

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

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BONAVERRE FAUST, GERALD E. SCHNEIDER,  
and SUE C. SCHNEIDER,

UNPUBLISHED  
April 9, 1999

Plaintiffs-Appellees,

v

RAYMOND P. GILREATH and MARIE V.  
GILREATH,

No. 210615  
Branch Circuit Court  
LC No. 96-010619 CH

Defendants-Appellants.

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Before: Holbrook, Jr., P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's judgment for plaintiffs in this case involving a dispute over access to a channel near the parties' real property and the Schneiders' right to maintain a dock in the channel. The trial court granted the Schneiders a prescriptive easement for access to the channel and placement of a dock for mooring boats, granted Faust title by adverse possession to the land between her lot and the water's edge, and determined a boundary line between the Faust and Gilreath property. We affirm.

This case arises from a real property dispute between plaintiffs and defendants, all of whom own property in Bussing's Landing No. 2 plat, a subdivision. Plaintiff Faust owns Lot 26; Plaintiffs Schneiders own Lot 27; and defendants own Lot 28. A channel is located near these lots; however, the water does not abut the lots. In order to obtain access to the channel from Lot 27, one must go across Lot 28, pursuant to a deeded easement, as well as the land in dispute, which lies between the parties' lots and the channel.

Plaintiffs filed suit to enjoin the Gilreaths from excavating the land between their lot and the channel because they felt that the excavation would impinge on their property rights. Defendants filed a counterclaim alleging that the Schneiders have attempted to enlarge the easement rights they possess over the Gilreaths' lot and that the seawall of railroad ties placed at the channel by Faust encroaches upon defendants' property.

Because actions regarding interests in land are equitable in nature, MCL 600.2932(5); MSA 27A.2932(5), our review is de novo; however, the trial court's findings of fact will not be modified or overturned unless clearly erroneous. *Caywood v Dep't of Natural Resources*, 71 Mich App 322, 332; 248 NW2d 253 (1976). "A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Markillie v Bd of Livingston Co Rd Comm'rs*, 210 Mich App 16, 22; 532 NW2d 878 (1995). This standard of review applies to all of defendants' arguments.

Defendants first argue that the trial court erred in finding that a prescriptive easement existed over the property in question because the evidence did not establish continuous use of the property for fifteen years. A prescriptive easement "is no more than an unopposed, continuous trespass for 15 years." *McDonald v Sargent*, 344 Mich 345, 344-345; 13 NW2d 843 (1944). This Court has stated that "[a]s a general rule, 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." *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 645; 528 NW2d 221 (1995). Pursuant to statute, no person may bring or maintain an action to recover possession of any lands unless the action is commenced within fifteen years. MCL 600.5801(4); MSA 27A.5801(4).

Continuous use does not mean constant use. *Dyer v Thurston*, 32 Mich App 341, 344; 188 NW2d 633 (1971) ("A pathway easement to a summer cottage is considered to be in continuous use if it is used merely seasonally"). However, continuous use is not found when there is no clear and cogent proof of this essential element, which is necessary for the divestiture of title to land. *Dummer v U S Gypsum Co*, 153 Mich 622, 641-642; 117 NW 317 (1908).

Although defendants presented evidence that there was not continuous use of the dock, other evidence revealed that the dock remained in its original location for approximately twenty years, the owners of Lot 27 always mowed the area on the lower side of the railroad ties, and the lots were designed for access to and use of the channel. On this record, we conclude that the trial court did not clearly err in finding a prescriptive easement where the evidence supported a finding of continuous use of the real property in question.

We next address defendants' argument that the trial court erred by increasing the scope of the easement. Defendants argue that the use of the dock should be limited to the docking of a ten-foot boat because placing larger boats by the dock extends the scope of the easement.

The Michigan Supreme Court has stated that "[a] principle which underlies the use of all easements is that the owner of an easement cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden." *Delaney v Pond*, 350 Mich 685, 687; 86 NW2d 816 (1957). The Michigan Supreme Court also has stated that the use of an easement should not "unreasonably interfere with [the complaining party's] use and enjoyment of their property." *Thies v Howland*, 424 Mich 282, 289; 380 NW2d 463 (1985). Because the extent of a party's right under an easement is a question of fact, this Court reviews the trial court's determination for clear error. *Dobie v Morrison*, 227 Mich App 536, 541; 575 NW2d 817 (1998).

There is little indication that the uses of the land permitted by the trial court will unreasonably interfere with the Gilreaths' use and enjoyment of their property. The trial court granted the Schneiders and their heirs, successors and assigns the right to place a dock, not exceeding ten feet in length, in the channel at the location on the west side of the prescriptive easement, as defined by the court, where it borders the channel, in order to access the lake and to moor boats. Although the trial court granted the owners of Lot 27 the entitlement to maintain the location of the prescriptive easement for reasonable use, which testimony indicated was done in the past, it limited the size of the dock and ordered that watercraft may not be docked south of the south line of the prescriptive easement. The property south of the south line of the prescriptive easement is the Gilreaths' property. Because the trial court defined the prescriptive easement as limiting the owners of Lot 27 from docking watercraft north of the prescriptive easement's south boundary, the Gilreaths' property is not sustaining a materially increased burden by the court not specifically limiting the size of watercraft docked there. We conclude that it is reasonable for the court to determine the boundaries of the prescriptive easement and then hold that neither party may dock watercraft in a fashion that would infringe upon these boundaries; thus, the trial court's determination was not clearly erroneous.

Next, defendants argue that the trial court clearly erred in granting Faust title by adverse possession to the land between her lot and the edge of the channel because that land was held by Herbert Bussing's heirs, who were not parties to the action. Defendants provided no case law to support their assertion. This Court has stated that "[a] party may not leave it to this Court to search for authority to sustain or reject its position." *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987). Nonetheless, because defendants have conceded that they did not have title to the land in question and because they have failed to demonstrate how the trial court's decision to grant Faust title to the land by adverse possession detrimentally affected any interest that they might have in the land, we conclude that defendants lack standing to challenge this aspect of the trial court's decision. See *Bowie v Arder*, 441 Mich 23, 42-43; 490 NW2d 568 (1992), citing 59 Am Jur 2d, Parties, § 30, p 414 ("[o]ne cannot rightfully invoke the jurisdiction of the court to enforce private rights, or maintain a civil action for the enforcement of such rights, unless one has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy. This interest is generally spoken of as 'standing'").

Finally, defendants argue that the trial court erred in determining the boundary line between the Faust and Gilreath lots and the channel, because the line was neither that contained in the deeds obtained from the Bussing heirs, nor the 45-degree angle from the northwest corner of their lot to the channel as suggested by the Gilreaths in their counterclaim. Because defendants did not provide any case law to support their theory, the issue is abandoned on appeal. *Dresden v Detroit Macomb Hosp Corp*, 218 Mich App 292, 300; 553 NW2d 387 (1996), *In re Keifer*, *supra* at 294. Regardless, on this record, we conclude that the trial court's finding in this boundary dispute is not clearly contrary to the evidence presented.

We affirm.

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy

/s/ Michael J. Talbot