STATE OF MICHIGAN

COURT OF APPEALS

TERRANCE L. PALMER and DEANNA R. PALMER,

Plaintiffs/Counter-Defendants-Appellees,

v

YVONNE VOHWINKLE, TRUSTEE OF THELMA TAHASH LIVING TRUST, ROBERT D. MORGAN, DARLENE MORGAN, JOANN DICKEY, ROBERT DICKEY, JANICE, SUNDBERG, and DAN SUNDBERG,

Defendants/Counter-Plaintiffs-Appellants.

UNPUBLISHED
September 16, 2004

No. 246850
Cheboygan Circuit Court
LC No. 01-006885-CH

Before: Whitbeck, C.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendants appeal as of right a judgment granting plaintiffs a prescriptive easement across defendants' property. This action stems from plaintiff's use of a driveway that cuts across defendant's lots and terminates on plaintiff's property. We affirm.

We review a trial court's determination of equitable issues de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). The court's factual findings are reviewed for clear error. *Id*. "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed." *Higgins Lake Prop Owners v Gerrish Twp*, 255 Mich App 83, 92; 662 NW2d 387 (2003).

Defendants first argue that the trial court erred by determining that the mutual use of the driveway by the parties matured into a prescriptive easement. We disagree. "An easement is a right to use the land of another for a specific purpose." *Killips*, *supra*, 244 Mich App 258. "An easement by prescription results from use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years." *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000).

> A prescriptive easement does not arise out of a mutual use of a driveway until mutuality ends and adverse user commences and continues for the period essential to the fastening of such a right. If the user was permissive at inception, such permissive character will continue of the same nature and no adverse user can arise until there has been a distinct and positive assertion of a right hostile to the owner and brought home to him. [*Hopkins v Parker*, 296 Mich 375, 379; 296 NW2d 294 (1941).]

However, mutual use does not apply where a drive "was neither owned half and half by the adjoining lots nor was it maintained for the joint benefit of both parties . . . ." *Cheslak v Gillette*, 66 Mich App 710, 715 ; 239 NW2d 721 (1976).

In this case, there is no evidence that the driveway was owned half and half or maintained for the joint benefit of both parties. Plaintiffs are the only people who benefited from the entire length. While both parties happen to use portions of it, plaintiffs' use was inconsistent with defendants' use. Therefore, plaintiffs' use was adverse. Accordingly, the trial court did not err by determining that plaintiffs' use of the driveway could ripen into a prescriptive easement.

Defendants next argue that the trial court clearly erred in finding that plaintiffs use of the driveway was not permissive because plaintiffs were ostensibly given permission to use the driveway on two occasions. However, several witnesses testified at trial that plaintiffs did not have permission to use the driveway. Furthermore, the testimony regarding the permission allegedly given to plaintiffs was uncertain. We defer to the trial court's determination of the credibility of witnesses. *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998). Therefore, the trial court did not err by choosing to believe the testimony supporting the conclusion that no permission was given.

Defendants also claim that the trial court erred when it determined that plaintiffs began to use the driveway in 1983. Defendants claim that, based on evidence at trial, it is clear that plaintiffs did not have the lot cleared and did not start using the driveway until 1988. However, numerous witnesses testified at trial that plaintiffs have used the driveway to access the lake lot since 1983 and no evidence clearly proved otherwise. Once again, we defer to the trial court on matters of witness credibility. *Fletcher*, *supra* at 24. Accordingly, the trial court did not clearly err in determining that plaintiffs began using the driveway in 1983.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Henry William Saad