IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 7, 2023 Session

CHRISTINE L. MANION ET AL. v. THE BALDINI, PRYOR, AND LAMMERT PARTNERSHIP

Appeal from the Chancery Court for Williamson County
No. 19CV-48211 Joseph A. Woodruff, Chancellor

No. M2022-00384-COA-R3-CV

The owners of certain real property sought a prescriptive easement over the parking lot of an adjacent neighbor. The trial court granted the prescriptive easement over the entirety of the neighbor's parking lot. The neighbor appealed. Discerning that the record contains clear and convincing evidence of all the requirements for a prescriptive easement, we affirm. We modify the trial court's judgment, however, by limiting the scope of the easement to the route followed when the route was first established.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed as Modified

ANDY D. BENNETT, J., delivered the opinion of the Court, in which W. NEAL MCBRAYER and JEFFREY USMAN, JJ., joined.

Marshall Thomas McFarland and Alvin Scott Derrick, Nashville, Tennessee, for the appellant, The Baldini, Pryor and Lammert Partnership.

Larry Lamont Crain, Brentwood, Tennessee, for the appellees, Christine L. Manion and Terry W. Alford.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

This case involves two parcels of land that are adjacent to each other on West Main Street in Franklin, Tennessee: 1337 West Main Street ("1337") and 1335 West Main Street ("1335"). Christine L. Manion and Terry W. Alford (collectively, "Manion and Alford") have owned 1337 since October 2015. The Baldini, Pryor, and Lammert Partnership ("the

Partnership"), a general partnership that engages in the business of real estate investment, development, leasing, and resale, acquired title to 1335 in 2002.

The two parcels are depicted in the following aerial photograph:

The rectangular lot with a house on it shown on the right side of the photograph is 1337. The lot measures approximately 50 feet wide and 240 feet deep. The house, a narrow driveway, and a small storage building are on the front section of the parcel. A small paved parking area is located on the rear of the lot. Directly adjacent to 1337, and on the left side of the photograph, is 1335. It includes a large white office building set back from West Main Street approximately 180 feet. The front of 1335 consists of a paved parking area that is approximately 50 feet wide and 180 feet deep. Two curb cuts allow vehicles to access this parking lot from West Main Street. Members of the general public routinely use this parking lot to access 1335 and, every week, the City of Franklin's garbage trucks use the parking lot to service the solid waste bins the City supplies to the business occupants of the office building.

A wooden fence marks the boundary between the two properties. The section of the fence closest to the office building on 1335 makes a 90-degree turn toward 1337 and terminates at the corner of a storage structure on 1337. This 90-degree turn in the fence creates an opening between the fence and the front corner of the office building that is large enough for vehicles to pass between the paved parking lot on 1335 and the paved parking lot at the rear of 1337. This opening is the only vehicular access point for the parking lot located on the rear of 1337; there is no way for vehicles to access the rear lot on 1337 from any point on 1337. Thus, owners or occupiers of 1337 and their visitors must drive across the parking lot on 1335 and through the opening in the fence in order to park on the rear lot.

The deed to Manion and Alford contains no easement or right of way across 1335 to access the rear lot on 1337. When deciding to purchase 1337, Manion and Alford considered the rear parking lot to be an important feature because they intended to rent the property to commercial tenants who would need that lot for their businesses. As a result, they inquired about whether there would be any issues crossing 1335 to access the rear parking lot on 1337, and the previous owners of 1337 responded that "[they] had had access and there really hadn't been any recent questions or issues regarding it." After purchasing the property, Manion and Alford and their tenants began using the parking lot on 1335 to access the rear parking lot. The crux of this appeal concerns whether Manion and Alford have a prescriptive easement over the parking lot on 1335 allowing them access to the parking lot at the rear of 1337.

An examination of the history of the two parcels of land assists in understanding the parties' dispute. Richard and Imogene Ray purchased 1337 in 1962 and used it as a personal residence. In 1980, Dr. Walter Hermsworth Gardiner owned 1335, and he constructed the office building for his medical practice. He then, in July 1981, entered into a five-year lease agreement with the Rays to lease an area that was approximately 50 feet wide and 80 feet deep in the rear-most section of 1337. Dr. Gardiner leveled, compacted, and paved this area to use as a parking lot for his patients and employees. He also built a wooden fence on the property line between 1335 and 1337 with an opening that allowed access from 1335 to the newly constructed parking lot at the rear of 1337.

During the five-year term of the lease, members of the Ray family sporadically used the rear parking lot on weekends and other days when Dr. Gardiner's clinic was closed. When Dr. Gardiner's lease expired in 1986, he did not extend it, and the Ray family began parking their vehicles on the rear lot more often. From 1995 or 1996 until the property was sold to Manion and Alford in October 2015, the Rays' son, Wayne Ray, frequently parked his vehicle on the rear parking lot when either living with or visiting his parents. As early as April 2011, Wayne Ray also often parked his mother's vehicle on the rear parking lot. Because it was impossible for a vehicle to access the rear parking lot by traversing 1337, the Ray family always crossed the parking lot on 1335 when they parked their vehicles on the rear parking lot.

After Dr. Gardiner vacated 1335, various commercial tenants occupied the property until Willowbrook Health Systems ("Willowbrook") purchased 1335 in October 1999.[1] Gregory Lammert was the company's chief operating officer and was responsible for handling the acquisition of 1335 on behalf of Willowbrook. During the purchasing process, Mr. Lammert spoke to Imogene Ray about leasing the rear parking lot on 1337 because Willowbrook was concerned that 1335 did not have adequate parking. That conversation,

[1] The record shows that Willowbrook purchased 1335 from Len Duvall, who previously acquired the property from a bank.

however, did not result in Willowbrook leasing the rear lot on 1337. Instead, Willowbrook obtained a lease from the property owner on the other side of 1335 to provide additional parking for Willowbrook employees.

Following Willowbrook's purchase of 1335, Mr. Lammert had an office in the building, and he was there every day from 8:00 a.m. to 5:00 p.m. for several years. Mr. Lammert formed the Partnership with June Baldini[2] and Faye Pryor in 2002. Shortly thereafter, Willowbrook quitclaimed 1335 to the Partnership and entered into a lease with Willowbrook for Willowbrook to continue operating from the office building.

In 2011, the wooden fence marking the boundary between the two parcels needed to be replaced. Mr. Lammert handled the replacement of the fence and instructed the contractor to leave the opening between the parking lot on 1335 and the rear parking lot on 1337. In fact, when the new fence was completed, it was exactly like the previous fence built by Dr. Gardiner except for the 15 feet closest to West Main Street. The City of Franklin Codes Department required the height of that section to be lowered for the visibility and safety of vehicles pulling out onto West Main Street from the parking lot on 1335.

In May 2018, the Partnership hired a roofing contractor to replace the roof on the office building. The roofing contractor placed his materials in a manner that blocked the opening in the fence, making the rear lot on 1337 inaccessible by any vehicles. Alford called the property management company for 1335, Cress Commercial Real Estate Services, and left a voicemail message requesting that the obstruction be removed. He also called the phone number for the company that shipped the materials and asked the shipper to return to the site and move the building materials. Before the shipper returned to relocate the building materials, the property management company returned Alford's voicemail message and informed him that he and Manion did not have access to the rear lot on 1337. He disagreed and expressed his belief that he and Manion had a "grandfathered" right from the previous owners of 1337 to access the rear lot.

Ultimately, the shipper moved the building materials but, on June 6, 2018, Mr. Lammert, acting on behalf of the Partnership, wrote Manion and Alford a letter that stated, in pertinent part, as follows:

> We were first made aware that you may be using our property to access your back parking lot last week through our roofing contractor. . . . We have occupied our building for a number of years, and, to the best of our knowledge, your property's previous owner did not use our property to access your rear lot.

[2] Ms. Baldini was Mr. Lammert's boss at Willowbrook.

Mr. Lammert then had a chain barrier placed between the corner of the office building and the corner of the wooden fence, blocking access to the rear lot. Alford disconnected the chain barrier, but the Partnership replaced it, once again blocking vehicular access to the rear parking lot.

On March 26, 2019, Manion and Alford filed a complaint seeking a declaratory judgment that a prescriptive easement existed for the purpose of ingress and egress to the rear parking lot on 1337. The Partnership filed an answer denying the existence of a prescriptive easement and asserting counterclaims for trespass, injunctive and declaratory relief, and defamation of title. After a three-day bench trial, the trial court awarded Manion and Alford a prescriptive easement "across the paved expanse of 1335 West Main for the purpose of ingress and egress from the parking lot of 1337 West Main" and dismissed the Partnership's counterclaims.

The Partnership timely appealed and presents two issues for our review: (1) whether the trial court erred in concluding that Manion and Alford established by clear and convincing evidence the existence of a prescriptive easement and (2) whether the trial court erred in imposing the scope of the prescriptive easement "across the paved expanse" of 1335.

