerly Half of Outlot C

Plaintiffs first argue on appeal that the trial court erroneously denied their motion for partial summary disposition as to their adverse possession claim to the westerly half of the disputed property. “A claim of adverse possession requires clear and cogent proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years.” *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993).

Plaintiffs’ adverse possession claim depends upon tacking the possessory period of plaintiffs’ predecessors in title. “An adverse claimant is permitted to add his predecessor’s period of possession if he can establish privity of estate by mention of the disputed lands in the instrument of conveyance or parol references at the time of the conveyance.” *Connelly v Buckingham*, 136 Mich App 462, 474; 357 NW2d 70 (1984). Privity was established with respect to the portion of the disputed property containing the driveway because there was mention of the disputed property in parol references at the time of the conveyance between plaintiffs and their predecessors in title, the McPhersons. *Id.*

Further, based on our review of the record, we conclude that there exists a question of fact as to plaintiffs’ adverse possession claim regarding the westerly half of Outlot C, such that neither party was entitled to summary disposition on this issue.

The trial court relied on William McPherson’s deposition testimony that the Cooks “told me that it was an easement and that it did not belong to me and that I could use that as my driveway,” that he told the Bachas “that it was an easement and it did not belong to us,” and that “I never did own the lot C . . . I never possessed it. I mean I used it but I never owned it.” However, although McPherson also indicated that he understood “that the outlot was not [his] property,” he also stated that he “didn’t know anything about that terminology outlot C.” Furthermore, when asked what portion of the property he understood “to be the easement part,” McPherson testified “anything east of the concrete.” He also testified that the Cooks “told [him] that the concrete was the end of [their] property.” Consistent with that testimony, both William and Nikki McPherson provided affidavits that indicated that they both believed that they owned the westerly half of Outlot C and Nikki McPherson provided a notarized statement indicating that she had informed Mark Bacha that she was told by the Cooks “that our property ended at the cement on the driveway then the “easement” area began at that point.” Based on this evidence, the responses by William McPherson given to questions asked by counsel that relate to “the outlot,” “lot C” or “the property” are ambiguous. Either McPherson’s testimony is inconsistent because he stated that the easement was only on the easterly half of Outlot C and that he owned the westerly half at the same time he stated that he knew he did not own Outlot C, or McPherson’s testimony is consistent because his statements regarding not owning Outlot C were made with the unstated implication that he was only referring to the easterly half. In either case,

however, only a trier of fact can make that decision because it requires a credibility determination.⁴

Because this was summary disposition, the trial court was required to read all inferences in favor of the Bachas. *Morris, supra*. Thus, McPherson's ambiguous testimony should have been treated as meaning that he believed the easement only related to the easterly half of Outlot C and his statements that he did not own Outlot C would be limited to just the easterly half. Although Jean Axford testified at her deposition that the Lot 16 owners always used the disputed property and no one ever fought over it, she also testified that no one ever asked her permission to use it and there is no evidence that she ever told either the McPhersons or the Bachas that she was giving them permission to use it. If McPherson did, in fact, believe that he owned the westerly-half of Outlot C, then his use of the property cannot be considered permissive,⁵ and meets the hostility requirement. Although McPherson was mistaken about where the boundary line was located, that belief does not defeat a claim of adverse possession "where a landowner intends to claim title to a visible, recognizable boundary; that is, where a landowner respected the line believed to be the boundary but that proved not to be the true line." *DeGroot v Barber*, 198 Mich App 48, 53; 497 NW2d 530 (1993).

Here, there is evidence that the McPhersons used the westerly half of Outlot C as a driveway, parked on it, installed an in-ground sprinkler system on it, and mowed the grass. This is sufficient evidence for adverse or "hostile" use. In *Mumrow v Riddle*, 67 Mich App 693; 242 NW2d 489 (1976), this Court determined that the defendants had adversely possessed the property in question, used as a driveway, through open, visible and adverse use. *Id.* at 696. Namely:

[s]ince the driveway was from the road to their residence, defendants made daily and continuous use of it. The driveway was there for all to see. Although we do not know for certain whether the [plaintiffs' predecessors in title] knew of this use of their property, since they did not testify, the circumstances were such that the owners of the corner portion should have been aware of this use of their property as part of defendants' driveway. . . .

