

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

GEORGE PAUCKE, JR., and	:	NO. CV-24-00302
JENNIFER PAUCKE,	:	
Plaintiffs,	:	
v.	:	
	:	CIVIL ACTION - LAW
MARY LOUISE PAUCKE, EXECUTRIX	:	
OF THE ESTATE OF ROBERT A.	:	
PAUCKE,	:	
Defendants.	:	ACTION TO QUIET TITLE

**OPINION AND ORDER**

**I. BACKGROUND**

This matter came before the Court on July 30, 2024, for a non-jury trial on the Complaint of George Paucke, Jr., and Jennifer Paucke (hereinafter collectively “Plaintiffs”) seeking judgment in quiet title on their claim for the right to continue to obtain water for use at their home from a spring on the adjoining real property owned by the Estate of Robert A. Paucke (hereinafter “Defendant”).

The factual background of this matter is more fully set forth in the attached Findings of Fact, which are incorporated herein by reference. Plaintiff George Paucke, Jr., was the nephew of Robert A. Paucke, now deceased. Plaintiffs reside in a home which was constructed by George Paucke, Jr., on a parcel of real property adjacent to other real property owned by the Estate of Robert A. Paucke, which includes his former residence. George Paucke, Jr., purchased his parcel from Robert A. Paucke, during his lifetime. The parcel owned by the Robert A. Paucke Estate contains a spring and a spring house structure, which has always been the source of water for the Robert A. Paucke home. Shortly after George Paucke, Jr., purchased his parcel from Robert A. Paucke, he commenced construction of the foundation for a residence, and he attempted to drill a well. That effort to drill a well was unsuccessful, because the well did not produce water.

After George Paucke, Jr., commenced construction of a foundation for a home on his parcel, but before the home was completed, he obtained oral permission from his uncle, Robert Paucke, to install piping from the spring located on the parcel owned by George Paucke, Jr., to serve his residence. Since the date when that piping was first installed, the spring has been the source of all water used by those now or formerly residing at the Plaintiffs’ Residence. That oral permission was never confirmed in writing, nor was that oral permission withdrawn, during the lifetime of Robert A. Paucke.

George testified at trial that he would not have completed construction of the home which he built at Plaintiffs' Residence, if he had not been able to secure oral permission from his uncle, Robert Paucke, to install piping from the spring to Plaintiffs' Residence. That testimony includes at least some speculation, since the foundation of that home was commenced before he secured that oral permission.

After the passing of Robert Paucke, Defendant's personal representative of the Estate advised Plaintiffs that she was terminating the oral permission granted by Robert Paucke, and thus that Plaintiffs could no longer secure water from the Spring. Plaintiffs have filed this action in an effort to confirm their continued entitlement to take water from the spring.

## **II. ISSUES PRESENTED**

- A. Whether Plaintiffs are entitled to an easement over the Defendant's real property, for continued use of water secured by Plaintiffs from the spring located on Defendant's property.
- B. Whether Plaintiffs are entitled to a license for continued use of water secured by Plaintiffs from the spring located on Defendant's property, despite the efforts of Defendant to revoke the license.

## **III. ANSWERS TO ISSUES PRESENTED**

- A. Plaintiffs are not entitled to an easement over the Defendant's real property, because their use of water from the spring was granted by permission.
- B. Plaintiffs are entitled to a license for continued use of water secured by Plaintiffs from the spring located on Defendant's property, despite the efforts of Defendant to terminate that license, because the reliance of Plaintiff George Paucke, Jr., rendered the license irrevocable.

#### IV. DISCUSSION

A. Plaintiffs are not entitled to an easement over the Defendant's real property, because their use of water from the spring was granted by permission.

It is the settled law of this Commonwealth that one may obtain a prescriptive easement over real property owned by another in the same fashion as title by adverse possession, that is, by open, notorious, uninterrupted, adverse use over a period of twenty-one (21) years. Where that use was by permission rather than by claim of right, however, no easement by prescription results.

We all agree that the result reached by the court below was the proper one under the evidence. Title by prescription has its foundation in the presumption of a grant arising from the long-continued use or possession of some right of common or other profit or benefit to be taken from or upon the land of another. Accordingly, the use must be such as to indicate that it is claimed as a right and is not the effect of indulgence or anything short of a grant. *Gibbs v. Sweet*, 20 Pa.Super. 275, 284. Mere user, no matter how long continued, will not give title. In order to give title, the right must not only have been enjoyed without interruption for twenty-one years, but the enjoyment must have been adverse to the rights of the owner of the land. *Bennett v. Biddle*, 140 Pa. 396, 404, 21 A. 363. Open, notorious and uninterrupted user for a period of twenty-one years will be presumed to have been in pursuance of a full and unqualified grant, in the absence of evidence of some license, indulgence or some special contract inconsistent with the right claimed. *Pierce v. Cloud*, 42 Pa. 102, 114, 82 Am. Dec. 496. But where the evidence produced by the claimant in support of his alleged right to an easement fully explains the manner in which the enjoyment began and is not sufficient to warrant a finding that the owner knew or ought to have known that the use was under a claim of right, the presumption of a grant does not arise. *Carter v. Tinicum Fishing Co.*, 77 Pa. 310, 315; *Gibbs v. Sweet*, supra, 20 Pa. Super. at page 285.

*Shinn v. Rosenberger*, 32 A.2d 747, 748 (Pa. 1943).