STANDARD OF REVIEW

In non-jury cases, we review the trial court's findings of fact de novo with a presumption of correctness unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). We review a trial court's conclusions on questions of law de novo without a presumption of correctness. *First Cmty. Bank, N.A. v. First Tenn. Bank, N.A.*, 489 S.W.3d 369, 382 (Tenn. 2015). If a trial court's factual findings depend on a witness credibility determination, "we will not reevaluate that assessment in the absence of clear and convincing evidence to the contrary." *Shealy v. Williams*, No. E2009-00126-COA-R3-CV, 2010 WL 3504449, at *4 (Tenn. Ct. App. Sept. 8, 2010) (citing *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *Newman v. Woodard*, 288 S.W.3d 862, 865 (Tenn. Ct. App. 2008)).

ANALYSIS

I. Prescriptive easement

"An easement is a right an owner has to some lawful use of the real property of another." *Pevear v. Hunt*, 924 S.W.2d 114, 115 (Tenn. Ct. App. 1996) (citing *Brew v. Van Deman*, 53 Tenn. (6 Heisk) 433, 436 (Tenn. 1871)). "'The most common form of an easement is a right of passage across another's property.'" *Shew v. Bawgus*, 227 S.W.3d 569, 578 (Tenn. Ct. App. 2007) (quoting *Stinson v. Bobo*, No. M2001-02704-COA-R3-CV, 2003 WL 238723, at *3 (Tenn. Ct. App. Feb. 4, 2003)). An easement may be created

in numerous ways: "(1) express grant, (2) reservation, (3) implication, (4) prescription, (5) estoppel, and (6) eminent domain." *Gore v. Stout*, No. M2006-02111-COA-R3-CV, 2008 WL 450597, at *5 (Tenn. Ct. App. Feb. 19, 2008) (citing *Pevear*, 924 S.W.2d at 115-16). This case involves an easement created by prescription, which is an implied easement that is based on the use of the property rather than on the language in a deed. *Bradley v. McLeod*, 984 S.W.2d 929, 934-35 (Tenn. Ct. App. 1998). Because a prescriptive easement is premised on the use of land rather than on the possession of land, "an entitlement to a prescriptive easement does not constitute ownership: 'the right acquired is limited to the specific use.'" *Shealy*, 2010 WL 3504449, at *5 (quoting *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 378 (Tenn. 2007)).

"To create a prescriptive easement, the use and enjoyment of the property must be adverse, under a claim of right, continuous, uninterrupted, open, visible, exclusive, with the knowledge and acquiescence of the owner of the servient tenement, and must continue for the full prescriptive period." *Pevear*, 924 S.W.2d at 116 (citing *Keebler v. Street*, 673 S.W.2d 154, 156 (Tenn. Ct. App. 1984)); *see also House v. Close*, 346 S.W.2d 445, 447 (Tenn. Ct. App. 1961). The prescriptive period in this state is twenty years. *Pevear*, 924 S.W.2d at 116 (citing *Callahan v. Town of Middleton*, 292 S.W.2d 501, 509 (Tenn. Ct. App. 1954)). Under certain circumstances, "parties may 'tack' their adverse possession onto that of predecessors in title," in order to establish the prescriptive period. *Shealy*, 2010 WL 3504449, at *6 (citing *Derryberry v. Ledford*, 506 S.W.2d 152, 156 (Tenn. Ct. App. 1973)). The party claiming that a prescriptive easement exists must prove the required elements by clear and convincing evidence. *Id.*; *see also Shew*, 227 S.W.3d at 578. Clear and convincing evidence is "'more exacting than the preponderance of the evidence standard,'" but it does not require "'such certainty as the beyond a reasonable doubt standard.'" *Shealy*, 2010 WL 3504449, at *6 (quoting *O'Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995)). "'Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence.'" *Id.* (quoting *O'Daniel*, 905 S.W.2d at 188).

The Partnership challenges the trial court's grant of a prescriptive easement on three grounds. First, the Partnership contends that Manion and Alford failed to establish that their use, or that of the Ray family, was adverse and under a claim of right. Second, the Partnership contends that Manion and Alford failed to establish knowledge of and acquiescence to use of the 1335 parking lot to access the rear parking lot on 1337 for the full prescriptive period because the record "is completely devoid of any proof" relating to the knowledge or acquiescence of any owner of 1335 prior to October 1999. Finally, the Partnership contends that, due to these deficiencies, Manion and Alford should not have been allowed to tack their use onto their predecessors' use to establish the requisite time period. We will address each argument in turn.

A. Adverse use under a claim of right

Although the Partnership does not expressly state as much, we infer from its appellate brief and oral argument before this Court that the Partnership acknowledges that Manion and Alford established continuous use of the right of way for the prescriptive period. The Partnership contends, however, that the use was permissive rather than adverse. To support this argument, the Partnership relies on *Blakemore v. Matthews*, 285 S.W. 567 (Tenn. 1926). For the reasons discussed below, we believe this reliance is misplaced.