* * *

In its opinion the court noted plaintiff Mumrow's testimony that, although he and defendants never talked about the use of the property, he felt that he was "letting them use it" and did not "mind" until he noticed that defendants were "going to put concrete across it." The court also noted Mumrow's testimony that at no time

⁴ We disagree with the dissent's statement that "it is clear that the McPhersons, themselves, had at all times known that they did not own it [the westerly ½ of Outlot C]." As previously noted, the testimony is far from clear in that regard and only a trier of fact may resolve the ambiguity.

⁵ Plaintiffs suggest that there is some significance that the Cooks stopped making payments on the 1964 lease at some point. However, we will not engage in speculation regarding those circumstances, where there was no testimony or evidence on that subject.

prior to 1972 did he have the impression that defendants were claiming the property as their own. The Court then concluded:

“Since plaintiffs [sic] testified that he made no objection to the use made by the defendants of the disputed area, it cannot be said that the requisite element of hostility existed.”

This conclusion is not in accord with the law controlling easements by prescription. See *St. Cecelia Society v Universal Car & Service Co*, [213 Mich 569; 182 NW 161 (1921)]. The term “hostile” as employed in the law of adverse possession is a term of art and does not imply ill will. Nor is the claimant required to make express declarations of adverse intent during the prescriptive period. *Adverse or hostile use is use inconsistent with the right of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder.* [*Id.* at 697-698 (emphasis added).]

Applying these holdings to the present case, taking the evidence in the light most favorable to plaintiff, Axford’s belief that she was letting plaintiffs and the McPhersons use the westerly half of Outlot C was insufficient to bar adverse possession where they used the land as though they owned it without ever asking for or receiving permission.

Additionally, the golf course employee parking on which the trial court relied to determine that the use of the property was non-exclusive occurred on the easterly half of Outlot C and, therefore, has no relevance to the adverse possession claim of the westerly half. Furthermore,

the ‘exclusivity’ needed for adverse possession is that a party (or multiple parties acting jointly) must have use of the land in a manner consistent with sole ownership of a section of land. Minimal use of disputed land by a titleholder that is consistent with an adverse possessor’s exercise of general control over the land as if the adverse possessor owned the property does not prevent the adverse possessor from acquiring title. A holding precluding adverse possession where the titleholder merely entered or used the disputed property in a *de minimis* fashion would lead to absurd results. For example, it is common knowledge that in many neighborhoods people commonly enter yards belonging to other households in the neighborhood. A party claiming by adverse possession may have maintained and exercised general control over a disputed parcel for well over fifteen years although a titleholder, or member of the titleholder’s household, sporadically walked across or otherwise used that parcel at various times during that period. In our view, it would be unreasonable to hold that such a *de minimis* use of the disputed property precludes a finding of the exclusivity required as one

part of an adverse possession claim. [*Baum v Dubord*, unpublished opinion per curiam of the Court of Appeals, issued August 7, 1998 (Docket No. 201247).]⁶

It is clear from the record, then, that the trial court failed to take the evidence in the light most favorable to the Bachas, improperly weighed the evidence, and impermissibly decided fact questions. *Morris, supra; In re Handelsman, supra*. Accordingly, summary disposition was inappropriate. Based on our review of the record, taking the evidence in the light most favorable to the plaintiffs, there is sufficient evidence to permit a fact finder to conclude that plaintiffs, by tacking their period of possession to that of the McPhersons, had actual, visible, open, notorious, exclusive, continuous and uninterrupted possession of the westerly half of Outlot C for at least fifteen years. Because there is an outstanding fact question as to whether plaintiffs obtained title to the westerly half of Outlot C based on adverse possession, we reverse the trial court's grant of summary disposition as to that claim and remand for trial.

IV. Prescriptive Easement of Driveway

Next, plaintiffs assert that the trial court erroneously granted defendants' motion for summary disposition on plaintiffs' claim for easement by prescription. We agree. "An easement by prescription arises from a use of the servient estate that is open, notorious, adverse, and continuous for a period of fifteen years." *Killips, supra* at 259.

As with the adverse possession claim, plaintiffs' easement by prescription claim depends upon tacking the possessory period of plaintiffs' predecessors in title. "A party may 'tack' on the possessory periods of predecessors in interest to achieve this fifteen-year period by showing privity of estate." *Id.* at 259. As noted in our discussion of adverse possession, plaintiffs established privity of estate with respect to the westerly half of Outlot C. Here, we conclude that privity of estate is also established with respect to part of the easterly half of Outlot C, namely that portion containing the driveway, based on the unequivocal evidence that it was orally agreed and understood to be within the boundaries of the "easement." *Id.*

In the instant case, the trial court observed that permissive use of a driveway, no matter how long continued, will not generally result in an easement by prescription. *Banach v Lawera*, 330 Mich 436, 440-441; 47 NW2d 679 (1951). However, this ignores *Killips*. In *Killips*, this Court concluded that the trial court had not erred in concluding that the plaintiffs had acquired a prescriptive use of a triangular strip of property "that has been used since approximately 1975 as a portion of plaintiffs' driveway but is in fact titled in defendant's name." *Killips, supra* at 258. This Court noted that although the original owner had an easement to the property in 1975, all of plaintiffs' predecessors in title had used the driveway without objection from the defendant until the late 1990s. *Id.* at 259. Although the dissent argued that the "[p]laintiffs' belief that an easement existed and that therefore their use was lawful is tantamount to use by permission, which can never result in a prescriptive easement," *id.* at 262 (Hoekstra, J. dissenting), the majority found the usage was "hostile" because "'hostile' merely means a use that is inconsistent

⁶ Although this unpublished decision is not binding precedent, MCR 7.215(1), this conclusion is applicable and persuasive, and we adopt it.

with the rights of an owner” and the “[d]efendant was aware that the driveway was on her property throughout the entire course of its use.” *Id.*

Thus, the conclusion in *Killips* that the trial court did not err in finding a prescriptive easement necessarily determined that a party’s belief that an easement exists, where one does not actually exist (as in true in the instant case), does not destroy the adverse or hostile nature of the party’s use of the property. Given the testimony regarding the Bachas and McPhersons’ use of the easterly half of Outlot C and their belief that an easement to use the driveway existed, there is sufficient evidence in the record from which a trier of fact could determine that plaintiffs acquired a prescriptive easement over a portion of the easterly half of Outlot C, namely the remainder of the driveway only. Because we have concluded that there was privity only for that portion of Outlot C that contained the driveway, plaintiffs have no prescriptive easement claim as to the remainder of the easterly half of Outlot C, and we affirm the trial court’s ruling in that regard. Accordingly, we hold that summary disposition was inappropriate as to this claim for the driveway portion of the easterly half of Outlot C only, and we reverse that ruling and remand for trial.

V. Easement by Necessity

Plaintiffs next claim on appeal that the trial court erroneously granted defendants’ motion for summary disposition on plaintiffs’ claim for easement by necessity. This claim has no merit. The facts of this case did not give rise to an easement by necessity, because the grantor did not create a landlocked parcel, or split his property leaving himself landlocked. *Chapdelaine v Sochocki*, 247 Mich App 167, 172-173; 635 NW2d 339 (2001). As such, defendants were entitled to summary disposition with respect to plaintiffs’ easement by necessity claim.

VI. Acquiescence

Next, plaintiffs contend that the trial court erroneously granted defendants’ motion for summary disposition on plaintiffs’ claim for acquiescence as to the westerly half of the disputed property. “The doctrine of acquiescence provides that where adjoining property owners acquiesce to a boundary line for at least fifteen years, that line becomes the actual boundary line.” *Killips, supra* at 260. A claim of acquiescence to a boundary line “requires merely a showing that the parties acquiesced in the line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary.” *Walters v Snyder*, 225 Mich App 219, 224; 570 NW2d 301 (1997). “A claim of acquiescence does not require that the possession be hostile or without permission.” *Id.* “The proper standard applicable to a claim of acquiescence is proof by a preponderance of the evidence.” *Killips, supra* at 260. “The acquiescence of predecessors in title can be tacked onto that of parties in order to establish the mandated period of fifteen years.” *Id.*

This Court has identified three theories under the doctrine of acquiescence: “(1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from intention to deed to a marked boundary.” *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). On appeal, plaintiffs claim that their acquiescence claim should prevail under the first and third theories.

