STATE OF MICHIGAN

COURT OF APPEALS

APPLEBEE OIL COMPANY,

Plaintiff/Counter-Defendant-Appellant,

and

CLARE R. APPLEBEE, individually and as trustee of the CLARE R. APPLEBEE TRUST, and ISEDEANE N. APPLEBEE,

Plaintiffs-Appellants,

v

MICHIGAN MILK PRODUCERS ASSOCIATION,

Defendant/Counter-Plaintiff-Appellee,

DEPARTMENT OF NATURAL RESOURCES,

Defendant-Appellee,

and

DEPARTMENT OF TRANSPORTATION,

Defendant.

UNPUBLISHED
September 29, 2016

No. 327514
Clinton Circuit Court
LC No. 14-011291-CH

Before: SAWYER, P.J., and HOEKSTRA and WILDER, JJ.

PER CURIAM.

In this property dispute, plaintiffs Clare and Isedeane Applebee, the Applebee Oil Company ("the company"), and the Clare R. Applebee Trust ("the trust") filed suit to quiet title to a circular driveway that runs through property owned by defendant Michigan Milk Producers Association (MMPA) and provides access to property currently owned by the trust. Plaintiffs claimed property rights in the driveway under theories of adverse possession, prescriptive easement and easement by necessity. The trial court granted summary disposition to defendants

MMPA and the Michigan Department of Natural Resources (MDNR) under MCR 2.116(C)(8), concluding that none of plaintiffs' claims could proceed because the property was owned by the trust but used by the company. The trial court also later denied plaintiffs' motion for reconsideration, plaintiffs' motion for relief from judgment, and plaintiffs' request to file a second amended complaint. Plaintiffs now appeal as of right. Because plaintiffs' complaint stated claims for which relief can be granted, we reverse and remand for further proceedings.

The company is a closely held Michigan corporation owned by husband and wife, Clare and Isedeane Applebee.[1] The company conducts a propane business, involving a "propane tank farm," on lot 22 of Patterson's Addition in the Village of Ovid, Michigan. The Applebees purchased lot 22 in 1992. However, in 1998, they signed a quit claim deed, conveying lot 22 to the trust, which had been established by the Applebees for estate planning purposes. Clare is the initial trustee, and Isedeane has been designated as the successor trustee.

The underlying dispute in this case involves access to lot 22. According to the allegations in the complaint, lot 22 is "landlocked," with no access to a public road other than by means of a circular driveway that travels through parts of lots 18, 19, 20 and 21 in Patterson's Addition. According to plaintiffs, these lots and lot 22 were once owned by the same individual prior to 1992, but the MMPA now owns lots 18, 19, 20, and 21. Nonetheless, according to the complaint, the company, the trust, and the Applebees, as well as propane suppliers and propane trucks, have used this circular driveway to access lot 22 since the Applebees' purchase of the property in 1992.

According to the complaint, the possibility of continued access to the circular driveway has been threatened by plans for a recreational path on lot 21. In particular, on April 4, 2008, MMPA granted the Michigan Department of Transportation (MDOT) an easement on lot 21 for purposes of building a recreational trail for biking, running, etc. While the easement is held by MDOT, the proposed trail will be implemented and managed by the MDNR. The MDOT easement on lot 21 intersects with the circular driveway at two different points, causing concern to plaintiffs about the continued viability of their access to lot 22 via the driveway. Moreover, plaintiffs alleged that the MMPA has plans to build a fence, which, in addition to the trail itself, will prevent their access to lot 22.

As a result of the planned trail, the company filed suit against the MMPA and the MDNR, alleging claims of adverse possession, prescriptive easement, and easement by necessity.[2] The trial court later granted summary disposition to the MDNR with respect to plaintiffs' claims involving an easement because the proposed trail, which has been built during

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[1] In connection with their motion for reconsideration, plaintiffs also indicated that the company issued stock to Clare as trustee of the trust, suggesting that the trust may also own an interest in the company.

[2] The case against the MDNR was filed in the Court of Claims, but later transferred to Clinton Circuit Court and consolidated with the case against the MMPA. Plaintiffs also later attempted to pursue claims against MDOT in the Court of Claims. MDOT is not a party to this appeal.

the pendency of this case, would be flat with the driveway and would not prevent access to lot 22 via the driveway. However, the claims of adverse possession against MDNR were not dismissed.[3] After deciding the MDNR's motion, the trial court also ordered plaintiffs to file an amended complaint to add the trust and MDOT as parties.

Once plaintiffs filed their amended complaint, including the Applebees and the trust as plaintiffs, the MMPA moved for summary disposition under MCR 2.116(C)(8). The trial court granted the MMPA's motion based on the separate identities of the entities involved, reasoning that the company used lot 22, but it was currently owned by the trust, and that, in these circumstances, none of the plaintiffs could maintain a viable action for adverse possession, prescriptive easement, or easement by necessity. For the same reason, the trial court also granted summary disposition to the MDNR with respect to the remaining adverse possession claim. Plaintiffs later filed a motion for reconsideration, which included an express request to amend their complaint, and plaintiffs also moved for relief from judgment. The trial court denied these motions. Plaintiffs now appeal as of right.

I. STANDARD OF REVIEW

We review de novo a trial court's decision regarding a motion for summary disposition. *Arabo v Mich Gaming Control Bd*, 310 Mich App 370, 389; 872 NW2d 223 (2015). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint," *Diallo v LaRochelle*, 310 Mich App 411, 414; 871 NW2d 724 (2015), and is properly granted "where the complaint fails to state a claim on which relief may be granted," *Diem v Sallie Mae Home Loans, Inc*, 307 Mich App 204, 210; 859 NW2d 238 (2014). "In deciding a motion under MCR 2.116(C)(8), a trial court may only consider the pleadings, and '[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.'" *Arabo*, 310 Mich App at 389 (citation omitted). Reasonable inferences may be drawn from the alleged facts, *Diem*, 307 Mich App at 210, and such inferences must be accepted as true and construed in favor of the party opposing the motion, *McManamon v Redford Charter Twp*, 256 Mich App 603, 610; 671 NW2d 56 (2003). A motion under MCR 2.116(C)(8) "should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Id.*

II. ADVERSE POSSESSION & PRESCRIPTIVE EASEMENT

On appeal, plaintiffs argue that the trial court erred by granting summary disposition under MCR 2.116(C)(8). According to plaintiffs, it is apparent from their complaint that the company uses lot 22 with the permission of the trust and previously with the permission of the Applebees during that time that the land was owned by the Applebees. Given the relationship between the plaintiffs—sole shareholders, closely held corporation, and a trust managed by Clare as trustee—plaintiffs maintain that, at all times, the parties involved have understood that the use

[3] Plaintiffs do not challenge the trial court's grant of summary disposition to MDNR with respect to their claims of prescriptive easement and easement by necessity, and we do not consider these claims on appeal with respect to the MDNR.

and possession of lot 22 included the right to use the driveway to access the property. In these circumstances, plaintiffs assert that use by the company inures to the owners, i.e. the Applebees and then the trust. Further, plaintiffs emphasize that, contrary to the court's conclusion that only the company uses the land, their complaint in fact alleges use by the Applebees as well as the trust. On the whole, by virtue of tacking and inurement of use, plaintiffs maintain that they can establish the continuity of use and possession required for their claims. We agree.

"A claim for adverse possession is equitable in nature." *Beach v Lima Twp*, 283 Mich App 504, 508; 770 NW2d 386 (2009). Such a claim has been long recognized in Michigan's common law and these principles have also been codified in MCL 600.5801. *Beach v Twp of Lima*, 489 Mich 99, 106 & n 16; 802 NW2d 1 (2011). "A claim of adverse possession requires clear and cogent proof[.]" *Wengel v Wengel*, 270 Mich App 86, 92; 714 NW2d 371 (2006). In particular, "[t]o establish adverse possession, the person claiming it . . . must show that his or her possession was actual, visible, open, notorious, exclusive, hostile, under cover of a claim of right, continuous, and uninterrupted for the statutory period of 15 years."[4] *Beach*, 283 Mich App at 512. "After the statutory period ends, the record owner's title is extinguished and the adverse possessor acquires 'legal title' to the property." *Beach*, 489 Mich at 106-107.

Like a claim of adverse possession, a claim for a prescriptive easement is also equitable in nature. *Mulcahy v Verhines*, 276 Mich App 693, 698; 742 NW2d 393 (2007). "An easement by prescription results from the use of the property of another that is open, notorious, adverse, and continuous for a period of 15 years."[5] *Heydon v MediaOne*, 275 Mich App 267, 270-271;

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[4] The MMPA and MNDR argue for the first time on appeal that plaintiffs' claim for adverse possession must fail because their complaint does not contain the word "exclusive" and the MMPA in fact also uses the driveway. This unpreserved argument is unavailing. Although plaintiffs did not use the word "exclusive," they did allege that they acted as "the *sole* owners of the circular driveway," and we think this allegation sufficiently imparts the exclusivity requirement. See *Jonkers v Summit Twp*, 278 Mich App 263, 274; 747 NW2d 901 (2008). See also *Corby v Thompson*, 196 Mich 706, 715; 163 NW 80 (1917). Moreover, to the extent the MMPA contends that it also uses the driveway, these unsupported assertions contrary to plaintiffs' complaint do not entitle the MMPA to summary disposition under MCR 2.116(C)(8).

[5] The MMPA argues for the first time on appeal that plaintiffs' claim of a prescriptive easement must fail because the MMPA also uses the driveway, the MMPA gave plaintiffs permission to use the driveway, and thus plaintiffs have not alleged facts to establish the "hostile" use of the driveway. These arguments lack merit. "Adverse or hostile use is use inconsistent with the right of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder [for trespassing]." *Plymouth Canton Cmty Crier, Inc v Prose*, 242 Mich App 676, 681; 619 NW2d 725 (2000). A prescriptive easement does not require exclusivity. *Matthews*, 288 Mich App at 37. In their complaint, plaintiffs alleged "hostile" use of the driveway "without permission," involving trucks going to and from lot 22 as well as general use of the driveway by plaintiffs. The MMPA's conclusory contradictions to plaintiffs' complaint do not entitle the MMPA to summary disposition under MCR 2.116(C)(8); rather, the

739 NW2d 373 (2007). These elements are similar to those for adverse possession, except that a prescriptive easement does not require exclusivity. *Matthews v Nat Res Dep't*, 288 Mich App 23, 37; 792 NW2d 40 (2010). "The plaintiff bears the burden to demonstrate entitlement to a prescriptive easement by clear and cogent evidence." *Id.* In comparison to the acquisition of legal title through adverse possession, "[a]n easement is the right to use the land of another for a specified purpose." *Heydon*, 275 Mich App at 270; *Matthews*, 288 Mich App at 37.

The parties' arguments in this case and the trial court's basis for summary disposition implicate the continuity element of both adverse possession and prescriptive easement. As noted, adverse possession requires continuous possession of the disputed property for 15 years and, similarly, a claim for prescriptive easement requires continuous use of the disputed property for a period of 15 years. *Beach v Lima Twp*, 283 Mich App at 512; *Heydon*, 275 Mich App at 270-271. In this case, the alleged prescriptive period of 15 years began in 1992. Whether use and possession were continuous during that time is complicated in this case by the facts that (1) there was a transfer of ownership in 1998 between the Applebees and the trust and (2) there was use by multiple persons and entities over the course of that 15 years, including non-owners.

Relevant to the transfer of ownership during the prescriptive period, it is well-settled that "[a] party may 'tack' on the possessory periods of predecessors in interest to achieve this fifteen-year period by showing privity of estate." *Killips v Mannisto*, 244 Mich App 256, 259; 624 NW2d 224 (2001). Typically, privity among successive owners may be established in one of two ways, by: (1) "including a description of the disputed acreage in the deed," or (2) "an actual transfer or conveyance of possession of the disputed acreage by parol statements made at the time of conveyance." *Id.* See also *Siegel v Renkiewicz' Estate*, 373 Mich 421, 425-426; 129 NW2d 876 (1964). However, in cases where the conveyance does not involve an arms-length, third-party transfer, this Court has held that the absence of an actual conveyance or parol statements at the time of conveyance will not bar a finding of privity when, by virtue of the relationship between the parties and their history with the property, there is clear and cogent evidence that the "well acquainted" predecessors in interest "undoubtedly intended to transfer their rights to their successors-in-interest." *Matthews*, 288 Mich App at 41-42. The reason for this rule is that "[w]here predecessors and successors are so intimately acquainted . . . it would not be reasonably expected for the predecessors to expressly articulate to the successors a right that all parties already believed they possessed." *Id.* at 42.

This question of tacking is distinct from the question of whether use and/or possession by a non-owner may be used by the owner to establish a claim to the disputed property. See Restatement (Third) of Property (Servitudes) § 2.17 (2000). That is, as a practical matter, in addition to use by an owner, property will often be used by family members, servants, guests, tradesmen and other persons with whom a landowner does business, *Unverzagt v Miller*, 306 Mich 260, 267; 10 NW2d 849 (1943), and the question becomes whether use of property by a non-owner may give rise to a prescriptive easement or claim of adverse possession for the owner over a disputed parcel. Regarding this question, caselaw is clear that, depending on the facts, use

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allegations in the complaint must be accepted as true and, viewed in this light, plaintiffs have sufficiently pleaded hostility. They were not required to allege exclusivity.

by a non-owner may inure to the owner for purposes of the owner's claim to the disputed property.

For example, the use and possession of a tenant is said to inure to the landowner, provided that the tenant understood that his or her leasehold included use of the disputed property. See *Gay v Wilson*, 327 Mich 265, 270; 41 NW2d 500 (1950); *Capps v Merrifield*, 227 Mich 194, 196; 198 NW 918 (1924); *Green v Anglemire*, 77 Mich 168, 172; 43 NW 772 (1889). When analyzing continuity of use, in addition to use by tenants, Michigan courts have also considered deliveries, actions of those attending events, and ingress and egress to property by "shareholders, employees, and customers." See, e.g., *St Cecelia Soc v Universal Car & Serv Co*, 213 Mich 569, 576; 182 NW 161 (1921); *Faris Bros Realty, Inc v JP Pship*, unpublished opinion of the Court of Appeals, issued November 15, 2005 (Docket No. 261644).[6] Particularly when the owner is a corporation or trust, this Court has noted that it may be necessary for the owner to rely on the use of "its agents, employees, or tenants" to establish adverse use of the disputed property. *Ballantyne v Fopma*, unpublished opinion of the Court of Appeals, issued March 16, 2006 (Docket No. 258658). These various Michigan cases are consistent with the principles aptly summarized in the Restatement (Third) of Property, as follows:

> Prescriptive uses need not be made personally by the owner of the claimed prescriptive servitude, but may be made by tenants, customers, guests, and visitors of the claimant. Use by people providing services to the claimed dominant estate like meter readers, mail carriers, school buses, and delivery services may also contribute to the prescriptive use. However, use by strangers and members of the general public does not qualify as prescriptive use to establish servitude rights in an individual. [Restatement (Third) of Property (Servitudes) § 2.16, comment e (2000).]

Stated more broadly, continuity of possession and use has been recognized when "[t]he proofs show a common understanding as to user over many years by all persons connected with the parcels." *Gay*, 327 Mich at 270. Ultimately, the "[d]etermination of what acts or uses are sufficient to constitute adverse possession depends upon the facts in each case and to a large extent upon the character of the premises." *Whitehall Leather Co, Div of Genesco v Capek*, 4 Mich App 52, 55; 143 NW2d 779 (1966) (citation omitted).

Turning to the present case, we begin by again noting that the summary disposition motion at issue was brought under MCR 2.116(C)(8), pursuant to which we accept all well-pleaded factual allegations as true and construe them in a light most favorable to the nonmovant. *Arabo*, 310 Mich App at 389. Relevant to the questions of tacking and continuity of use, plaintiffs' amended complaint alleged that the Applebees are the sole shareholders of the company which operates a propane tank farm on lot 22. According to the complaint, the Applebees purchased lot 22 in 1992 and, for estate planning purposes, they signed a quit claim

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[6] Although unpublished decisions of this Court do not constitute binding precedent, MCR 7.215(C)(1), they may be considered persuasive. *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010).

deed, conveying lot 22 to the trust in 1998. The trust has owned lot 22 since 1998, and Clare is the trustee. Notably, according to the allegations in plaintiffs' amended complaint, since 1992, the driveway has been "continuously used by Plaintiffs." The complaint specifically alleges that the Applebees individually and/or Clare as trustee, as the fee title holder of lot 22, have "owned, operated, used, and otherwise controlled, as if it was their own, an access point and the current circular driveway configuration" providing access to lot 22. Further, the complaint alleges that the company has "owned, operated, used, and otherwise controlled" the access point and circular driveway. As alleged, use by the company has included use by the "suppliers" of bulk propane as well as use by the Appleebees in their roles "as the sole shareholders" of the company.

Given these well-pleaded allegations, we conclude that the trial court erred by granting summary disposition under MCR 2.116(C)(8) because plaintiffs' sufficiently alleged continuity of use and possession with respect to the driveway for a 15 year period. To begin with, from 1992 until 1998, the Applebees owned lot 22 and used the driveway to access their property. In 1998, they transferred lot 22 to the trust. The trust now owns lot 22, and the trust (which acts through Clare) uses the driveway to access lot 22.[7] Further, because the Applebees and the trust are in privity, the 1998 transfer of ownership does not undermine the continuity of the use and possession. In particular, although the complaint does not allege that the Applebees expressly informed the trust of its right to use the driveway, such an express statement was unnecessary given the nature of the alleged relationship between the Applebees and the trust. Cf. *Matthews*, 288 Mich App at 41-42. That is, this was not an arms-length transaction between third parties. Rather, the Applebees transferred lot 22 to the trust for their own estate planning purposes and that trust is now managed by Clare. After the transfer, the Applebees in fact continued to use the driveway to access lot 22, and Clare, in particular, acted for the trust with respect to lot 22 in his role as trustee. In these circumstances, the trust may be a separate legal entity, but the alleged relationship between the Applebees and the trust is such that it can be concluded that the Applebees "undoubtedly" intended to transfer their rights to the driveway to the trust. Cf. *id.* The Applebee's period of ownership, use, and possession from 1992 to 1998 may thus be tacked with the trust's ownership, use, and possession from 1998 until the present, resulting in well over the required 15 year time period. See *id.* at 41-42. In short, given allegations that the Applebees and trust together have continuously possessed and used the driveway to access lot 22 for more than the required 15 year prescriptive period, the trial court erred by granting summary disposition.

In addition to use of the driveway by the Applebees and the trust as owners of lot 22, we note as well that use by non-owners may inure to the owner. See *Gay*, 327 Mich at 270.

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[7] Contrary to the trial court's conclusions that *only* the company used lot 22 and the driveway, the complaint alleged continuous use by *all* plaintiffs during the prescriptive period. It may well be that the company is the most frequent user of the driveway to access lot 22. But, continuity of user does not require "that a person shall use the easement every day for the prescriptive period." *St Cecelia Soc*, 213 Mich at 577 (citation omitted). And, we see no reason why the alleged use of the Applebees and the trust as owners of lot 22 should not be considered for prescriptive purposes.

Accepting as true the well-pleaded allegations in this case, it follows that use by the company and propane suppliers may inure to the Applebees (from 1992 to 1998) and to the trust (from 1998 onward). The allegations in the complaint indicate that the company has used lot 22 and the driveway since 1992. The company is owned solely by the Applebees and operating on land owned by the Applebee's trust, which is managed by Clare as trustee. The corporation is certainly a separate legal entity, but a reasonable inference from plaintiffs' allegations is that the company occupies lot 22 with permission and authorization from the Applebees and the trust, thereby occupying the property under the claim of right held by the owners, be it the Applebees or the trust depending on the time period.[8] And, given the relationship between the parties—sole shareholders, a closely held corporation, and a trust for the Applebees administered by Clare—it would be absurd to conclude, in connection with a motion under MCR 2.116(C)(8), that the Applebees or the trust authorized the company to use lot 22 to operate a propone business without also intending for them to make use of the only means of accessing the property, i.e., the circular driveway which the Applebees themselves have continuously used to access the property as individual owners, as trustee, and in their role as corporate shareholders. Cf. *Matthews*, 288 Mich App at 41-42. In short, accepting the allegations in the complaint as true and construing them in plaintiffs' favor, the allegations suggest "a common understanding as to user over many years by all persons connected with the parcels." *Gay*, 327 Mich at 270.

In such circumstances, the fact that there are various entities and persons involved in the use of the property is not fatal to plaintiffs' claims. Instead, any use by the company as a non-owner may inure to the owner, either the Applebees or the trust, and, when ownership by the Applebees is tacked with that of the trust, the complaint sets forth a viable claim for either adverse possession or prescriptive easement.[9] Thus, the trial court erred by granting summary

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[8] On appeal, the MMPA emphasizes that plaintiffs failed to allege a contractual landlord-tenant relationship between the company and the Applebees and/or the trust. However, we do not think this oversight fatal to plaintiffs' claims because use of the driveway by the Applebees and trust as owners was also alleged, and, in any event, a tenant is not the only non-owner whose use may inure to a landowner. See Restatement (Third) of Property (Servitudes) § 2.16, comment e (2000). Further, we note that plaintiffs in fact sought to amend their complaint to add allegations pertaining to the specific relationship between the company, the Applebees, and the trust. Given that summary disposition was granted under MCR 2.116(C)(8), on the facts of this case, we agree with plaintiffs that the trial court abused its discretion by denying such a request simply because plaintiffs had previously filed one amended complaint. See MCR 2.116(I)(5); MCR 2.118(A)(2); *Liggett Rest Group, Inc v Pontiac*, 260 Mich App 127, 138; 676 NW2d 633 (2003). See also *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997) (noting leave to amend may be denied, among other reasons, for *repeated* failure to cure deficiencies by amendments previously allowed).

[9] There is a potential question remaining regarding whether the Applebees (as individuals) and the company (on its own) may maintain such claims if their use of the property is to be tacked on with, or inured to, the trust as current owner. See *Wilhelm v Herron*, 211 Mich 339, 342-343; 178 NW 769 (1920); 42 Causes of Action 2d 111, § 11 (2009). However, the parties' briefing does not put so fine a point on the issue and, at this juncture, rather than parse the minutia of the

disposition based on the identities of the various plaintiffs with respect to plaintiffs' claims of adverse possession and prescriptive easement against the MMPA as well as plaintiffs' claim of adverse possession against the MDNR.

III. EASEMENT BY NECESSITY

Lastly, we also conclude that the trial court erred by granting summary disposition with respect to plaintiffs' claim of an easement by necessity. An easement by necessity "may be implied by law where an owner of land splits his property so that one of the resulting parcels is landlocked except for access across the other parcel." *Chapdelaine v Sochocki*, 247 Mich App 167, 172; 635 NW2d 339 (2001). "An easement by necessity may arise either by grant, where the grantor created a landlocked parcel in his grantee, or it may arise by reservation, where the grantor splits his property and leaves himself landlocked." *Id.* at 172-173. "This sort of implied easement is not dependent on the existence of any established route or quasi-easement prior to the severance of the estate by the common grantor; it is first established after the severance." *Charles A Murray Trust v Futrell*, 303 Mich App 28, 42; 840 NW2d 775 (2013), quoting *Schmidt v Eger*, 94 Mich App 728, 733; 289 NW2d 851 (1980). "[S]trict necessity is required to establish an easement by necessity."[10] *Charles A Murray Trust*, 303 Mich App at 45.