The following quote shows the substance of the *Blakemore* opinion:

> The complainant's idea seems to be that, where it appears that one has traveled over the private road of another, without objection, for more than 20 years, an indefeasible easement is thereby acquired in said road. Entertaining this idea, the complainant offered no testimony to show that his use of said road was based upon a claim of right, or that he occupied same adversely to the defendants, or that he was in the exclusive possession of said road, or that he notified the defendants, either expressly or impliedly, of his claim of right to use said road. He limited his testimony to the fact that he had been continuously using said road for more than 20 years.

Blakemore, 285 S.W. at 567. Thus, because the complainant offered no proof to show that his continuous use of the right of way was adverse and under a claim of right, the Court presumed the complainant's use was permissive. *Id.* at 567-68. The Court explained the presumption as follows:

> Where persons travel the private road of a neighbor in conjunction with such neighbor and other person, *nothing further appearing*, the law will presume that such use was permissive, and the burden is upon the party asserting a prescriptive right to show that his use was under claim of right and adverse to the owner of the land.

Id. (citing *Connor v. Frierson*, 38 S.W. 1031, 1032 (Tenn. 1897)) (emphasis added).

Although the *Blakemore* opinion makes it clear that a party's use will be presumed permissive without proof that such use was adverse and under a claim of right, the Court provided no definition or explanation for the terms "adverse" and "claim of right" as they apply to prescriptive easements. Thirty-five years after *Blakemore*, this Court provided the following guidance for determining whether a use is adverse and under a claim of right:

> [T]o be adverse, the use must be under a claim of right inconsistent with or contrary to the interest of the owner and of such a character that it is difficult

> or impossible to account for it except on the presumption of a grant; or use under a claim of right known to the owner of a servient tenement; or use whenever desired without license, or permission asked, or objection made such as the owner of an easement would make of it, disregarding entirely the claims of the owner of the land.

House, 346 S.W.2d at 448 (citing 28 C.J.S. *Easements* § 14). Since issuing the opinion in *House*, we have further explained that, if a person asks permission to use certain property, and the property owner grants permission, expressly or implicitly "by allowing continued use, or if the owner makes it clear that the use is only with permission, even in the absence of a request, this would strongly indicate that the proponent's use was permissive and not adverse." *Gore*, 2008 WL 450597, at *8. Furthermore, for use to be adverse, it is not necessary to show that an owner "actively resist[ed] the use of the easement" or that there was "actual hostility between the adverse user and the owner of the servient estate." *Sanders v. Mansfield*, No. 01-A-01-9705-CH00222, 1998 WL 57532, at *4 (Tenn. Ct. App. Feb. 13, 1998); *see also German v. Graham*, 497 S.W.2d 245, 248 (Tenn. Ct. App. 1972). All that is required is that "the use . . . be under a claim of right inconsistent with or contrary to the interest of the owner." *Sanders*, 1998 WL 57532, at *4 (discussing the *German* court's holding).

The Partnership contends that the adverse use and claim of right requirements were not established in this case because the only evidence in the record of any adverse use under a claim of right was the incident with the roofing contractor in June 2018. According to the Partnership, the record "is devoid of proof" that the Ray family or Manion and Alford used 1335 to access the rear parking lot on 1337 "adversely to the Partnership and/or under any claim of right to do so from the time Dr. Gardiner vacated 1335 W. Main" in 1986 and the roofing incident in June 2018. Thus, the Partnership contends, use of 1335 to access the rear parking lot on 1337 by the Ray family and by Manion and Alford prior to June 2018 must be presumed to have been permissive.

The record, however, contradicts the Partnership's contention. There is no evidence that the Ray family ever asked any owner of 1335 for permission to use the right of way or any evidence strongly indicating that the use was permissive. *See Gore*, 2008 WL 450597, at *8. Indeed, our review of the record shows that the members of the Ray family adversely used 1335 to access the rear parking lot on their property and assumed they had a right to so. Wayne Ray testified that, when Dr. Gardiner vacated 1335 in 1986, he was a teenager and lived at 1337 with his parents. Between 1986 and 1988 Wayne Ray regularly parked his car on the rear parking lot. He spent approximately the next seven years living elsewhere in Franklin, but he visited his parents "daily during that period of time" and routinely parked his car on the rear parking lot when he visited. Wayne Ray stated that he moved back to 1337 in either 1995 or 1996 and continued living there until the property was sold to Manion and Alford in 2015. From 1995 or 1996 through 2015, Wayne Ray parked his vehicle on the rear parking lot. He further stated that, during that same time

period, he began parking his mother's car on the rear parking lot because she disliked backing out of the driveway onto a busy West Main Street. Each time he accessed the rear parking lot to park either his or his mother's vehicles, he crossed the parking lot on 1335 and passed through the opening in the fence.

