

STATE OF MICHIGAN
COURT OF APPEALS

RONALD J. DENNIS,

Plaintiff/Counterdefendant-
Appellee,

v

LUANNE M. STORY TRUST,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED
August 21, 2018

No. 340231
Lapeer Circuit Court
LC No. 15-048420-CK

Before: SWARTZLE, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

Defendant Luanne M Story Trust appeals as of right the trial court’s judgment concluding that plaintiff Ronald J Dennis held an easement by prescription over a U-shaped driveway passing through defendant’s land. Because our Supreme Court’s decision in *Marlette Auto Wash, LLC v Van Dyke SC Properties, LLC*, 501 Mich 192; 912 NW2d 161 (2018), conclusively determines each of defendant’s issues in plaintiff’s favor, we affirm.

I. BACKGROUND

The pertinent facts underlying this case are not in dispute. At issue is a U-shaped driveway that traverses the boundary between plaintiff’s and defendant’s adjoining properties in Imlay City. Part of the U-shaped driveway is on plaintiff’s property, and part of the U-shaped driveway is on defendant’s property. The U-shaped driveway was constructed sometime in the late 1940s or early 1950s and has existed in substantially the same form since then. Pertinent to this appeal, the trial court found that the driveway was present in 1986 when plaintiff’s current property was purchased by Raymond and Edith Hill and that “Mr. and Mrs. Raymond Hill exercised dominion and control over the ‘U’ shaped driveway thereafter” by using, grading, plowing, and otherwise maintaining the driveway.

In 1998, Raymond and Edith Hill sold the property to their son, Brian Hill, and his wife, Janet Hill. Brian Hill had lived on the property from 1986 to 1998 and, after the sale, continued to use the driveway “openly and notoriously.” Brian and Janet Hill divorced in 2013, at which time Janet became the sole owner of the property. Janet Hill sold the property to plaintiff in 2014. As for defendant’s current property, Charles Sylla and Luanne Story purchased it in 1999 and eventually transferred it to defendant—a trust created in 2005 in Ms. Story’s name.

The current owners had a dispute about the driveway. Plaintiff sued defendant, claiming that he held a prescriptive easement over the portion of the U-shaped driveway that crossed defendant's land. Defendant argued that plaintiff could not hold a prescriptive easement over the disputed property because plaintiff could not meet the statutory period of adverse use. It is undisputed that plaintiff had not owned the property long enough to meet the statutory 15-year period on his own. Defendant argued that plaintiff could not tack on the adverse-use periods of previous owners because he was not in privity with Janet Hill and that, even if the previous owners had met the 15-year period of adverse use, plaintiff was not entitled to a prescriptive easement because, without privity, those previous owners could not transfer any easement to plaintiff. The trial court disagreed and concluded that "a prescriptive easement arises when the period of limitations expires, not when an action regarding title to the property is brought." The trial court found that the required 15-year period had been established before plaintiff's ownership of the property and that the resulting prescriptive easement transferred to plaintiff when he purchased the property.

This appeal followed.

II. ANALYSIS

A Prescriptive Easement Is an Easement Appurtenant. On appeal, defendant argues that a prescriptive easement only arises upon the commencement of an action to claim the easement and that plaintiff could not tack the adverse-use periods of the previous owners because he was not in privity with Janet Hill. We review de novo the trial court's conclusion that a party holds a prescriptive easement. *Marlette Auto Wash*, 501 Mich at ___; 912 NW2d at 167. An easement by prescription results from a dominant estate's use of a servient estate that is open, notorious, adverse, and continuous for the statutory period of fifteen years. *Killips v Mannisto*, 244 Mich App 256, 258-259; 624 NW2d 224 (2001). "A party may 'tack' on the possessory periods of predecessors in interest to achieve this fifteen-year period by showing privity of estate." *Id.* at 259.

