

STATE OF MICHIGAN
COURT OF APPEALS

GERALD D. HAUSE,

Plaintiff-Appellant,

v

CYNTHIA SCHNEIDER,

Defendant-Appellee.

UNPUBLISHED

March 28, 2006

No. 257115

Ingham Circuit Court

LC No. 03-001974-CH

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order awarding defendant a prescriptive easement over a specified portion of plaintiff's property. We reverse and remand for entry of summary disposition in favor of plaintiff. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased "Lot 1," a small parcel in Meridian Township, via tax deed and quitclaim deed on March 7, 2001. Defendant owns two adjoining parcels, "Lot 2" and "Lot 3," on which her residence is situated. A curving driveway crosses all three lots, providing access to Roe Street from Lot 1 and to Marsh Road from Lot 3. A path had been worn across Lot 1 by defendant's predecessors; after purchasing Lots 2 and 3 in 1995, defendant apparently made improvements to the driveway, including having it blacktopped. The driveway covers an area of approximately eighteen feet by eleven feet on Lot 1.

In 2003, plaintiff filed a complaint against defendant alleging trespass and seeking an injunction prohibiting her from using Lot 1 to access Roe Street. Defendant filed a counter-complaint, claiming that she owned the eighteen-foot section of Lot 1 by virtue of adverse possession. Defendant alleged that the driveway across Lot 1 provided the sole access to Lots 2 and 3, a fact that was disputed by plaintiff, and that it had been used as such by defendant and her predecessors in interest continuously since 1963.

The parties each sought summary disposition pursuant to MCR 2.116(C)(10). In support of her claim for adverse possession, defendant presented the affidavits of two prior owners of Lots 2 and 3, who each averred that they had openly and continuously used the driveway between Roe Street and Marsh Road for purposes of ingress and egress, and that they had mowed and maintained Lot 1 openly and without objection by any owner of Lot 1, for the entire

period that they lived there. The first affiant had purchased Lots 2 and 3 in 1969 and had sold them on land contract in 1985; the affiant stated that he observed the continuous use of the driveway and maintenance of Lot 1 by the purchasers during the term of the land contract. The second affiant stated that she had purchased Lots 2 and 3 from the land contract purchasers in 1988 and that she had resided there until 1993; she then leased the property to tenants until 1995, at which time she sold the property to defendant. The affiant had personal knowledge that her tenants had mowed and maintained Lot 1 openly and continuously and had used the driveway between Roe Street and Marsh Road for the purpose of ingress and egress. A third affiant, the owner of a neighboring parcel, stated that, for the entire time he had lived in the neighborhood, he had personally observed the owners and tenants of Lots 2 and 3 use the driveway to and from Roe Street and Marsh Road, as well as mow and maintain Lot 1.

Plaintiff argued that defendant did not have a valid claim for adverse possession because, as a result of delinquent taxes owed on the property, the State of Michigan owned Lot 1 during the 15-year period that defendant claimed she had adversely possessed it, and one could not adversely possess against the State. Plaintiff provided a copy of a 1999 written lien search showing that Lot 1 was deeded from the Michigan Department of Resources to grantees on March 22, 1993. Plaintiff further argued that when title became absolute in the State on sale for delinquent taxes, the land became free of all taxes and other liens and encumbrances. Nor could defendant “tack” on the previous successions of the property because successive possessions could not be tacked where, as here, the disputed land was not described in the deed.

The trial court rejected defendant’s claim of adverse possession, holding that any adverse possession claim was defeated when the State took title of Lot 1 for nonpayment of taxes.¹ Nevertheless, the trial court awarded defendant a prescriptive easement across Lot 1. (*Id.*, 5-7.)

Equitable issues are reviewed de novo. *AFSCME v Bank One*, 267 Mich App 281, 293; 705 NW2d 355 (2005). “While actions to quiet title are equitable and therefore reviewed de novo, the circuit court’s factual findings are not reversed unless they are clearly erroneous.” *Gorte v Dep’t of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993). This case also presents issues of law, which are reviewed de novo. *Burba v Burba*, 461 Mich 637, 647; 610 NW2d 873 (2000). Likewise, this Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005).

An easement represents the right to use another’s land for a specified purpose. *Schadewald v Brulé*, 225 Mich App 26, 35; 570 NW2d 788 (1997). An easement by prescription requires elements similar to adverse possession, except exclusivity. *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 680; 619 NW2d 725 (2000). 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. MCL 600.5801; *Marr v Hemenny*, 297 Mich 311, 314; 297 NW 504 (1941); *Plymouth Canton Community Crier, Inc, supra* at 679; *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 645; 528 NW2d 221 (1995).

¹ Defendant has not appealed from this ruling.

Plaintiff argues that defendant cannot establish the statutory 15-year prescriptive period because (1) the period was interrupted when the State acquired title to Lot 1 due to the nonpayment of taxes and (2) defendant could not “tack” the period of her prescriptive use to that of her predecessors so as to establish a combined total prescriptive period in excess of 15 years because she did not establish privity of estate. We agree on both accounts.

When the State acquired title to Lot 1 due to nonpayment of taxes, any easement or other encumbrance was extinguished. See *Moceri v St Clair Shores*, 366 Mich 380; 115 NW2d 103 (1962); *Young v Thendara, Inc*, 328 Mich 42, 53; 43 NW2d 58 (1950); *James A Welch Co, Inc v State Land Office Bd*, 295 Mich 85, 93; 294 NW 377 (1940); *Frey v Scott*, 224 Mich App 304, 308; 568 NW2d 162 (1997). Because any existing easement over Lot 1 was extinguished when the State took title prior to 1993 and again prior to its conveyance to plaintiff in 2001, defendant could only claim a prescriptive period of two years at the time her counter-complaint was filed in 2003.

Moreover, defendant may not “tack” any prior prescriptive periods onto her own in order to satisfy the fifteen-year statutory requirement. A party may tack on the possessory periods of predecessors in interest to achieve the statutory fifteen-year period by showing privity of estate. *Dubois v Karazin*, 315 Mich 598, 605-606; 24 NW2d 414 (1946); *Killips v Mannisto*, 244 Mich App 256, 259; 624 NW2d 224 (2001). “This privity may be shown in one of two ways, by (1) including a description of the disputed acreage in the deed, or (2) an actual transfer or conveyance of possession of the disputed acreage by parol statements made at the time of conveyance.” *Id.* (citations omitted). There is no record evidence, nor has any assertion been made, that privity exists between defendant and her predecessors in interest. Accordingly, the trial court lacked a proper basis for finding that defendant had established a claim for a prescriptive easement.²

Reversed and remanded for entry of summary disposition in plaintiff’s favor. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

² Because the foregoing analysis is dispositive of the case, we need not address plaintiff’s remaining issues on appeal.