STATE OF MICHIGAN

COURT OF APPEALS

RONALD J. TERNES and CHRISTINE FERRANTI-TERNES,

Plaintiff-Appellants,

v

PAUL J. HARTCORN and HELEN J. HARTCORN,

Defendants,

and

DOUGLAS MOORE, ADELE MOORE, MELFORD FARRIER, LYNN FARRIER, FRED WALKE, BRIAN GRIGG, SHERRY HARTMAN, and ALMONT INVESTMENT, LLC,

Intervening Defendants-Appellees

UNPUBLISHED
November 27, 2012

No. 307237
Presque Isle Circuit Court
LC No. 11-002958-CH

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

In this adverse possession case, plaintiffs seek title to a strip of land adjacent to their property over which the intervening defendants (defendants)[1] hold easements in order to access Long Lake. Plaintiffs appeal the trial court order granting summary disposition in favor of defendants. We affirm because, even accepting the facts as alleged by plaintiffs, there is no

[1] The original defendants, Paul and Helen Hartcorn, could not be found for service. Plaintiffs believe that the Hartcorns have died, but there is no record of the disputed land being passed to anyone else. The Hartcorns are not part of this appeal, and we will refer to the intervening defendants simply as defendants for brevity's sake.

support for plaintiffs' argument that they exclusively possessed the disputed parcel, even allowing for activity consistent with the defendants' easement rights.

We review de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). When reviewing a motion brought under MCR 2.116(C)(10), we consider the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007).

Plaintiffs acquired their property on Long Lake in 1986. The disputed property is a parcel approximately 20' by 85', which is directly adjacent to plaintiffs' property. Plaintiffs filed suit against the Hartcorns, the last known owners of the disputed parcel, claiming that plaintiffs had acquired title to the parcel by adverse possession. The Hartcorns could not be found and made no appearance, but defendants, who all own easements over the disputed property for purposes of ingress and egress to Long Lake, intervened.

Plaintiffs allege that since 1986 they have continually maintained the disputed property, including cleaning up litter and debris, as well as seeding and mowing it. Plaintiffs have also brought in fill materials and even paid for the construction of a drain under the disputed property after another neighbor raised his land, causing water to flow onto the disputed property. Plaintiffs' family has also used the disputed property for recreation. However, plaintiff Ronald Ternes admitted in his affidavit that someone removed a tree from the disputed property without his permission sometime in 2000. He claims that when he confronted defendant Douglas Moore about the tree, Moore told him "we do what we want up here." Ternes also admitted that defendant Mel Farrier has kept a dock on the disputed property, and that the neighbors were consulted before plaintiffs installed the drain under the disputed property. In addition, plaintiffs do not dispute Mel Farrier's assertions that Farrier's family and other neighbors have used the disputed parcel for swimming and picnicking, and helped maintain the property.

To claim property by adverse possession, one must show that the property owner of record has had a cause of action for recovery of the land for more than the statutory period of 15 years. *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993); MCL 600.5801. The claimant must show either that the true owner had actual knowledge that the claimant had taken possession of the land, or:

> The possession must be so open, visible, and notorious as to raise the presumption of notice to the world that the right of the true owner is invaded intentionally, and with the purpose to assert a claim of title adversely to his, so that if the true owner remains in ignorance it is his own fault. [*Ennis v Stanley*, 346 Mich 296, 301; 78 NW2d 114 (1956)].

Further, the possession must be exclusive. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). The exact degree of exclusivity depends upon the circumstances. *Jonkers v Summit Twp*, 278 Mich App 263, 274; 747 NW2d 901 (2008). Plaintiffs argue that their possession needed to be exclusive only to the true owners, because they do not seek to destroy the easements held by defendants. Caselaw does not, however, support this argument under the circumstances.

In *Jonkers*, the Court held that a township had adversely possessed a boat launch, despite the fact that the township did not interfere with the prior owners' continued use of the property. However, the Court noted that this was because "the claimant is attempting to adversely possess *as public property* a parcel of land that was ostensibly private and thus closed to members of the public." *Id.* at 274 (emphasis in original). This situation was contrasted with the facts in *LeRoy v Collins*, 176 Mich 465, 475; 142 NW 842 (1913), in which the claimant attempted to adversely possess as private property an alley that the surrounding neighbors also used freely.

Indeed, the facts of *LeRoy* are similar to those in the present case. In both cases, the party claiming adverse possession made some improvement to the property in question, but did not stop others from continuing to use the property. The *LeRoy* Court stated, "So far as possession and use are involved, that of plaintiffs and defendant were the same in kind, varying only in degree. . . . Occupation in common with the public is not exclusive possession . . . ." *Id.*

In the present case, plaintiffs do not dispute that defendants also used the subject property for recreation and helped to maintain it. As in *LeRoy*, there is nothing that separates plaintiffs from defendants to give plaintiffs a superior claim to the subject property. A holding in favor of plaintiffs on these facts would essentially mean that, in situations where multiple parties all make free use of a piece of property, any of them may sue for adverse possession, as long as they beat the other parties to the courthouse. It does not matter if plaintiffs are correct that they did not need to exclude defendants entirely, because they were not able to substantially distinguish their use from that of defendants.

Plaintiffs also argue that the trial court should not have allowed defendants to intervene. MCR 2.209(A) allows intervention by right:

> (3) When the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Plaintiffs argue that defendants' easements do not constitute a sufficient interest to support intervention. However, an easement certainly constitutes an interest in land. See, e.g., *Thies v Howland*, 424 Mich 282, 296-297; 380 NW2d 463 (1985). Though plaintiffs claim that defendants' easements would be preserved even if plaintiffs suit succeeds, defendants have a sufficient interest in this case to intervene and represent their own interests, rather than relying on plaintiffs' promises.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro