

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

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WILLIAM E. STEBBINS,

Plaintiff-Appellant,

v

TUSCOLA COUNTY ROAD COMMISSION,

Defendant-Appellee.

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UNPUBLISHED  
February 16, 2006

No. 254677  
Tuscola Circuit Court  
LC No. 03-021745-CZ

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

PER CURIAM.

Plaintiff appeals as of right from the trial court order that (1) granted defendant's motion for reconsideration as to Count I of defendant's motion for summary disposition (action to quiet title); and (2) summarily dismissed that count with prejudice on the ground that it was barred by an applicable statute of limitations. We affirm.

I. Basic Facts And Procedure

This case arises out of plaintiff's grant of an easement to defendant in 1974 so that defendant could extend an existing roadway to intersect with a railroad line. The roadway was completed in 1976. Plaintiff filed the instant lawsuit in April, 2003, seeking to recover portions of the easement that are outside the actual road surface and right-of-way.

The trial court initially denied defendant's motion for summary disposition as to Count I of plaintiff's complaint but granted it as to four other counts. Defendant moved for reconsideration for the reason that the trial court failed to address its affirmative defense that plaintiff's claim was barred by an applicable statute of limitations. The court granted defendant's motion for reconsideration after recognizing its failure to determine whether the defense applied. On reconsideration, the court granted defendant summary disposition as to Count I on the basis that plaintiff's claim was not filed within fifteen years of the time the roadway was completed and that the claim was, therefore, barred by an applicable statute of limitations.

II. Analysis

Plaintiff claims the trial court abused its discretion by granting defendant's motion for reconsideration and wrongfully dismissed its claim for quieting title. We disagree.

## A. Standard Of Review

We review a trial court's ruling on a motion for reconsideration for an abuse of discretion. *Kokx v Bylenga*, 241 Mich App 655, 658; 617 NW2d 368 (2000). "The rule allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *Id.*, 659. "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Schoensee v Bennett*, 228 Mich App 305, 314-315; 577 NW2d 915 (1998), citing *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992).

Furthermore, this Court reviews de novo a judgment on a motion for summary disposition. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 567; 702 NW2d 539 (2005); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005).

When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept as true the plaintiff's well-pleaded factual allegations and construe them in the plaintiff's favor. The court must look to the pleadings, affidavits, or other documentary evidence to determine whether there is a genuine issue of material fact. If no facts are in dispute, and reasonable minds could not differ on the legal effect of those facts, whether the plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. However, if a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. [*Baker v DEC Int'l*, 218 Mich App 248, 252- 253; 553 NW2d 667 (1996), affirmed in part and reversed in part on other grounds 458 Mich 247; 580 Mich 894 (1998) (citations omitted).]

## B. Limitation Periods On Actions Pertaining To Easements

Although there is not a specific statute of limitations pertaining to easements, MCL 600.5801 provides in pertinent part:

No person may bring or maintain any action for the recovery or possession of any lands or make any entry upon any lands unless, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section.

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(4) *In all other cases* under this section, the period of limitation is 15 years. [Emphasis added.]

The period of limitation runs from the time the claim accrues. MCL 600.5827. For claims to recover land from which a person is disseised, "his right of entry on and claim to recover land accrue at the time of his disseisin." MCL 600.5829(1). "Disseisin occurs when the

true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership.” *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993), citing Black’s Law Dictionary (4<sup>th</sup> ed), pp 558-559.

### C. Bar To Plaintiff’s Claim

In this case, plaintiff was disseised of the easement at the time construction began on the road extension project – the point at which defendant exercised rights of ownership of the easement.<sup>1</sup> Plaintiff claims, however, that the statute of limitations was tolled because, in accordance with MCL 600.5801(4), he had entered on the land within fifteen years of the filing of the instant lawsuit. Plaintiff cites no legal authority supporting his novel proposition that merely entering the land tolls the statute of limitations or that Michigan courts have interpreted the statute as such. Generally, when a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

In any event, plaintiff’s position is without merit. MCL 600.5829(1) clearly provides that, in the situation where a person is disseised, the right to make entry on and the claim to recover land “accrue at the time of his disseisin.” Plaintiff was disseised, at the latest, when defendant began constructing the roadway extension because this was the time that plaintiff was displaced and defendant exercised ownership rights of the easement. Thus, plaintiff’s claim began to accrue at that point. Although plaintiff may have entered the property at later dates, MCL 600.5801 must be read *in pari materia* with MCL 600.5829(1). “Statutes *in pari materia* are statutes sharing a common purpose or relating to the same subject. They are construed together as one law, regardless of whether they contain any reference to one another.” *Omne Financial Inc., v Shacks Inc.*, 460 Mich 305, 312; 596 NW2d 591 (1999), citing *State Treasurer v Schuster*, 456 Mich 408; 572 NW2d 628 (1998). “Such construction should effectuate each statute without repugnancy, absurdity, or unreasonableness.” *Id.*, citing *People v Harrison*, 194 Mich 363; 160 NW 623 (1916). In this case, while the two statutes relate to the same subject and are thus read *in pari materia*, interpreting MCL 600.5801(4) in the manner advanced by plaintiff would, in addition to violating a rule of construction, render nugatory the language of MCL 600.5829(1) establishing disseisin as the point at which the cause of action begins to accrue. This Court should avoid any construction that would render a statute, or any part of it, surplusage or nugatory. *Jones v Slick*, 242 Mich App 715, 719; 619 NW2d 733 (2000).

Plaintiff next argues that a “discovery rule” should apply to determine when his cause of action accrued. Assuming without deciding that MCL 600.5829(1) includes by implication an objective discovery standard for determining when disseisin occurs, plaintiff still cannot prevail because he was, by his own admissions, aware that defendant began constructing the roadway extension sometime prior to 1976 (when the project was completed). Thus, defendant knew or

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<sup>1</sup> We disagree with the trial court to the extent that it held that the statute of limitations began to run upon the completion of the road extension project. However, the trial court’s error was harmless because it does not affect the conclusion that the statute of limitations expired before plaintiff filed the instant lawsuit.

should have known that he was disseised of the property pursuant to the right-of-way agreement before 1976.

#### D. Adverse Possession

Plaintiff also asserts that his claim was not barred by the statute of limitations because it was filed within fifteen years of when he recovered the easement by way of adverse possession. Plaintiff offered no proof below that he satisfied each of the elements for adverse possession: actual, visible, open, notorious, exclusive, and uninterrupted possession of the property that was hostile to the owner and under cover of a claim of right for a fifteen-year period. *Rozmarek v Plamondon*, 419 Mich 287, 295; 351 NW2d 558 (1984). Therefore, plaintiff's adverse possession claim must fail.

#### E. Abandonment

Finally, plaintiff claims that defendant abandoned the easement after the completion of the roadway extension because it was no longer a necessity and that it therefore reverted back to him. "An easement may be considered abandoned when there is a history of non-use, coupled with an act or omission showing a clear intent to abandon." 25 Am Jur 2d, Easements and Licenses, § 98, p 596.

Plaintiff has presented no evidence of any act or omission of defendant evidencing its clear intent to abandon the easement. Presumably, the easement is still required by defendant to clear any vegetation that might block essential sight lines (the roadway extension intersects with a railroad line) or present an actual danger to travelers on the road (e.g., trees growing too close to the shoulder). Moreover, presumably the roadway will require repaving or maintenance in the future. Just as the easement was needed to construct the extension in the first place, it may be needed for future maintenance and upkeep. At the very least, the easement is required to *prevent* plaintiff or his successors from constructing outbuildings or planting (or allowing to grow) vegetation on the property that might impede or endanger traffic by, again, interfering with sight lines to the railroad crossing. Plaintiff presented no evidence that the easement was no longer a necessity and that defendant clearly expressed an intention to abandon the easement.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra  
/s/ Alton T. Davis