

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

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ROBERT F. RILEY and MARY ANN RILEY,  
  
Plaintiffs-Appellants/Cross-Appellees,

UNPUBLISHED  
October 15, 1999

v

No. 204407  
Emmet Circuit Court  
LC No. 95-003514 CH

JAMES QUINLAN, JOAN QUINLAN, DALE  
CLEMONS, NANCY CLEMONS, JOHN  
CARPENTER, THE DAVID GEZON TRUST, and  
MARGARET THORNELL, TRUSTEE ,

Defendants-Appellees,

and

MICHAEL THEISEN, KATHY THEISEN and THE  
ARNOLD SAVIANO TRUST,

Defendants-Appellees/Cross-  
Appellants.

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Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

In this action to quiet title, plaintiffs challenge the location of a road which they claim encroaches on their property. The trial court dismissed plaintiffs' claim, holding that their action was barred by the doctrines of laches and repose and by a previous judgment. Plaintiffs appeal and we affirm.

On appeal, this Court reviews the grant or denial of a motion for summary disposition de novo. *International Brotherhood of Electrical Workers, Local Union No 58 v McNulty*, 214 Mich App 437, 442; 543 NW2d 25 (1995). A trial court's grant or denial of a motion for summary disposition pursuant to MCR 2.116(C)(7) is reviewed to determine whether the moving party was entitled to judgment as a matter of law. *Limbach v Oakland Cty Bd of Cty Road Comm'rs*, 226 Mich App

389, 395; 573 NW2d 336 (1997). Both this Court and the trial court must resolve all reasonable inferences in the nonmoving party's favor. *Bertrand v Allan Ford*, 449 Mich 606, 618; 537 NW2d 185 (1995).

A motion pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Ottaco, Inc v Gauze*, 226 Mich App 646, 650; 574 NW2d 393 (1997). Such a motion may be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Giving the benefit of doubt to the nonmovant, this Court must determine whether a record might be developed which will leave open an issue upon which reasonable minds could differ. *Id.*; see also *Bertrand*, *supra* at 606.

### Laches

Plaintiffs first argue that the trial court erred in granting defendants' motion for summary disposition based upon the equitable doctrine of laches. Specifically, plaintiffs contend that they did not have notice of their potential claims until 1990, and in any event, defendants were not prejudiced by the delay in bringing suit. We disagree with both assertions.

Laches is an equitable defense based primarily on circumstances which render inequitable the granting of relief to a dilatory plaintiff. *City of Holland v Manish Enterprises*, 174 Mich App 509, 512; 436 NW2d 398 (1988). The doctrine of laches applies when there has been an unexcused or unexplained delay in commencing an action and a corresponding change of material condition, which results in prejudice. *Dep't of Public Health v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996). "Unlike the statute of limitations, which is concerned with the time of the delay, the concern of laches is the effect of or prejudice caused by the delay." *Torakis v Torakis*, 194 Mich App 201, 205; 486 NW2d 107 (1992).

Essential prerequisites to invoke the equitable doctrine of laches are: (1) a passage of time, (2) prejudice to defendant, and (3) lack of diligence by the plaintiff. *Id.* Mere lapse of time without a showing of prejudice will not support the defense of laches. *Cantor v Cantor*, 87 Mich App 485, 493-494; 274 NW2d 825 (1978). "[I]t must appear the delay resulted in some prejudice to the party asserting laches which would make it inequitable to disregard the lapse of time and incidental consequences." *Manheim v Urbani*, 318 Mich 552, 555; 28 NW2d 907 (1947). Finally, in determining whether a party is guilty of laches, each case must be decided on its particular facts. *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 97; 572 NW2d 246 (1997).

We find no error in the trial court's determination that the doctrine of laches precludes plaintiff from filing this suit, almost twenty years after the date on which the cause of action arose. Plaintiffs acquired an interest in their property in August 1977. At that time, there was a publicly recorded survey that monumented the property now in dispute that placed plaintiffs on constructive notice of the boundaries of their property. A purchaser of real estate is on constructive notice of all matters properly recorded, whether there is actual knowledge of such matters or not. See *Boraks v Siegel*, 366 Mich 308, 312-313; 115 NW2d 126 (1962).

Also, plaintiffs acquired a fee simple interest in the property and recorded their deed in May 1985, seven years after Meadow Gate Lane had been paved as a roadway. If there are physical conditions on land or any improvements made thereon that would lead a reasonable person to make further inquiries, the purchaser will be charged with the knowledge that such inquiry would have disclosed. *Kastle v Clemons*, 330 Mich 28, 31; 46 NW2d 450 (1951). Therefore, although plaintiffs made no attempt to investigate the boundaries or otherwise challenge the location of the road, plaintiffs are charged with knowledge of the encroachment on their property dating back to 1978 when the road was constructed. See *Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995) (“[a]n obvious roadway crossing the property in question puts a purchaser on actual notice that a third party’s rights may be involved”).

Finally, on April 27, 1990, plaintiffs received a letter from an attorney on behalf of the survey company that discovered the error notifying them of the encroachment on their land and of the error in the prior surveys. Certainly, this letter placed plaintiffs on actual notice of a potential cause of action. Yet, despite these events and the numerous opportunities for plaintiffs to inquire and investigate this matter and to assert their potential claims, they failed to do so until 1995. We are convinced that these facts establish that plaintiffs failed to exercise due diligence in resolving this matter.