Robin Ray also testified at trial. He stated that, while living with his parents at 1337, he usually parked his vehicle in the gravel driveway in front of the house, but he would occasionally park his car on the rear parking lot after Dr. Gardiner vacated 1335. From the mid-1980's until 2011,[3] Robin Ray did not live at 1337, but he visited his parents there once a week. During these weekly visits, Robin Ray typically parked in the gravel driveway, but he usually saw his brother's car parked on the rear parking lot and that he saw his mother's car parked on the rear parking lot half of the time. Both Wayne Ray and Robin Ray identified their mother's car parked on the rear parking lot from an aerial photograph taken on April 12, 2010. This evidence shows that the Ray family used 1335 to access the rear lot "whenever desired without license" and contrary to the Partnership's interest. *House*, 346 S.W.2d at 448.

Despite this evidence showing that members of the Ray family continuously and adversely used 1335 to access the rear parking lot for many years based on their belief that they had a right to do so, the Partnership argues that the use must still be presumed permissive because there is no evidence that the Ray family "put the Partnership on notice of any claim of right." At oral argument, the Partnership contended that a proponent of an easement is not required to walk up to the owner and expressly state that he or she is claiming a right to use the easement, but rather, the proponent must do something that puts the owner on notice that a claim of right is being made. We infer from the Partnership's explanations that the Partnership takes the position that the use of 1335 to access the rear of 1337 was permissive because the Partnership never saw either the Ray family or Manion and Alford and their tenants use the right of way. The case of *German v. Graham*, 497 S.W.2d at 245, is instructive on this issue.

In *German*, the Germans and their tenant had used a road over land owned by Earl Graham and his predecessors in title for more than twenty years despite having no official title to such an easement. *German*, 497 S.W.2d at 247. The Germans filed suit seeking an injunction against Mr. Graham after he blocked the road, and the trial court concluded that the Germans had no right to an injunction because their use of the road was permissive. *Id.* at 248. This Court reversed after concluding that the Germans' use was, in fact, adverse and under a claim of right that was inconsistent with Mr. Graham's interest. *Id.* at 249. The court based its conclusion on the following:

[3] Imogene Ray died in April 2011. The record indicates that Richard Ray pre-deceased her, but no date is specified.

> When defendant Graham bought the Ozier lands he was given actual knowledge that A.L. German and wife were using the road as the access road to their farm. From 1956 until 1966 Graham never asked by what authority A.L. German and wife used the road and never made any complaint or objection to their use of the road. A.L. German never asked the new owner, Graham, for permission to use the road. *Such conduct by the parties indicates that Graham understood that German was using the road under a claim of right and not by permission.*

Id. at 248 (emphasis added).

Here, Mr. Lammert testified on behalf of the Partnership. He stated that he had no knowledge that the owners and/or occupiers of 1337 used 1335 to access the rear of 1337 until the roofing incident in June 2018. The trial court found Mr. Lammert's claimed lack of knowledge was "plainly not credible in light of all the facts and testimony presented."[4] We agree. The record contains abundant evidence, both direct and circumstantial, contradicting Mr. Lammert's testimony on this issue. For example, although nothing in the record shows that permission to cross 1335 was ever requested or granted, Wayne Ray testified that, between 1986 and 2015, he regularly parked his vehicle on the rear parking lot. Moreover, several aerial photographs from as early as April 2010 show Imogene Ray's vehicle parked on the rear parking lot. When Dr. Gardiner vacated 1335, Wayne Ray installed a chain across the access point from 1335 to the rear parking lot to prevent others from accessing the parking lot. He stated that he placed a "No Trespassing" sign on the chain as well as a lock to which only members of the Ray family had a key. Therefore, only the Ray family could access the rear lot. Numerous photographs taken on different days show that the Ray family's vehicles came and went from the rear lot because those cars were not always parked on the rear parking lot and they were not always parked in the same spots when parked on the rear lot.

After Manion and Alford purchased 1337, the number of vehicles coming and going from the rear parking lot drastically increased. Dr. Amy Miltich, a licensed psychologist, leased 1337 for her counseling service. She testified that she leased 1337 from June 2016 until July 2018 and, during that time period, she and her colleagues saw thirty-five to forty clients per week. Those clients usually parked on the rear parking lot. Dr. Miltich and her staff also parked on the rear parking lot most days.

Despite all of the coming and going from the rear lot, Mr. Lammert and a few former Willowbrook employees testified that they had no knowledge of the Ray family or Manion

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[4] In its brief, the Partnership contends that the trial court erred in making negative credibility findings against Mr. Lammert. The record, however, contains clear and convincing evidence supporting the trial court's credibility determination. Thus, we will not reevaluate that assessment. *See Shealy*, 2010 WL 3504449, at *4 (citing *Jones*, 92 S.W.3d at 838; *Newman*, 288 S.W.3d at 865).

and Alford and their tenants using 1335 to access the rear parking lot because the parking lot on 1335 was often packed with its employees' vehicles, making it difficult to notice vehicles coming and going from the rear parking lot. Nonetheless, the record contains evidence indicating that Mr. Lammert knew that the Ray family and Manion and Alford and their tenants were using 1335 to access the rear parking lot. For instance, Mr. Lammert admitted that he knew that, when Willowbrook purchased 1335, there was a chain with a "No Trespassing" sign blocking access to the rear parking lot on 1337 and that the Ray family owned the rear parking lot. He testified that, after Willowbrook purchased 1335, he worked in the office building five days a week from 8:00 a.m. to 5:00 p.m. He eventually ceased working from the building on a daily basis, but he occasionally came to the building for meetings.

Testimony from other witnesses indicates that, when Mr. Lammert worked in the office building, he had reason to know that the Ray family was using 1335 to access the rear lot. Diane Garnett, a former Willowbrook employee, testified that, Willowbrook employees who parked on the front parking lot on 1335 could see whether a vehicle was parked on the rear parking lot if they looked in the direction of the rear parking lot when walking to the front door of the building on 1335. Sheryl Howell, a neighbor whose property abuts 1337, also testified that a person standing on the 1335 parking lot could see if vehicles were parked on the rear parking lot on 1337. Nothing in the record establishes where on the 1335 parking lot Mr. Lammert parked when he worked in the building, but the evidence shows that he would have accessed the 1335 parking lot from one of the two curb cuts from West Main Street and then parked in one the many parking spaces on that lot. While walking from his parked vehicle to the entrance of the building, he would have seen whether or not the Ray family's vehicles were parked on 1337's parking lot.

Perhaps most damaging to the credibility of Mr. Lammert's testimony that the Partnership lacked notice of the adverse use is the evidence regarding the replacement of the wooden fence marking the boundary between the two parcels in 2011. Mr. Lammert testified that he handled the replacement of the fence, and photographs of the new fence as it was being built very clearly depict Wayne Ray's vehicle parked on the rear parking lot. Because the opening in the fence is the only way to access the rear lot by vehicle, that vehicle had to cross over 1335. Therefore, the evidence in this case, even more than that relied on in *German*, indicates that the owners and occupiers of 1337 were using 1335 to access the rear parking and that the Partnership understood that they were using 1335 under a claim of right rather than by permission. In the words of the trial court, concluding otherwise "beggars credulity." And, despite knowing that owners and occupiers of 1337 used 1335 to access the rear parking lot adversely and under a claim of right, the Partnership did nothing to prevent the use. Indeed, when Mr. Lammert handled the replacement of the boundary fence, he instructed the contractor to leave the opening in the fence, allowing continued use of that access point to the parking lot on 1337.

In light of this evidence, we affirm the trial court's determination that Manion and Alford established by clear and convincing evidence the continuous, uninterrupted, open, visible, and exclusive use of 1335 to access the rear parking lot on 1337 with the knowledge and acquiescence of the Partnership.[5]

B. Knowledge and acquiescence of previous owners/occupiers of 1335

The Partnership next argues that the trial court erred in awarding the prescriptive easement because Manion and Alford failed to prove that the knowledge and acquiescence elements existed for the full prescriptive period. According to the Partnership, there was a "gap" in the proof entered at trial regarding whether the prior owners and/or occupiers of 1335, from 1986 until 1999, knew of and acquiesced to use of 1335 to access the rear parking lot. Thus, the Partnership contends, no prescriptive easement was created because the "prescriptive time clock" did not commence until Willowbrook purchased 1335 in October 1999—meaning that Manion and Alford filed this lawsuit several months short of the required twenty years.

