IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DONALD HAWKINS and MAUREEN HAWKINS, husband and wife,
Plaintiffs/Appellees,

v.

FLORENCE BLAIR, *Defendant/Appellant*.

No. 1 CA-CV 17-0670
FILED 11-27-18
AMENDED PER ORDERS FILED 11-28-18 AND 11-29-18

Appeal from the Superior Court in Yavapai County
No. P1300CV20090599
The Honorable David L. Mackey, Judge

AFFIRMED

APPEARANCES

The Vakula Law Firm, PLC, Prescott
By Alex B. Vakula
Counsel for Plaintiffs/Appellees

Florence Blair, Prescott
Defendant/Appellant

MEMORANDUM DECISION

Presiding Judge James P. Beene delivered the decision of the Court, in which Judge Michael J. Brown and Judge James B. Morse Jr. joined.

B E E N E, Judge:

¶1 Appellant Florence Blair ("Blair") challenges the superior court's judgment declaring a non-exclusive easement appurtenant over a 25-foot-wide strip of land within her property ("Disputed Easement"). We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Donald and Maureen Hawkins (collectively, "the Hawkins") and Blair own contiguous real property in Yavapai County. Both properties were once part of a unified parcel owned by John Magee ("Magee"). Magee sold a portion of that parcel known as the "Carlo mining claim" to Kenneth McIntyre on October 7, 1980. Kenneth sold one portion of the Carlo mining claim to Roger and Barbara Miller ("the Millers") that same day and conveyed the remainder to Susan Slavin on December 10, 1980. The Hawkins acquired the Millers lot on March 2, 1999, and acquired the Slavin lot from Coppercrest Leveraged Mortgage Fund, LLC on June 13, 2011.

¶3 Magee sold the remaining property, then known as the "Why Not mining claim," to Douglas McIntyre ("Douglas") on May 5, 1981. Douglas conveyed that property to Terry and Shirley Novak ("Novaks") on May 15, 1981. In that conveyance, Douglas reserved for himself and his heirs and assigns "an easement for ingress, egress and utilities" over the Disputed Easement.

¶4 Blair acquired the Novaks' property on June 27, 1983. In that transaction, the Novaks reserved the Disputed Easement for themselves, their heirs and assigns. They later quitclaimed their Disputed Easement rights to the Millers on September 22, 1992.

¶5 The Hawkins used the Disputed Easement to access their property starting in 1999 when they acquired the Millers' lot. Access to the Disputed Easement was limited at that time by a "daisy chain," to which the Hawkins had a key. In 2007, the Hawkins were denied access to the Disputed Easement.

¶6 The Hawkins sued Blair in 2009 seeking to quiet title to the Disputed Easement. The Hawkins contended they were entitled to an implied easement, a prescriptive easement, or a private way of necessity across the Disputed Easement. Blair counterclaimed, alleging she had adversely possessed the Disputed Easement. The superior court granted summary judgment for the Hawkins, finding they were entitled to either an easement implied on severance or an implied way of necessity across the

Disputed Easement. The superior court also granted summary judgment to the Hawkins on Blair's counterclaim.

¶7 Blair appealed those rulings. We affirmed the judgment as to Blair's counterclaim but found that contested factual issues remained and we reversed the grant of summary judgment on the theories of easement implied on severance and implied way of necessity. *Hawkins v. Blair*, 1 CA-CV 15-0227, 2016 WL 2585928, at *1-2, ¶¶ 7-11, 17 (Ariz. App. May 5, 2016).

¶8 Following remand and a bench trial, the superior court granted the Hawkins a prescriptive easement over the Disputed Easement on two independent bases: (1) open, notorious, and hostile use of the Disputed Easement from October 1980 until the 2007 lockout, and (2) an "imperfect grant" evinced in conveyances from Douglas to the Novaks and the Novaks to Blair. Additionally, the superior court concluded in the alternative that the Hawkins had established an easement implied on severance, finding sufficient circumstantial evidence to show "long, continued, and obvious" use of the Disputed Easement "prior to severance."

¶9 The superior court entered a final judgment declaring a non-exclusive easement appurtenant over the Disputed Easement and awarding the Hawkins attorneys' fees pursuant to Arizona Revised Statutes ("A.R.S.") § 12-1103(B). Blair timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

DISCUSSION

¶10 On appeal from a bench trial, we review legal questions *de novo* but review the superior court's fact findings for clear error. *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 51-52, ¶¶ 11-12 (App. 2009). A finding of fact is not clearly erroneous if substantial record evidence supports it, even if there is substantial conflicting evidence. *Id*. at ¶ 11. Evidence is substantial if it allows a reasonable person to reach the superior court's result. *Id*. (citation omitted). We view the evidence and reasonable inferences from that evidence in the light most favorable to the Hawkins as the prevailing party. *See FL Receivables Trust 2002-A v. Ariz. Mills, L.L.C.*, 230 Ariz. 160, 166, ¶ 24 (App. 2012).

¶11 Blair challenges the superior court's grant of an easement implied by severance but does not challenge its grant of a prescriptive

easement.[1] We may affirm, however, on any basis supported by the record. *Leflet v. Redwood Fire & Cas. Ins. Co.*, 226 Ariz. 297, 300, ¶ 12 (App. 2011). We thus first consider the Hawkins' prescriptive easement claim.

¶12 To gain a prescriptive easement, one must show the land in question has been actually and visibly used for ten years, the use began and continued under a claim of right, and the use was hostile to the title of the true owner. *Paxson v. Glovitz*, 203 Ariz. 63, 67, ¶ 22 (App. 2002) (quoting *Harambasic v. Owens*, 186 Ariz. 159, 160 (App. 1996)). Once the party claiming the easement has shown that his or her use during the statutory period was open, visible, continuous, and unmolested, Arizona law presumes the use was under a claim of right. *Spaulding v. Pouliot*, 218 Ariz. 196, 201, ¶ 14 (App. 2008).

¶13 The record contains substantial evidence supporting the Hawkins' prescriptive easement claim. Donald Hawkins and Roger Miller each testified that he used the Disputed Easement to access his property for more than ten years combined. Miller testified that he began using the Disputed Easement by 1986 and continued to openly use it until he sold his property to the Hawkins in 1999. Donald Hawkins testified that he openly used the Disputed Easement approximately a dozen times per year from 1999 until it was blocked in 2007. Moreover, neither Miller nor Hawkins sought permission at any time from Blair to use the Disputed Easement. In the light most favorable to sustaining the judgment, this evidence is sufficient to establish a prescriptive easement. *See Bunyard v. U.S. Dept. of Agriculture*, 301 F. Supp. 2d 1052, 1056 (D. Ariz. 2004) (finding that a prescriptive easement was established by undisputed evidence of open, regular, and uninterrupted use).

¶14 As noted above, Blair does not challenge the superior court's prescriptive easement findings or demonstrate an error committed by the superior court. While we can affirm solely on this basis, our review of the record provides ample support for affirming the superior court ruling. *See Guard v. Maricopa County*, 14 Ariz. App. 187, 188-89 (App. 1971) ("On appeal, the appellant has the burden of demonstrating to this court that there was error committed below.").

¶15 Given this finding, we need not decide whether the Hawkins were entitled to an easement implied by severance or whether the

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[1] Blair also contends the Hawkins are not entitled to a private way of necessity. The superior court denied that claim.

conveyances from Douglas to the Novaks and the Novaks to Blair evinced an imperfect grant that triggered adverse possession of the Disputed Easement. *See Leflet*, 226 Ariz. at 300, ¶ 12 (We may affirm on any basis supported by the record.).

CONCLUSION

¶16 We affirm the judgment. In our discretion, we grant the Hawkins' request for reasonable attorneys' fees incurred on appeal pursuant to A.R.S. § 12-1103(B) and taxable costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

AMY M. WOOD • Clerk of the Court
FILED: JT