Open, notorious, and adverse use are not at issue in this appeal. Rather, defendant's appellate argument concerns whether plaintiff can prove use of the servient estate for the statutory period within the confines of this Court's decision in *Marlette Auto Wash, LLC v Van Dyke SC Properties, LLC*, unpublished opinion of the Court of Appeals, issued May 10, 2016 (Docket No. 326486). In *Marlette Auto Wash*, the plaintiff operated a car wash that was accessed by a parking lot on the defendant's property. *Id.* at 1. The defendant requested that the plaintiff contribute to the parking lot maintenance. *Id.* The plaintiff refused and brought a claim against the defendant, arguing that it held a prescriptive easement over the access. *Id.* The trial court concluded that plaintiff had established a prescriptive easement because the 15-year period of adverse use was met by a prior owner of the car wash, at which time the prescriptive easement attached to the car wash property. *Id.* at 1-2. On appeal, a prior panel of this Court reversed the trial court's decision, concluding that a prescriptive easement vests automatically upon the expiration of the 15-year period, but that "the person claiming a prescriptive easement must acknowledge or act on the purported acquired right." *Id.* at 3. The prior panel noted that plaintiff had not owned the property long enough to satisfy the statutory period on its own and refused to allow the plaintiff to tack on any previous periods of adverse use because plaintiff had not shown privity with the prior owner. *Id.* at 2-3. Accordingly, the prior panel concluded that

plaintiff could not establish the 15-year period of adverse use necessary to maintain an action for prescriptive easement and vacated the trial court's judgment. *Id.* at 3.

Shortly before the instant appeal was filed, the Supreme Court granted leave to appeal in *Marlette Auto Wash* to answer the question of "whether open, notorious, adverse, and continuous use of property for at least 15 years creates a prescriptive easement that is an easement appurtenant without regard to whether the owner of the dominant estate took legal action to claim the easement." 500 Mich 950; 891 NW2d 230 (2017). In its brief on appeal in the instant case, defendant notes that, "[i]n all likelihood the decision in [*Marlette Auto Wash*] will . . . establish controlling precedent on the issues raised in this appeal." Defendant is correct that the Supreme Court's decision controls the issues raised in this appeal, and this precedent undercuts defendant's claims.

In *Marlette Auto Wash*, 501 Mich at ___; 912 NW2d at 172, the Supreme Court concluded that "Michigan caselaw establishes that the open, notorious, adverse, and continuous use of the relevant statutory period creates a prescriptive easement that is appurtenant, without the need for the claimant to show privity of estate with the prior owner." "Moreover, the prior owner of the dominant estate is not required to take legal action to claim the easement in order for a vested prescriptive easement to exist." *Id.* Stated differently, "a claimant seeking to prove the existence of a prescriptive easement may establish that the requisite elements were met by the claimant's predecessor in interest." *Id.* at ___; 912 NW2d at 168. Adverse title transfers at the time the statutory period expires, at which time the title attaches to, and runs with, the dominant estate. *Id.* at ___; 912 NW2d at 168-169.

Defendant does not dispute that the previous owners of plaintiff's property met the statutory period of adverse use. Upon the completion of the statutory period, a prescriptive easement was established and adverse title attached to plaintiff's current property. Whether plaintiff can establish privity with the prior owners is irrelevant as an easement appurtenant attaches to the dominant estate and is automatically transferred to subsequent owners. Stated differently, there is no need to tack plaintiff's period of adverse use to any of the prior owners' periods because the prescriptive easement was conclusively established before plaintiff purchased the property. The easement is therefore an essential part of the interest plaintiff purchased. Thus, the trial court did not err by concluding that plaintiff held a prescriptive easement over the portion of the U-shaped driveway that traverses defendant's property.

Privity and Adversity Are Separate Issues. Defendant next claims that this Court's panel in *Marlette Auto Wash* conflated the notions of privity of estate and a presumption of prescriptive easement. While privity of estate is a separate issue from whether an easement is adverse or permissive, see *Marlette Auto*, 501 Mich at ___; 912 NW2d at 170-171, this distinction does not aid defendant's position in this lawsuit. As explained supra, the Supreme Court's conclusion that a prescriptive easement is an easement appurtenant renders irrelevant whether plaintiff was in privity with any of the previous owners of his property. The prior owners of plaintiff's property established a prescriptive easement over the portion of the U-shaped driveway on defendant's property, and this easement was included in the bundle of rights plaintiff acquired when he purchased the property.

Affirmed.

/s/ Brock A. Swartzle

/s/ Mark J. Cavanagh

/s/ Brock A. Swartzle