STATE OF MICHIGAN

COURT OF APPEALS

STEVE GORHAM,

Plaintiff-Appellee,

v

JAMES R. OWENS and STEPHANIE OWENS,

Defendants-Appellants.

UNPUBLISHED
December 9, 1997

No. 199846
Ionia Circuit Court
LC No. 95-016721-CH

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Defendants[1] appeal as of right from a judgment in favor of plaintiff that was entered following a bench trial. The trial court determined that plaintiff had established a prescriptive easement to park in a gravel driveway located next to plaintiff's house, but fully within the boundary of defendants' property, on which all parties shared a right-of-way. We affirm.

Defendants first argue that the trial court clearly erred in finding that a prescriptive easement to use the driveway for parking had been established. A prescriptive easement generally requires the establishment, by clear and cogent evidence, of use that is open, notorious, continuous and adverse for at least the statutory period of fifteen years. *Reed v Soltys*, 106 Mich App 341, 346; 308 NW2d 201 (1988). Defendants argue that plaintiff's use was not continuous or adverse, and that the court erred by finding that plaintiff could park on the driveway within the boundaries of the east and west walls of his house. We disagree.

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." *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976). The continuity of the use must simply be in keeping with the nature and character of the right claimed. *Von Meding v Strahl*, 319 Mich 598, 613; 30 NW2d 363 (1948), overruled on other grounds in *Schmidt v Eger*, 94 Mich App 728; 289 NW2d 851 (1980). Plaintiff and defendant both testified that until 1994, neither neighbor asked or gave permission to park, or asserted that there was or was not a right to park on the gravel, although defendant and his predecessors knew that the use for parking was inconsistent with their rights. All

parties and witnesses agreed that plaintiff parked nearly every day in the driveway beside defendants' house. This parking has continued uninterrupted at least from 1978, over fifteen years. Therefore, defendants' argument has no merit, and we find no clear error in the trial court's finding of a prescriptive easement.

Defendants next argue that the trial court abused its discretion by not making specific findings of fact, as required by MCR 2.517, on defendants' affirmative defenses of laches and estoppel. The court rule is satisfied where it appears that the trial court was aware of the factual issues and correctly applied the law, and where further explanation would not facilitate appellate review. *People v Johnson*, 208 Mich App 137, 141; 526 NW2d 617 (1994). In the context of addressing the prescriptive easement issue, the trial court found that plaintiff did not act without due diligence in asserting his right to park, nor did plaintiff's actions prejudice defendants, as are required by the defenses of laches and estoppel. *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982); *Cudahy Bros Co v West Michigan Dock & Market Corp*, 285 Mich 18, 26; 280 NW 93 (1938). Plaintiff asserted his right to park as soon as defendant told him he could not park in the driveway, and defendants are not prejudiced by maintenance of the driveway because they still own it and could use it for ingress and egress if they had not erected a fence to block access to the cement half of the driveway. Because the trial court addressed and incorporated into his ruling facts which show that there is no merit to the defenses, it would not facilitate appellate review to remand for further explanation.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Janet T. Neff

[1] All mention of "defendant" refers to James Owens.