Yet, in order for laches to bar plaintiffs from obtaining equitable relief, defendants must also demonstrate that they were prejudiced by plaintiffs’ delay in bringing suit. We are persuaded that defendants have satisfied their burden. A substantial number of conveyances were made in the Meadow Gate Subdivision between 1990 and 1995, and this lawsuit would clearly affect their property rights and boundaries.<sup>1</sup> In addition, there were a number of lot owners who were not served with notice of the lawsuit; thus, the named defendants would be forced to bear the brunt of any damages and costs assessed for relocating the road, which should rightfully be borne by all lot owners. Lastly, the protracted litigation would unsettle other boundaries in the subdivision and require extensive reconstruction to the affected land. This activity would undoubtedly be detrimental to all lot owners, including those who are not aware of the pending litigation. Accordingly, we find that plaintiffs’ delay in bringing this action, coupled with the prejudice caused to defendants and other lot owners in the event this lawsuit proceeded, warrants dismissal of plaintiffs’ claims under the doctrine of laches.

#### Doctrine of Repose

Next, plaintiffs assert that the trial court erred in granting defendants’ motion for summary disposition based upon the doctrine of repose. Plaintiffs argue that the doctrine is inapplicable to this case because their request to relocate the road will not affect the property boundaries of residences in the subdivision. We disagree.

Public policy clearly favors consistency in ascertaining boundary lines, especially where a multitude of boundaries have been established in reliance upon prior surveys and monuments. *Adams v Hoover*, 196 Mich App 646, 651; 493 NW2d 280 (1992). In addition, this Court has previously

upheld a trial court's grant of title in favor of the plaintiff to an approximate 9-foot strip of land based upon the doctrine of repose under a similar factual scenario. *Id.* at 647-648, 655. Here, the boundaries to Meadow Gate and the proposed location of Meadow Gate Lane were established through a survey conducted by Charlevoix Abstract & Engineering, Inc. in 1972. The survey was duly recorded and subsequently relied upon by the surveyor who was commissioned by the Meadow Gate proprietors to help them file their petition to vacate a portion of Roaring Brook in order to use the land as an access road. Based upon the Charlevoix Abstract & Engineering survey, the Emmet Circuit Court vacated a portion of land in Roaring Brook to serve as Meadow Gate Lane.

Therefore, because the boundaries to Meadow Gate and the location of Meadow Gate Lane were based upon a properly recorded survey, we find that the doctrine of repose prevents plaintiffs from using a subsequent survey to alter previously established boundary lines. Moreover, plaintiffs' proposed relief would inevitably unsettle established property boundaries throughout the immediate area, a result which the doctrine of repose was designed to avoid. Although plaintiffs argue that their requested relief would not affect the property boundaries of Meadow Gate (because Meadow Gate Lane itself could merely be reduced by 16 feet to 50 feet), we note that the issue of whether the proposed 50-foot road would be sufficient to handle the traffic flow or whether a 50-foot road would violate local ordinances was not addressed by the parties or the court below. Therefore, we hold that the trial court did not err in granting summary disposition in favor of defendants based upon the doctrine of repose.

#### Prior Judgment

Finally, plaintiffs contends that the trial court erred in granting defendants' motion for summary disposition based upon a 1978 judgment by the Emmet Circuit Court, which vacated a portion of Roaring Brook to create an access road to Meadow Gate. MCR 2.612(C)(2) provides the grounds for seeking relief from a prior judgment. While the court rules allow an equitable action seeking relief from a judgment, the action must nonetheless be brought within a reasonable time. MCR 2.612(C)(2). See *Roth v Roth*, 201 Mich App 563, 510; 506 NW2d 900 (1993); Martin, Dean & Webster, *Michigan Court Rules Practice*, pp 544-545.

Here, plaintiffs entered into a land contract to purchase their property in 1977. Meadow Gate Lane has existed as a paved access road since 1978. In 1985, plaintiffs acquired a fee simple interest in their property and received a warranty deed. In 1990, plaintiffs received a letter from an attorney notifying them of the error in the prior survey and the encroachment on their property. Despite these events, and the numerous opportunities plaintiffs had to investigate the matter and pursue their rights, plaintiffs failed to challenge the location of the road on their property until 1995. Plaintiffs waited over ten years after receiving a warranty deed to their property, and over 18 years after obtaining a property interest in the disputed land, before filing the instant action to quiet title. In light of this information, we concur with the trial court that plaintiffs' attempt to challenge the 1978 circuit court judgment vacating their property was untimely - not within a reasonable time - under the court rule. Therefore, we find that that plaintiffs are not entitled to equitable relief of the judgment which vacated a portion of their property, and the trial court's grant of summary disposition to defendants should be upheld.

In light of our conclusion that the trial court properly dismissed plaintiffs' claims under the doctrines of laches, repose, and for failure to seek relief from the 1978 judgment within a reasonable time, consideration of defendants' issue on cross-appeal is unnecessary.<sup>2</sup>

Affirmed.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Jeffrey G. Collins

<sup>1</sup> The trial court took judicial notice of the fact that, of the fourteen plats in the area, there were six recorded conveyances during that time frame.

<sup>2</sup> In any event, review of defendants' argument that the trial court should have granted them summary disposition because plaintiffs' failed to file their action within the three-year statute of limitations, pursuant to MCL 600.5805(8); MSA 27A.5805(8), is without merit. Because plaintiffs contend that defendants have interfered with the exclusive possession of their property on a daily basis since Meadow Gage Lane was constructed in 1978, we believe that the continuing wrongful acts doctrine tolls the running of the period of limitations. Therefore, the trial court did not err in denying defendants' motion for summary disposition based upon the statute of limitations. *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 347; 568 NW2d 847 (1997).