With respect to the first theory, plaintiffs claim that they meet the requirements for acquiescence for the statutory period as expressed by their arguments regarding adverse possession. Plaintiffs are mistaken. To prevail on an acquiescence claim under this theory, there must be evidence that the parties treated the line as the boundary. *Mason, supra* at 530. In this case, the McPhersons made a representation to plaintiffs while they were conducting the residential property transaction of Lot 16. There is no evidence that Ross Properties or Gowanie Golf Club treated the edge of the concrete driveway as the boundary to Lot 16. Plaintiffs, in passing, represent on appeal that “all parties gave their assent, through their conduct if in no other manner, to the historical boundary (easterly edge of concrete driveway) dating at least as far back as 1982”; however, plaintiffs do not indicate what conduct by defendants demonstrated their assent to this purported boundary. We reject plaintiffs’ acquiescence claim based on this theory, where there is no evidence that defendants acquiesced in the line and treated the line as the boundary for the statutory period. *Walters, supra* at 224.

With respect to the third theory, plaintiffs suggest that the oral conveyance by the McPhersons to plaintiffs was sufficient to sustain their acquiescence claim. Acquiescence under this theory “arises from the intention to describe in the deed the boundary marked on the ground by a common grantor” and requires “an identification of intended location by those who are to be affected.” *Daley v Gruber*, 361 Mich 358, 363; 104 NW2d 807 (1960). Although there is a common grantor in this case—Ross Properties was the original owner of the property platted into the Gowanie Gardens subdivision and, therefore, is a common grantor for both Lot 16 and Outlot C—there is no claim, let alone evidence, that suggests that the deeds in this case reference any boundary related to the concrete portion of the driveway. The McPhersons’ representations do not change this result, as they are not the common grantor. Thus, we find no support in the law for plaintiffs’ cursory treatment of this claim.

VII. Axford’s Affidavit

Plaintiffs also contend that the trial court erroneously relied upon Axford’s affidavit, which contradicted her previous deposition testimony and pleadings. Unpreserved allegations of error are reviewed for plain error affecting plaintiffs’ substantial rights. *Hilgendorf v St John Hosp & Medical Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001). After reviewing the entire record, we conclude that Axford’s affidavit generally comports with her deposition testimony and Ross Properties’ admissions. There was no error.

VIII. Judicial Disqualification

Finally, plaintiffs allege that the trial court improperly denied their motion for judicial disqualification. Because plaintiffs did not seek review of the trial court’s denial of their motion for judicial disqualification pursuant to MCR 2.003(C)(3), this issue is not preserved, *Welch v District Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996), and is reviewed for plain error affecting plaintiffs’ substantial rights, *Hilgendorf, supra*.

A strong presumption of impartiality exists when a judge is challenged on the basis of bias. *Cain v Dep’t of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). As a general rule, absent a showing of actual bias or prejudice, a trial judge will not be disqualified. *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001). Disqualification is

not warranted unless “deep-seated favoritism or antagonism” is displayed “that would make fair and impartial judgment impossible.” *Cain, supra* at 496 (citation omitted).

Plaintiffs contend that the trial judge should have been disqualified because defendants revealed the case evaluation in violation of MCR 2.403(N)(4). MCR 2.403(N)(4) provides in relevant part, “In a nonjury action, the envelope may not be opened and the parties may not reveal the amount of the evaluation until the judge has rendered judgment.” Plaintiffs rely on *Bennett v Medical Evaluation Specialists*, 244 Mich App 227; 624 NW2d 492 (2000). In *Bennett*, the plaintiff revealed the mediation amount after the conclusion of an eight-day bench trial, but prior to the trial court issuing its decision. *Id.* at 229. This Court held, “we conclude that the only appropriate sanction when, as in the present case, a party violates MCR 2.403(N)(4) by prematurely revealing the mediation evaluation is disqualification of the judge and transfer to a different judge for retrial.” *Id.* at 233. However, in *Cranbrook Professional Bldg v Pourcho*, 256 Mich App 140; 662 NW2d 94 (2003), this Court held that *Bennett* “does not hold that a new trial is required in every case in which a violation of MCR 2.403(N)(4) occurs. Rather, the appropriate sanction depends on the particular facts of the case.” *Id.* at 144.

Given that disclosure of case evaluations does not automatically result in judicial disqualification, and plaintiffs’ failure to provide specific facts showing bias or prejudice on the part of the trial judge resulting from the disclosure, we conclude that plaintiffs have failed to show plain error. *Hilgendorf, supra*.

IX. Conclusion

We affirm the trial court’s grant of summary disposition as to plaintiffs’ acquiescence and easement by necessity claims, reverse the trial court’s grant of summary disposition as to plaintiffs’ adverse possession claim as to the westerly half of Outlot C and prescriptive easement claim as to the entirety of the driveway on Outlot C, and remand for trial. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Douglas B. Shapiro