

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

---

MONTROSE ORCHARDS, INC.,

Plaintiff/Counterdefendant-  
Appellee,

and

DONALD M. AND SANDRA HILL TRUST,

Plaintiff-Appellee,

v

BRYCE LANE,

Defendant/Counterplaintiff-  
Appellant.

UNPUBLISHED

March 23, 2006

No. 257892

Genesee Circuit Court

LC No. 00-069159-CK

---

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

PER CURIAM.

Defendant appeals as of right from the trial court order granting summary disposition under MCR 2.116(C)(10) in favor of plaintiffs on their complaint to maintain and use a buried water line across defendant's property. We vacate the order and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court erred as a matter of law in granting summary disposition in favor of plaintiffs on plaintiffs' claim that they possessed an "irrevocable license" to maintain and use a buried water line on defendant's property. Briefly, the relevant facts are as follows. Plaintiffs are a corporate orchard and its owners. Defendant is the owner of land adjacent to plaintiffs' orchard. For years plaintiffs irrigated the orchard by running an above ground water line from a water-filled gravel pit across defendant's property to the orchard. Plaintiffs wanted to bury the water line for ease of maintenance. In 1988, defendant granted oral permission to plaintiffs to bury their water line on his property. Beginning in 1997, defendant indicated that he did not want plaintiffs on his property. In 2000, defendant attempted to remove the buried water line. Plaintiffs then sued defendant, alleging counts for breach of contract, easement, quantum meruit, and injunctive relief. Defendant counter-sued and moved for summary disposition, arguing that plaintiffs did not have either an easement or a license coupled with an interest that would allow them to place, maintain, and use the water line on defendant's property.

The trial court agreed with defendant that plaintiffs did not have an easement to maintain and use the buried water line. However, the court found that plaintiffs did have an “irrevocable license” to maintain and use the water line because they had a license, i.e., defendant’s oral permission, coupled with an interest in a chattel personal on defendant’s property subject to the license, i.e., the water line. Based on this legal analysis, the court granted summary disposition to plaintiffs. After the parties settled their remaining claims, defendant appealed the trial court’s grant of summary disposition in favor of plaintiffs. Defendant claims that his oral permission to plaintiffs to bury a water line on his land did not create an “irrevocable license.” We agree.

A license is “permission to do some act or series of acts on the land of the licensor without having any permanent interest in it.” *Kitchen v Kitchen*, 465 Mich 654, 658; 641 NW2d 245 (2002). A license may be granted orally, but an “oral license is necessarily revocable at the will of the licensor without regard for any promised duration.” *Id.* at 661. Because a revocable license does not create an interest in land, it is not subject to the statute of frauds. *Id.* at 659-660. Plaintiffs purported “irrevocable license” describes an interest in defendant’s land that gives them a permanent right to use defendant’s property. Such a right is commonly known as an easement. *Id.* at 659. A landowner can grant an easement, but the easement must comply with the statute of frauds. MCL 566.106. The statute of frauds provides as follows:

No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

Thus, unless the oral grant of a right to an “irrevocable license” is reduced to writing, the grant remains a mere license and is revocable at will. *Id.*

In this case, plaintiffs only had an oral promise from defendant that they could bury the water line and use it to transport water from the gravel pit across plaintiffs’ property to irrigate their orchards. Because the oral promise was never reduced to writing, plaintiffs never acquired a right arising out of an interest in defendant’s property to permanently install, maintain, and use the water line. Rather, plaintiffs’ right to do so always remained a license, revocable by defendant. If plaintiffs had desired an “irrevocable license,” they possibly could have obtained an easement from defendant by having defendant’s oral grant of permission reduced to a writing. But plaintiffs never did. Therefore, defendant’s permission to plaintiffs to use his property remained a revocable license, which defendant revoked.

Plaintiffs’ reliance on the “promise-coupled-with-an-interest” doctrine is misplaced because the doctrine does not apply to the facts of this case. The doctrine, as articulated in *Forge v Smith*, 458 Mich 198, 210-211; 580 NW2d 876 (1998), states:

[A] license coupled with an interest is a privilege “incidental to the ownership of an interest in a chattel personal located on the land with respect to which the license exists.” This privilege is distinguished from licenses incidental to an interest in land. In order to be irrevocable, the latter license must constitute an easement appurtenant. (citations omitted.)

In this case, plaintiffs obtained an oral license to enter onto defendant's land to place, maintain, and use the water line because defendant orally gave plaintiffs permission to do so. Because plaintiffs owned the water line, they had an interest in the chattel personal, i.e., the water line. Accordingly, plaintiffs had a right to use and maintain the water line on defendant's property, under the "promise-coupled-with-an-interest" doctrine, but only as long as the water line remained on defendant's property. However, plaintiffs did not have an irrevocable license to permanently place the water line on defendant's property because plaintiffs' right to bury the water line on defendant's property did not arise from an interest in defendant's property based on a written document, i.e., an easement. Rather, as discussed above, it was simply based on an oral license that always remained revocable because it was never reduced to writing, as required by the statute of frauds. Thus, in the absence of a written document creating such an easement, we find that the statute of frauds and the facts of this case preclude plaintiffs from obtaining an "irrevocable license" under the "license-coupled-with-an-interest" doctrine.

We also find that plaintiffs' other arguments urging relief based on an analogy to a prescriptive easement, adverse possession, or acquiescence lack merit. Plaintiffs have not identified any authority that supports their position, and those doctrines do not apply to the facts of this case.

Accordingly, we vacate the order of the trial court granting summary disposition in favor of plaintiffs and remand to the trial court for further proceedings consistent with this opinion.

Vacated and remanded. We do not retain jurisdiction.

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