The record again contradicts the Partnership's assertion. At trial, Alford was asked whether he possessed any knowledge about the owners of 1335 between 1986 and 1999. He responded that he did have some knowledge and stated, "First National Bank purchased the property, I believe, in 1992 or '3. And they turned around and sold it to a Mr. DuVall. And Mr. DuVall sold it to Baldini Pryor and Lammert, Willowbrook." Mr. Lammert provided further information regarding Mr. DuVall's ownership of the property:

> [MR. LAMMERT]: We purchased it from an architect that had offices in there. I can't recall his name right now. DuVall – Len DuVall, I believe. But he had purchased it and was in there for a few years, and the space didn't work for him so he put it on the market, and we purchased it from him.
> THE COURT: And Mr. DuVall, did he acquire it from Dr. Gardiner, or is he affiliated with Dr. Gardiner?
> [MR. LAMMERT]: What I understand is the bank [First National Bank] took it. And I guess Mr. DuVall must have purchased it from the bank.

This evidence shows that, from at least the mid-1990's until October 1999, Mr. DuVall owned 1335 and operated his architecture business from the property. Therefore, the building was not abandoned or vacant during that time period, which coincided with Wayne Ray moving back to 1337 and beginning to habitually park his vehicle on the rear

[5] In determining that Manion and Alford established a prescriptive easement, the trial court relied on Wayne Ray's testimony that an unidentified woman he believed worked for Willowbrook informed him that he could not cross 1335 to access the rear lot. The Partnership takes considerable offense to the court's reliance on this testimony and makes various principal-agent arguments for why the evidence should have been excluded. In light of the other evidence in the record that supports the court's decision, we decline to address this issue.

parking lot. As discussed above, any person standing or parked on the front parking lot on 1335 could see if there were vehicles parked on the rear parking lot on 1337, and the only way those vehicles could possibly access that lot was by crossing 1335. The evidence, therefore, indicates that Mr. DuVall, like the Partnership, knew and understood, from at least the mid-1990's until 1999, that the Ray family was using 1335 to access the rear parking lot, and he did nothing to stop the Ray family from doing so.

Based on the foregoing, we conclude that the record contains clear and convincing evidence that the various owners of 1335 knew of and acquiesced to the use of 1335 to access the rear parking lot for the full prescriptive period.

C. Tacking

The Partnership next contends that Manion and Alford should not have been allowed to tack the Ray family's use of 1335 in order to establish the prescriptive period. Tacking permits the proponent of a prescriptive easement to combine his or her period of use with that of his or her predecessor in order to establish the prescriptive period. *Gore*, 2008 WL 450597, at *6. "Tacking requires that the combined periods be successive, that each possession must meet the elements of prescriptive easement, and that the possessions be in privity." *Thompson v. Hulse*, No. E1999-02474-COA-R3-CV, 2000 WL 124787, at *3 (Tenn. Ct. App. Jan. 26, 2000). As discussed above, both the Ray family's period of use and Manion and Alford's period of use met the requirements of a prescriptive easement. The Partnership's argument that the successive periods should not be tacked focuses on the requirement that the possessions be in privity.

Tennessee recognizes certain exceptions to the privity requirement. *Gore*, 2008 WL 450597, at *6. As this Court has stated:

> "The general rule that successive adverse possessions cannot be tacked unless the possessors are connected by some form of legal privity was applied in *Erck v. Church*, [87 Tenn. 575, 11 S.W. 794 (1889)], and *Ferguson v. Prince*, 136 Tenn. 543, 190 S.W. 548 [(1916)]. However, the rule is subject [to] exceptions. In *Rembert v. Edmondson*, 99 Tenn. 15, 41 S.W. 935, 63 Am.St.Rep. 819 [(1897)], a parol understanding that a strip on the rear of a lot conveyed by deed would go with the lot to the extent the grantor had any title to convey was held to supply the necessary privity although the strip adjoining the lot conveyed was not within the calls of the deed. *See also Tuggle v. Southern Railway Co.*, 140 Tenn. 275, 204 S.W. 857 [(1918)]; *Mercy v. Miller*, 25 Tenn. App. 621, 166 S.W.2d 628 [(1942)]."

Thompson, 2000 WL 124787, at *4 (quoting *Peoples v. Hagaman*, 215 S.W.2d 827, 830 (Tenn. Ct. App. 1948)). Thus, "tacking can be established, in the absence of a conveyance of a right by deed, by a parol understanding that an unwritten right of use is conveyed along

with the property specifically conveyed in the deed." *Gore*, 2008 WL 450597, at *6. The *Thompson* court explained as follows:

> The contractual intention to connect successive adverse possessions through tacking requires the property claimed through the judicial mechanism to establish prescriptive easement be described in the deed transferring ownership between the adverse possessors, *or be established through parol evidence sufficient to establish the buyer's right of reasonable reliance on representations made by the buyer's predecessor relating to the transfer of ownership.*

Thompson, 2000 WL 124787, at *4 (emphasis added).

