

STATE OF MICHIGAN
COURT OF APPEALS

EDWIN J. GUSTAFSON,

Plaintiff-Appellee,

v

ROBERT F. KOZAL, RACHEL D. KOZAL,
DAVID F. HARMON and TERRI ANN HARMON,

Defendants-Appellants,

and

CONSUMERS POWER COMPANY,

Defendant.

UNPUBLISHED

April 28, 2000

No. 215567

Livingston Circuit Court

LC No. 95-014482-CH

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

MEMORANDUM.

Defendants appeal as of right the judgment entered for plaintiff in this quiet title action. We affirm.

Plaintiff purchased property in Hamburg Township adjacent to Whitmore Lake. Defendants Kozals owned neighboring property. A private road abutted the parcels on the immediate north. Plaintiff claimed ownership of the private road, asserting that the easement had been abandoned and replaced by a different path for access to defendants' property. Plaintiff sought to quiet title to the original private road, claiming that he and the previous owner had adversely possessed that portion of the property. The trial court decided the matter on briefs and determined that plaintiff established adverse possession.

To establish adverse possession, a plaintiff is required to establish by clear and cogent proof that his possession was actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period. *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993).

Use of an easement by the owner of the servient estate will not ripen into adverse possession unless such use is inconsistent with the easement. *Nicholls v Healy (After Remand)*, 37 Mich App 348, 349; 194 NW2d 727 (1971); 1 Cameron, Michigan Real Property Law (2d ed), § 6.30, p 219. The owner has the right to make any use of the premises not inconsistent with the easement. *Lakeside Associates v Toski Sands*, 131 Mich App 292, 299-300; 346 NW2d 92 (1983).

There was clear and cogent evidence to support the lower court's finding of adverse possession of the easement. Trees were planted; a garage was constructed, and cars were stored on the easement. Defendants' predecessors used an alternative path and did not take any action to preserve the easement. Plaintiff's predecessor made actual, visible, open, notorious, exclusive, continuous, and uninterrupted use of the easement in a manner inconsistent with the maintenance of the easement. Defendants failed to establish that the trial court erred in quieting title and enjoining defendants from using the easement.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Janet T. Neff
/s/ Michael R. Smolenski