

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALLAN E. KORNMILLER,

Plaintiff-Appellee,

v

STATE OF MICHIGAN and DEPARTMENT OF  
NATURAL RESOURCES,

Defendants-Appellants.

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UNPUBLISHED

June 22, 2010

No. 289423

Grand Traverse Circuit Court

LC No. 08-026385-CH

Before: MURRAY, P.J., and SAAD and M. J. KELLY, JJ.

PER CURIAM.

In this declaratory action involving rights to real property, defendants appeal as of right the circuit court's grant of plaintiff's motion for partial summary disposition and its subsequent denial of defendants' motion requesting supplementation of its opinion. Because we conclude that there were no errors warranting relief, we affirm.

**I. BASIC FACTS AND PROCEDURAL HISTORY**

In 1968, plaintiff purchased an 80-acre parcel of land from Edgar Ball. State owned lands border plaintiff's parcel on the north, south, and east, and private land borders the parcel to the west. There is no access to plaintiff's parcel from a public road. The nearest road is Muncie Lake Road South, which runs to the east of the parcel. Two access roads connect that road to the parcel, one entering the parcel from the north, and the other entering from the south. The southern access road is at issue in this case.

Plaintiff sued defendants for declaratory relief in 2008. In his complaint, plaintiff alleged that he had acquired a prescriptive easement and an easement by necessity over the southern access road. He alleged that he had used the southern access road in a manner that was adverse, open, notorious, peaceable, and continuous for at least 15 years. He further alleged that Ball, his predecessor in interest, had also used the southern access road "for decades." Plaintiff moved for summary disposition on the issue of the prescriptive easement. The trial court held that plaintiff was entitled to tack on his predecessor's use of the southern access road, which began in 1946, and that he had thus acquired a prescriptive easement over the access road. The trial court then dismissed as moot plaintiff's claim for an easement by necessity.

Defendants moved for supplementation under MCR 2.611(A)(2)(d), seeking to have the trial court define the scope of the easement. The trial court denied this motion. Defendants now bring this appeal.

## II. PERIOD OF LIMITATIONS

Defendants first argue that plaintiff's action was barred under MCL 600.5801(4). We review de novo the legal question of whether a cause of action is barred by a statute of limitations. *City of Novi v Woodson*, 251 Mich App 614, 621; 651 NW2d 448 (2002).

Section 5801 establishes the period of limitations for "any action for the recovery or possession of any lands." MCL 600.5801. Plaintiff's action was not one for the recovery or possession of lands; rather, it was a declaratory judgment action seeking judicial recognition of the prescriptive easement plaintiff alleged already existed. The statute of limitations found in § 5801 would apply to an action brought by defendants against plaintiff to try to stop plaintiff from using the southern access road. Once a prescriptive easement has vested, however, no statute of limitations applies to bar an action for a declaration that it has done so.

No Michigan court has adopted defendants' novel interpretation of § 5801. In fact, this Court has previously rejected an identical argument applied to an adverse possession claim. See *Gorte v Dep't of Transportation*, 202 Mich App 161, 168-169; 507 NW2d 797 (1993). The rights at issue in a prescriptive easement case are not sufficiently distinct from those in an adverse possession case to successfully distinguish *Gorte*. Defendants' argument is without merit.

## III. ELEMENTS OF A PRESCRIPTIVE EASEMENT

Defendants next argue that the trial court did not have enough evidence to determine either that Ball had used the southern access road in a manner that would give rise to a prescriptive easement, or that plaintiff's use of the southern access road after 1973 was adverse.

We review de novo a trial court's grant of summary disposition. *DaimlerChrysler Corp v G Tech Professional Staffing, Inc*, 260 Mich App 183, 184; 678 NW2d 647 (2003). A motion for summary disposition under MCR 2.116(C)(10) must be supported by "affidavits, depositions, admissions, or other documentary evidence." MCR 2.116(G)(3). Once the movant satisfies his initial burden of identifying the issues as to which he believes there is no genuine issue as to any material fact, and supporting this with evidence, the opposing party must then "demonstrate with supporting evidence that a genuine and material issue of disputed fact exists." *DaimlerChrysler Corp*, 260 Mich App at 185. The party opposing the motion "may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Here, plaintiff submitted direct documentary evidence in the form of affidavits showing that Ball had used the property continuously from 1946 to 1968, and that the southern access road was the only means of access to the property before (at least) 1968. This was sufficient to show that Ball had used the southern access road from 1946 to 1968. Defendants did not respond with evidence to the contrary, and thus failed to show that there was a genuine issue of

material fact. As such, it was not error for the trial court to allow plaintiff to tack Ball's use of the southern access road.

#### IV. EQUITY

Defendants also assert that it was inequitable for the court to recognize plaintiff's easement. Defendants argue that plaintiff was aware when he bought the property that there was no public road accessing it, and that it now offends equity to allow plaintiff to improve his position by receiving judicial recognition of his right to use the southern access road. Defendants cite no precedent or rule of equity supporting this argument. In fact, this Court has upheld the grant of easements to access property that the purchaser knew was landlocked at the time of purchase. See, e.g., *Schumacher v Dep't of Natural Resources*, 256 Mich App 103, 105-106; 663 NW2d 921 (2003) (*Schumacher I*) (affirming finding of implied easement by necessity to access property that was without access when purchased).

#### V. MOTION FOR SUPPLEMENTION

We also do not agree with defendants' contention that the trial court erred when it denied their motion for supplementation. Defendants argue that there are serious concerns over the future use of the southern access road, and its impact on other users of the land. Presently, however, there is no dispute between the parties as to the scope of the easement. Thus, defendants are asking the trial court to answer a purely hypothetical question. The scope of the easement does not need to be defined by the court anymore than it is already defined by Michigan law—plaintiff may “do such acts as are necessary to make effective the enjoyment of the easement unless the burden on the servient estate is unreasonably increased; the scope of the privilege is determined largely by what is reasonable under the circumstances.” *Heydon v MediaOne*, 275 Mich App 267, 271; 739 NW2d 373 (2007). Without an actual dispute between the parties, there are no “circumstances” by reference to which a court may determine what uses are and are not “reasonable.” It is neither necessary nor possible to determine whether a particular hypothetical action by plaintiff is within or beyond the scope of the easement.

*Schumacher I* and the appeal of the same case after remand, *Schumacher v Dep't of Natural Resources*, 275 Mich App 121; 737 NW2d 782 (2007) (*Schumacher II*), on which defendants rely, are distinguishable. In that litigation, the scope of the easement was part of the dispute between the parties. The trial court initially limited the easement to nonmotorized vehicle use, refusing to consider whether the scope of the easement could expand as technology advanced. *Schumacher I*, 256 Mich App at 106. This was error, and this Court remanded for a proper determination of the scope. *Id.* at 106-108. On remand, the trial court again erred in determining the proper scope, and we remanded a second time. *Schumacher II*, 275 Mich App at 132. But the *Schumacher* plaintiff sought a declaration that his easement allowed him to construct a paved two-lane road, divided by a 20-foot median, with shoulders and irrigation ditches on each side. *Id.* at 125. Here, plaintiff is only seeking a declaration that his easement exists. There is no case or controversy that would allow the trial court to hold a trial on the scope of the easement in this case. On these facts, we cannot conclude that the trial court abused its discretion in denying defendants' motion.

There were no errors warranting relief.

Affirmed.

/s/ Christopher M. Murray

/s/ Henry William Saad

/s/ Michael J. Kelly