STATE OF MICHIGAN

COURT OF APPEALS

JOHN GUIDOBONO II REVOCABLE TRUST AGREEMENT and JOHN GUIDOBONO II, Trustee,

Plaintiffs/Counter-Defendants-Appellants,

v

SANDRA JONES, WILLIAM KRIST, DONNA KRIST, TODD KRIST, and CHERYL KRIST,

Defendants/Counter-Plaintiffs/Third-Party Plaintiffs-Appellees,

and

JOHN GUIDOBONO II and CATHY GUIDOBONO,

Third-Party Defendants-Appellants.

UNPUBLISHED
June 24, 2010

No. 290589
Livingston Circuit Court
LC No. 06-022328-CH

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Plaintiffs, the John Guidobono II Revocable Trust Agreement and its trustee, and third-party defendants, John Guidobono II and Cathy Guidobono, appeal as of right two January 6, 2009 orders, which granted defendants partial summary disposition in this case involving easement rights. We affirm.

Appellants argue that the trial court erred because it determined that the language in defendants' easements was ambiguous. Based on that determination, the trial court improperly considered defendants' historical use of the easements and held that defendants were entitled to shoreline activities, such as lounging, picnicking, and parking vehicles, as well as riparian rights, such as mooring boats and installing a dock. We agree.

We review a trial court's dispositional ruling on equitable matters de novo. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). We also review a

decision on a motion for summary disposition de novo. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). We must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Summary disposition is proper under MCR 2.116(C)(10) where the proffered evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); MCR 2.116(G)(4); *Coblentz*, 475 Mich at 568.

The Court in *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003), explained:

> Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. If the text of the easement is ambiguous, extrinsic evidence may be considered by the trial court in order to determine the scope of the easement. [Citation omitted.]

We conclude as a matter of law that being granted access or ingress or egress to a lake does not result in being granted riparian rights on the lake or the right to use the land for shoreline activities, which do not relate to the use of the water itself. See *Delaney v Pond*, 350 Mich 685, 686-687; 86 NW2d 816 (1957); *Dyball v Lennox*, 260 Mich App 698, 699-709; 680 NW2d 522 (2003). Moreover, the addition of the word "use" in the easement did not create riparian rights where none otherwise existed, nor did it create ambiguity. Hence, in this case, the plain language of the easements did not convey riparian rights, and the language was unambiguous. The trial court incorrectly concluded that the easements were ambiguous and considered defendant's historical use in deciding the case. Nevertheless, we find that the trial court reached the correct result and we affirm the disposition. See *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000), where we indicated that "we will not reverse the [trial] court's order when the right result was reached for the wrong reason."

We conclude, as did the trial court, that defendants were granted the disputed use rights by acquiescence. Historically, the doctrine of acquiescence was developed in order to promote the resolution of disputes regarding land boundaries. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). Importantly, however, the doctrine of acquiescence also may apply to easements. *Id*. at 259-261. The doctrine of acquiescence does not require hostility or lack of permission. *Id*. at 260. Further, "[t]he acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years." *Id*. "The proper standard applicable to a claim of acquiescence is proof by a preponderance of the evidence." *Id*.

In this case, the record demonstrates that defendants used the easements for purposes such as maintaining docks, driving vehicles on the property, mooring boats, and entertaining social guests. These activities were conducted beginning in 1968, when the land contracts of defendant Sandra Jones and defendants William and Donna Krist (hereafter Krist senior) were executed, and certainly no later than in the early 1970s when Richard Bilbie, officer of Bilbie Hall, Inc., the seller, installed a dock on the easement. Moreover, these activities were not only condoned, but were encouraged by Richard. Further, no action was instituted to reclaim the property until this suit was brought in 2006, thus the 15-year period required for acquiescence, MCL 600.5801(4), was easily met. Hence, the trial court correctly concluded that plaintiffs were

barred from their causes of action by the doctrine of acquiescence. Richard acquiesced to defendants Jones and Krist senior's possession of the property for the uses complained of by appellants. In addition, because defendants Todd and Cheryl Krist (hereafter Krist junior) received whatever Krist senior obtained from Bilbie Hall, the doctrine of acquiescence also bars plaintiffs' claim against Krist junior.