To establish "strict necessity" the easement must be "strictly necessary for purposes of ingress and egress to and from a public highway." *Id.* at 56. In other words, the property at issue must be "landlocked." *Id.* at 55. In contrast, the "mere convenience" of a particular right of way will not support a claim of easement by necessity.[11] *Id.* Thus, the availability of another

various plaintiffs' potential rights, we leave plaintiffs to their proofs. The Applebees and the company have both alleged their own continuous use and possession of the driveway for more than 15 years such that, depending on the factual development as the case progresses, the company and the Applebees may have viable claims apart from the trust. See generally *Heydon*, 275 Mich App at 270 (easement in gross); *Beach*, 283 Mich App at 512 (adverse possession); Restatement (Third) of Property (Servitudes) § 2.16, reporter's note to comment e (2000). Plaintiffs are free to plead alternative, even inconsistent claims. See MCR 2.111(A)(2).

[10] The parties debate whether "strict" or "reasonable" necessity is required. It appears that the parties have conflated a claim of easement by necessity with a claim for an easement implied from a quasi-easement. While these claims are similar, they have different elements and require different degrees of necessity. See *Charles A Murray Trust*, 303 Mich App at 41-42, 45. Plaintiffs' complaint asserts a claim of easement by necessity.

[11] On appeal, relying on *Kahn-Reiss, Inc v Detroit & Northern S & L Ass'n*, 59 Mich App 1, 13; 228 NW2d 816 (1975), the MMPA maintains that plaintiffs' claim for an easement by necessity must fail because plaintiffs need the driveway as a "mere convenience" for the large trucks visiting lot 22, but the driveway is not strictly necessary for access to the lot. We note briefly that the MMPA's comparison to *Kahn-Reiss* is misplaced. While both cases involve delivery vehicles, this was not the deciding factor in *Kahn-Reiss*. Rather, the dispositive fact in *Kahn-Reiss* was the existence of an alternate path to the property, making the larger requested path a mere convenience. In this case, plaintiffs have alleged that lot 22 is "landlocked" without the driveway and we see no indication of another path providing lot 22 with access to a public road, meaning that plaintiffs have sufficiently alleged strict necessity for purposes of a claim of

pathway to the property—be it difficult to traverse or smaller in size—will defeat a claim of "strict necessity." See *id.* at 55-57. Once established, an easement by necessity is appurtenant to the land and it passes with successive transfers. See *Bean v Bean*, 163 Mich 379, 397; 128 NW 413 (1910). However, when strict necessity ends, such as when another way to the property has been acquired, the easement also ceases to exist. *Charles A Murray Trust*, 303 Mich App at 42, 55.

In this case, the trial court did not differentiate plaintiffs' claim of easement by necessity from plaintiffs' other claims. Rather, as with plaintiffs' other claims, summary disposition was granted because lot 22 was used by the company and owned by the trust. As discussed *supra*, this was an improper basis for summary disposition on the facts of this case. Moreover, this reasoning is particularly flawed with respect to a claim of easement by necessity, which does not have the same 15 year continuity requirements as plaintiffs' other claims. In short, the trial court erred by granting summary disposition under MCR 2.116(C)(8) with respect to plaintiffs' claim for an easement by necessity.

In sum, the trial court erred by granting summary disposition under MCR 2.116(C)(8) to the MMPA on plaintiffs' claims of adverse possession, prescriptive easement, and easement by necessity. Likewise, the trial court erred by granting summary disposition under MCR 2.116(C)(8) to the MDNR on plaintiffs' claim of adverse possession. Given our conclusion that the trial court erred by granting summary disposition, we need not decide whether the trial court also abused its discretion by denying plaintiffs' motion for relief from judgment and motion for reconsideration.

Reversed and remanded. Plaintiffs, being the prevailing party, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder

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easement by necessity. Indeed, so far as we are aware, the recreational trail crosses lot 21, not lot 22, suggesting that, at a minimum, some access to the driveway remains a strict necessity.