

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM T. GILES and SHARON R. GILES,	:	DOCKET NO. 12-01,143
Plaintiffs,	:	
vs.	:	CIVIL ACTION
	:	
RONALD E. READ,	:	
Defendant.	:	SUMMARY JUDGMENT

OPINION AND ORDER

Pending before the Court is Plaintiffs’ Motion for Summary Judgment and Request for View of the Property, filed March 21, 2013. At issue is Defendant’s use of an alleged right-of-way, Giles Lane (hereafter “lane” or “right-of-way”), over Plaintiffs’ property located in Susquehanna Township, Lycoming County, Pennsylvania. On June 7, 2013, the Court held oral argument on Plaintiffs’ motion. Following oral argument and upon review of the pleadings, it is hereby ORDERED and DIRECTED that Plaintiffs’ Motion for Summary Judgment is GRANTED in part and DENIED in part, and Plaintiffs’ Request for View of the Property is GRANTED.

I. Procedural Background

On June 13, 2012, Plaintiffs filed an action in trespass against Defendant for his use of the right-of-way. On July 2, 2012, Defendant alleged that he has an a) implied easement from a prior use, b) easement by prior use, c) implied easement on ground of necessity, d) easement by prescription, and e) easement by estoppel, over Plaintiffs’ property. A number of Defendant’s claims are premised upon actions taken by Defendant’s predecessor in title, Jacqueline S. Read (Mother). On June 7, 2013, the Court granted Defendant permission to amend his New Matter, Affirmative Defense, and Counterclaim. On June 12, 2013, Defendant filed an Amended New Matter, Affirmative Defense, and Counterclaim. On July 3, 2013, the pleadings closed. This matter is now ripe for review.

II. Summary Judgment Standard

Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to his cause of action or defense. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. Ct. 2011). When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. 31 A.3d at 971. Yet, a non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Keystone*, 31 A.3d at 971 (citing *Young v. Pa. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)).

III. Discussion

In Plaintiffs' motion for summary judgment, Plaintiffs allege that they should be granted summary judgment on Defendant's affirmative defenses and counterclaims. Plaintiffs argue that Defendant has failed to produce evidence of facts essential to his defenses and counterclaims. Specifically, Plaintiffs argue that Defendant failed to produce evidence sufficient to support his easement claims; these claims include: a) implied easement from a prior use; b) easement by prior use; c) implied easement on ground of necessity; d) easement by prescription; and e) easement by estoppel. The Court will address each of these arguments in turn.

a. Implied Easement from a Prior Use

Initially, Plaintiffs argue that Defendant's claim of an implied easement from a prior use lacks merit. At this time, the Court cannot agree. An implied easement from a prior use "[is] based on the theory that continuous use of a permanent right-of-way gives rise to the implication

that the parties intended that such use would continue, notwithstanding the absence of necessity for the use." *Groff v. Scanlan*, 673 A.2d 1028, 1032, n.4 (Pa. Cmwlth. Ct. 1996). In this matter, an issue exists as to whether the parties' intended that Defendant's use of the right-of-way would continue in the absence of a necessity. Additionally, as provided herein, an issue of fact exists as to whether there is an absence of necessity. Based upon these outstanding issues, Plaintiffs' motion is DENIED in this respect.

b. Easement by Prior Use

At the time of oral argument, the parties' agreed that Plaintiffs' motion should be GRANTED as it pertains to Defendant's claim of an easement by prior use because this type of easement is identical to an implied easement (by prior use). *See Groff*, 673 A.2d at 1032, n.4.

c. Implied Easement on Ground of Necessity

Plaintiffs also argue that Defendant's claim of an implied easement on the grounds of necessity lacks merit. At this juncture, the Court cannot agree.

"An easement by necessity arises upon a showing that there was a conveyance of a part of a tract of land in such a manner that the part conveyed or the part retained is denied access to a public road." *Groff*, 673 A.2d at 1032, n.4. In order to find an easement by necessity, the claiming party must prove: 1) unity of title of the dominant and servient tenement, 2) severance of this unity of title, and 3) the dominant tenement's necessity to use the easement both at the time of conveyance and the present. *Id.* at 1032. An easement premised upon necessity must be of strict necessity; therefore, the necessity cannot be created by the individual claiming the easement, nor does the necessity exist if the claimant can access the public road through his own land. *Id.* at 1032.

Instantly, no issue exists as to the first two prongs of the easement by necessity requirements; the parties agree that their properties had unity of title that was severed. However,

an issue exists as to whether the easement is necessary for the dominant tenement to enjoy his estate. Defendant alleges that his parcel is land locked and has no reasonable means of access to a public road. N. Matter, ¶¶ 29-30. *See also* Def. Bf., Ex. C. Defendant alleges that structures and septic tanks on his property contribute to the necessity of the easement. Def. Bf., Ex. C. Defendant also alleges that these structures were built prior to Mother's acquisition of the property. *Id.*

Upon considering Defendant's arguments and viewing the record in the light most favorable to him, the Court cannot conclude that Defendant does not have a meritorious easement by necessity claim. The Court believes that an issue of fact exists as to whether Defendant can access the public road from his property. The Court will not rule on Defendant's easement of necessity claim until given the opportunity to view the property personally during litigation. Therefore, Plaintiffs' motion is DENIED in this respect.

d. Easement by Prescription

Plaintiffs also argue that Defendant's claim that he has an easement by prescription lacks merit. At this time, the Court does not agree.

Plaintiffs aver that they gave Defendant's predecessor in title, Mother, *permission* to use the right-of-way. Complaint, ¶ 9. Plaintiffs further allege that this permission terminated upon transfer of the property from Mother to Defendant. *Id.*, ¶ 10. Alternatively, Defendant denies Plaintiffs granted Mother permission to use the lane and alleges that he and his predecessors have used the lane adversely, continuously, openly, and notoriously in contravention of Plaintiffs' interest. N. Matter, ¶ 32.

Presently at issue is the distinction between permissive and prescriptive easements. An easement by prescription requires adverse, continuous, open, notorious and uninterrupted use for a period of 21 years. *McNaughton Properties, LP v. Barr*, 981 A.2d 222, 225 n.5 (Pa. Super. Ct.

2009) (citing *Waltmyer v. Smith*, 556 A.2d 912, 913-14 (Pa. Super. Ct. 1989)). “A use based upon permission cannot ripen into a prescriptive right unless the owner of the land is given clear notice that the character of the use has changed from a permissive use to an adverse use, and the adverse use then continues for the full prescriptive period.” *Waltmyer*, 556 A.2d at 914.

However, when a predecessor in title has a permissive easement, he has a personal license to use that easement. *Waltmyer*, 556 A.2d at 914. This personal license terminates upon transfer of the land. *Id.* Therefore, the time associated with the prior-owner’s permissive use cannot be tacked to a subsequent owner’s prescriptive use. *Id.*

Viewing the record in the light most favorable to Defendant, the Court cannot find that Plaintiffs are entitled to judgment as a matter of law on Defendant’s prescriptive easement claim. The Court believes an issue of fact exists as to whether Mother’s use of the lane was permissive. Therefore, Plaintiffs’ motion is DENIED in this respect.

e. **Easement by Estoppel**

Lastly, Plaintiffs argue that Defendant has failed to allege any facts that would establish Defendant has an easement by estoppel. At this time, the Court does not agree. In *Zufall v. Dep’t of Environmental Resources*, 590 A.2d 812 (Pa. Cmwlth. Ct. 1991), *appeal denied*, 598 A.2d 995 (Pa. 1991), our Commonwealth Court provided:

[e]quitable estoppel arises when someone by his acts, representations or admissions, or by his silence when he ought to speak out, either intentionally or through culpable negligence induces another to believe certain facts to exist and such other person rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. *Bearoff v. Bearoff Brothers, Inc.*, 458 Pa. 494, 327 A.2d 72 (1974). In short, the two essential elements of equitable estoppel are an inducement, and a justifiable reliance on the inducement. *Novelty Knitting Mills, Inc. v. Siskind*, 500 Pa. 432, 457 A.2d 502 (1983). The party asserting the estoppel bears the burden of

proving it by clear and convincing evidence. *Blofsen v. Cutaiar*, 460 Pa. 411, 333 A.2d 841 (1975).

Id. at 814-15 (citing *Bayush v. Worker's Compensation Appeal Bd.*, 534 A.2d 853, 857 (Pa. Cmwlth. Ct. 1987)). As with Plaintiffs' other arguments, the Court believes that doubt exists as to whether an inducement and justifiable reliance occurred in this matter. Therefore, Plaintiffs' motion is DENIED in this respect.

The Court enters the following Order.

ORDER

AND NOW, this 9th day of July, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED that Plaintiffs' March 21, 2013 Motion for Summary Judgment is GRANTED in part and DENIED in part. The Court GRANTS summary judgment in favor of Plaintiffs and against Defendant as to Defendant's claim of easement by a prior use, and Defendant's claim of easement by a prior use is DISMISSED. Additionally, Plaintiffs' Request for View of Property is GRANTED. When the parties are prepared for this Court to conduct a site view of the property, they shall praecipe the Court for a view. The parties shall serve the undersigned *directly* with the praecipe.

BY THE COURT,

Date

Richard A. Gray, J.

cc: C. Rocco Rosamilia, Esq. – Counsel for Plaintiffs
Jonathan E. Butterfield, Esq. – Counsel for Defendant
Gary L. Weber, Esq. – Lycoming County Reporter