The deed to Manion and Alford provides no right-of-way across 1335 to access the rear parking lot on 1337. Therefore, to tack their period of use to that of the Ray family, the record must contain clear and convincing evidence of a parol understanding between Manion and Alford and the Rays that the Rays conveyed to Manion and Alford the right to use the 1335 parking lot to access the rear parking lot on 1337. The circumstances surrounding the purchasing negotiations are important in ascertaining Manion and Alford's understanding. *See Gore*, 2008 WL 450597, at *7 ("The context of [the] Johnson-to-Gore transaction is significant in ascertaining their understanding."). Alford testified that, when he and Manion decided to purchase 1337, they intended to rent it to commercial tenants. Thus, he and Manion considered the rear parking lot to be a crucial feature of the property due to the limited parking space on the front section of the property. Because the only feasible access to the rear parking lot is across 1335, access was an issue of concern. Indeed, Robin Ray testified that, during purchasing negotiations with Manion and Alford, access to the rear parking lot was "a specific topic of discussion." He told them that he and Wayne Ray "had had access, and there really hadn't been any recent questions or issues regarding it." Manion and Alford had reason to rely on this statement because Manion had a long-standing connection to the Ray family. Specifically, Manion testified that she taught karate and gymnastics to Wayne and Robin Ray when they were children. Furthermore, Manion was the person who introduced Dr. Gardiner to the Ray family when he was looking to lease the rear section of 1337 for additional parking for his medical practice. After acquiring 1337, Manion and Alford and their tenants routinely traveled over 1335 to access the rear parking lot.

This evidence establishes that Manion and Alford had a parol understanding that the Ray family was transferring the right to cross 1335 to access the rear parking lot and that their reliance on that understanding was reasonable. Thus, the trial court did not err in allowing Manion and Alford to tack their period of use to that of the Ray family to establish the prescriptive period.

Because the record contains clear and convincing evidence of all of the required elements for creating a prescriptive easement, we affirm the trial court's decision awarding Manion and Alford a prescriptive easement over 1335 to access the rear parking lot on their property.

II. Scope of the easement

Finally, the Partnership argues that the trial court erred in imposing a prescriptive easement "across the paved expanse" of 1335. According to the Partnership, this was overly broad as it burdens the entirety of the large, paved parking lot at the front of 1335. We agree. The scope of a prescriptive easement has been explained as follows:

> The scope of a prescriptive easement is defined by the character and nature of the use that created it, during the prescriptive period. In other words, a prescriptive easement is generally limited in scope by the manner in which it was acquired and the previous enjoyment. When an easement is established by prescription, the common and ordinary use which establishes the right also limits and qualifies it. The type of usage may not be increased just because the use has ripened into a prescriptive right, and if the party claiming the prescriptive right enlarges the use within the prescriptive period, the party cannot claim the use as enlarged by her within the prescriptive period. In addition, a prescriptive right extends only to the portion of the servient estate actually used.

28A C.J.S. *Easements* § 194 (May 2023) (footnotes omitted). Therefore, the scope of the prescriptive easement is limited to the manner of the use by which the easement was acquired.

Here, Manion and Alford introduced evidence that they and their tenants accessed the rear parking lot by any open path that allows one to cross the paved expanse to reach the opening in the fence—whether by using the curb cutout closest to the fence and driving along the fence until reaching the opening or using the second curb cutout and driving across the entirety of the paved expanse until reaching the opening. But this use was an enlargement of the easement created by the Ray family. Robin Ray described the scope of the easement thusly:

> Q. All right. I understand. So there are two access points off of West Main Street - -
> A. Correct.
> Q. - - into that parking lot. But when you were accessing the lot yourself, which path would you typically take?
> A. I would typically always take the one closest to the fence.

Q. All right. And as far as you know, when you observed members of your family, be it [Wayne] Ray or your mother, drive, which path would they take?
A. Normally they would take the same route.

This evidence shows that the use that created the right to cross 1335 to access the rear parking lot was via the curb cutout closest to the fence, driving along the fence until reaching the opening, and turning right when reaching the opening. We, therefore, conclude that the scope of the prescriptive easement was limited to that route. The trial court's decision awarding the prescriptive easement is modified to reflect that limitation.

CONCLUSION

The judgment of the trial court is affirmed but modified to limit the scope of the prescriptive easement to the route used by the Ray family when the right was created. Costs of this appeal are assessed against the appellant, The Baldini, Pryor and Lammert Partnership, for which execution may issue if necessary.

_/s/ Andy D. Bennett_____
ANDY D. BENNETT, JUDGE