We also conclude that the defense of prescriptive easement barred plaintiffs' claim with regard to Krist senior and Krist junior. A prescriptive easement can be established in two ways. First, a prescriptive easement can arise when there is the "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). In this case, all defendants used the servient estate in an open, notorious, and continuous fashion for a period of 15 years. However, their use of the servient estate was not adverse, but rather permissive. Because Richard permitted their use of the property, and adverse or hostile use cannot be established where the use is permissive, regardless of the length of the use, none of the defendants can establish a prescriptive easement in this way. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995).

A prescriptive easement can also "be established where an express easement failed through some defect and was treated as if it had been properly established." *Plymouth Canton Community Crier*, 242 Mich App at 684-685; *Mulcahy v Verhines*, 276 Mich App 693, 699-703; 742 NW2d 393 (2007). Specifically, a prescriptive use is made "*pursuant to the terms of an intended but imperfectly created servitude*, or the enjoyment of the benefit of an intended but imperfectly created servitude." *Plymouth*, 242 Mich App at 684, quoting Restatement of Property, Servitudes, 3d, § 216. Thus, in this situation,

> *people try to create a servitude but fail, initially because they do not fully articulate their intent* or reduce their agreement to writing, or because they fail to comply with some other formal requirement imposed in the jurisdiction. *If they proceed to act as though they have been successful in creating the servitude, and continue to do so for the prescriptive period, the servitude is created by prescription.* [*Id*. at 685 (emphasis in original).]

However, the improper use of the easement must still be open and notorious and continued without effective interruption for the prescriptive period. *Id*.

In this case, the record reflects that Richard and Krist senior intended for Krist senior to possess the right to use the easement for maintaining docks, driving vehicles on the property, mooring boats, and entertaining social guests, despite the fact that that intention was not reflected in the easement. The document that created the imperfect servitude was executed on October 4, 1979. In addition, Krist senior's use of the property continued without effective interruption for at least 15 years. Thus, we conclude that since the alleged improper use of the easement was open and notorious and continued without effective interruption for the prescriptive period of 15 years, Krist senior, and therefore Krist junior as well, had a prescriptive easement to conduct the disputed activities.

We note that the doctrine of laches may bar plaintiffs' claims in this case. Laches is an equitable affirmative defense that is applicable where circumstances make it inequitable to grant

relief to a plaintiff who unreasonably delays filing a claim. *Yankee Springs Twp v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004). The unreasonable delay must cause a change in a material condition, which results in prejudice. *Id*. at 612. The defendant bears the burden of proving that a lack of due diligence by the plaintiff to file a claim caused him prejudice. *Id*. We conclude that a genuine issue of material fact exists with regard to whether laches barred plaintiffs' claims in this case. Nevertheless, resolution of any factual issues is unnecessary because the trial court correctly granted defendants partial summary disposition for the reasons already stated, and we affirm the trial court's orders.

Finally, in reaching our conclusion, we have determined that the defense of equitable estoppel is inapplicable in this case. An equitable estoppel arises when: (1) a party, by representation, admissions, or silence, intentionally or negligently induces another party to believe alleged facts, (2) the other party justifiably relies and acts on this belief, and (3) the other party will be prejudiced if the first party is permitted to deny the existence of those alleged facts. *AFSCME Int'l Union v Bank One*, 267 Mich App 281, 293; 705 NW2d 355 (2005). We conclude that this defense does not apply in this case because defendants cannot establish the first prong of the above-described test. Hence, the trial court's decision was incorrect to the extent that it may have provided that equitable estoppel existed in this case with regard to Jones. Nevertheless, partial summary disposition was properly granted for the reasons discussed above.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens