IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

CAROL A. FRANKLUND,	)	No. 29336-0-III
Appellant,	)	
v.	)	
ARVID K. OLSON,	)	UNPUBLISHED OPINION
Respondent.	)	

Brown, J. • Arvid K. Olson[1] and Carol A. Franklund own adjacent parcels. Between their properties is an easement used by both parties to access their properties. Mr. Olson began to prevent Ms. Franklund's use of the easement. As a result, Ms. Franklund sued for injunctive relief. Mr. Olson argued he acquired the easement through adverse possession. The trial court disagreed. On appeal, Mr. Olson contends he established the necessary elements of adverse possession. We find no error in the trial court's decision, and affirm.

[1] Mr. Olson passed away while this appeal was pending; his estate represents his interests.

FACTS

Initially, the adjacent parcels were owned by Stanley and Jean Sinclair. In 1977, the Sinclairs sold Parcel B to Mr. Olson via statutory warranty deed. In 1981, the Sinclairs sold Parcel A to Donald and David Briney, Ms. Franklund's predecessors in interest, by warranty fulfillment deed. Both deeds provide for an express 30-foot easement "for ingress and egress" running north and south between the two parcels. Clerk's Papers (CP) at 20. The easement centerline coincides with the boundary line of Parcel A and Parcel B.

After acquiring his parcel, Mr. Olson graveled the existing 30-foot wide dirt driveway running north and south located on the easement. Ms. Franklund's three predecessors in interest used the easement for access to Parcel A. In 2005, Ms. Franklund acquired Parcel A. She used the easement to access an entry on the east side of Parcel A; and she was able to access Parcel A via a driveway located on the southwestern part of her parcel. When Ms. Franklund acquired the property, she believed she was acquiring the easement. Following her acquisition of Parcel A, she continued to use the easement to access the eastern part of her property for about a year and a half.

Mr. Olson began refusing to allow Ms. Franklund to continue to use the easement, claiming it was his personal driveway. He attempted to block the easement with trucks and other objects. In May 2009, Mr. Olson twice attempted to gate the southern access to

the easement. Both times, Ms. Franklund removed the gates. Mr. Olson attempted to fence off Ms. Franklund's east entryway leading off the easement by installing a fence along the western boundary of the easement located 15 feet west of the boundary line between Parcels A and B. Mr. Olson later removed the fence.

On July 2, 2009, Ms. Franklund sued for injunctive relief and quiet title. Ms. Franklund sought a judgment declaring the existence of the 30-foot ingress-egress easement over the east 15 feet of Parcel A and the west 15 feet of Parcel B, together with an order prohibiting Mr. Olson from interfering with her use. Mr. Olson denied an easement existed. He claimed he extinguished one-half of the easement by adversely possessing the west 15 feet of his property for over 32 years.

Entering findings of fact and conclusions of law, the trial court agreed with Ms. Franklund and concluded an express easement had been reserved over the west 15 feet of Parcel B and the east 15 feet of Parcel A. The court found Mr. Olson failed to provide, "evidence of hostile or adverse use." CP at 21. In its written decision, the court concluded Mr. Olson, "failed to prove the necessary elements of adverse possession." CP at 16. The court enjoined Mr. Olson from interfering with the easement. Mr. Olson appealed.

ANALYSIS

The issue is whether the trial court erred by enjoining Mr. Olson from preventing

use of the easement between his property and Ms. Franklund's property.

We review a trial court's decision to grant or withhold an injunction, and the injunction's terms, for abuse of discretion. *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). We give great weight to a trial court's injunction order, interfering only if the trial court's order is based on untenable grounds, is manifestly unreasonable, or is arbitrary. *Fed. Way Family Physicians, Inc. v. Tacoma Stands Up For Life*, 106 Wn.2d 261, 264, 721 P.2d 946 (1986).

We review a trial court's conclusions of law supporting an injunction, including the interpretation of restrictive covenants, de novo. *Rainer View Ct. Homeowners Ass'n, Inc. v. Zenker*, 157 Wn. App. 710, 719, 238 P.3d 1217 (2010), *review denied*, 170 Wn.2d 1030 (2011); *Bloome v. Haverly*, 154 Wn. App. 129, 137-38, 225 P.3d 330 (2010). We review a trial court's findings of fact supporting an injunction to ascertain whether substantial evidence in the record supports the findings. *Rainer View Ct.*, 157 Wn. App. at 719. Substantial evidence is "a quantum of evidence sufficient to persuade a fair-minded person that the premise is true." *Id.*

"To establish adverse possession, the claimant must show use that was open, notorious, continuous, uninterrupted, and adverse to the property owner for the prescriptive period of 10 years." *Cole v. Laverty*, 112 Wn. App. 180, 184, 49 P.3d 924 (2002) (citing *Beebe v. Swerda*, 58 Wn. App. 375, 383, 793 P.2d 442 (1990)). Since an

easement is a possessive interest in property, it can be extinguished through adverse use. *Cole*, 112 Wn. App. at 184 (citing *City of Edmonds v. Williams*, 54 Wn. App. 632, 634, 774 P.2d 1241 (1989)). The adverse use of the easement, however, must be clearly hostile to the dominant estate's interest in order to put the dominant estate owner on notice. *Id.* The question is whether Mr. Olson sufficiently established hostile, exclusive use of the express easement for ingress and egress to justify termination of the easement by adverse possession.

The trial court found an express easement existed between the two parcels meant to benefit both property owners. The court further found Ms. Franklund reasonably removed obstructions to the easement placed there by Mr. Olson. The court found no evidence showed hostile or adverse use. These findings are unchallenged and, therefore, are verities on appeal. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992). Without hostile or adverse use of an easement, a claim for adverse possession must fail. Thus, the trial court properly concluded Mr. Olson failed to prove the necessary elements of adverse possession. Therefore, because Mr. Olson did not establish adverse possession, the trial court properly enjoined him from extinguishing the easement that runs through both parcels.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Korsmo, C.J.

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Sweeney, J.