It is undisputed that Plaintiffs took water from the spring located on the Robert A. Paucke real property by his oral permission, which oral permission was neither confirmed in writing nor withdrawn, during the lifetime of Robert A. Paucke. Thus, no easement by prescription was ever created.

B. Plaintiffs are entitled to a license for continued use of water secured by Plaintiffs from the spring located on Defendant's property, despite the efforts of Defendant to terminate that license, because the reliance of Plaintiff George Paucke, Jr., rendered the license irrevocable.

At the time that Plaintiff George Paucke, Jr., secured oral permission of Robert A. Paucke to install a pipe to allow him to secure water from the spring located on Robert A. Paucke's residential real property, that oral permission was a license.

A license is generally considered a "mere personal privilege to perform an act or series of acts on the land of another." *Dailey's Chevrolet v. Worster Realities, Inc.*, *supra* at 281, 458 A.2d at 960 quoting *Hennebont Co. v. Kroger Co.*, 221 Pa.Super. 65, 69, 289 A.2d 229, 231 (1972). While a license may be created by a written instrument, it is usually created orally, *Hennebont Co. v. Kroger Co.*, *supra*, and it conveys no interest or estate in land. *Thompson v. Commonwealth Department of Highways*, 214 Pa.Super. 329, 257 A.2d 639 (1969) (allocatur denied).

*Kovach v. Gen. Tel. Co. of Pennsylvania*, 489 A.2d 883, 885 (Pa. Super. Ct. 1985).

As a general rule, licenses are revocable at will at any time, by the party who granted the license. An exception to that general rule exists, however, when the licensee makes a financial investment in reliance on the license. In that instance, the grantor may be equitably estopped from revoking the license.

Licenses are ordinarily revocable at will. Pennsylvania, however, has adopted the equitable doctrine of irrevocable licenses. This doctrine, based upon the equitable principle of estoppel, recognizes that, "if a license, ... is given by parol, then followed by the expenditure of money, on the faith of the parol agreement, it is irrevocable and is treated as a binding contract." *Cole v. Ellwood Power Co.*, 216 Pa. 283, 289, 65 A. 678, 680 (1907). *See also Dailey's Chevrolet v. Worster Realities, Inc.*, *supra*; *Harkins v. Zamichieli*, 266 Pa.Super. 401, 405 A.2d 495 (1979). Once irrevocability is established, "successors-in-title take subject to an irrevocable license if they had notice of the license before the purchase." *Harkins v. Zamichieli*, *supra* at 407-08, 405 A.2d at 498. *Messinger v. Washington Township*, 185 Pa.Super. 554, 137 A.2d 890 (1958).

*Kovach v. Gen. Tel. Co. of Pennsylvania*, 489 A.2d 883, 885 (Pa. Super. Ct. 1985).

Plaintiff George Paucke, Jr., testified at trial that he had commenced construction of the foundation to his home (he approximated 25% completion) when he discovered that the well he drilled was dry. As a result, he secured the oral license from Robert A. Paucke to secure water from the spring on the adjoining property. Thereafter, he completed construction of the home.

Plaintiff George Paucke, Jr., testified at trial that he would not have completed construction of his home without the license to take water from his uncle's well. Naturally, that testimony involved some speculation. The Court is confident, however, that George Paucke, Jr., would not have completed construction if he believed that the home would have no source of water. For that reason, the Court will credit his testimony.

Defendant disputes much of the testimony introduced by the Plaintiffs. Defendant appears to mistrust Plaintiffs' testimony that their well was dry, despite the fact that Defendant introduced no evidence to the contrary. Defendant appears to mistrust Plaintiffs' testimony that Plaintiffs' home construction was commenced, but not completed at the time that the oral license was granted, despite the fact that Defendant introduced no evidence to the contrary. Defendant appears to mistrust Plaintiffs' testimony regarding the approximate dates when Plaintiffs made certain improvements to the piping from the spring house to their real property, despite the fact that Defendant introduced no evidence to the contrary.

Defendant Mary Louise Paucke testified that she was not fully aware of the nature and extent of the oral license which her father granted to Plaintiffs, during her father's lifetime. She testified that she lived elsewhere, but frequently visited her father's home. While the Court credits that testimony, her lack of notice does not present a material issue to the Court's proper resolution of Plaintiffs' claim.

## V. FINDINGS OF FACT

1. Plaintiffs are the owners of residential real property containing approximately two (2) acres, which they obtained from a deed from Robert A. Paucke and Viola M. Paucke, dated October 17, 1984, and recorded in Lycoming County Record Book 1090, pages 42 to 44 (hereinafter “Plaintiffs’ Residence”). At the time of the deed, the real property was vacant land.
2. Plaintiffs’ Residence is adjacent to a larger tract of land owned by the Estate, which includes a residence which was formerly the home of Robert A. Paucke (hereinafter the “Estate Residence”).
3. The Estate Residence contains a spring (hereinafter the “Spring”) and a Spring house structure, which is the source of all water used by those now or formerly residing at the Estate Residence.
4. Robert A. Paucke, now deceased, was the uncle of Plaintiff George Paucke, Jr. (hereinafter “George”).
5. Shortly after George obtained title to the vacant land which is now Plaintiffs’ Residence, he commenced construction of the foundation for a residence, and he attempted to drill a well. That effort to drill a well was unsuccessful, because the well did not produce water.
6. Shortly after George obtained title to the vacant land which is now Plaintiffs’ Residence, and near the time that he discovered that his first attempt to drill a well was unsuccessful, George secured oral permission from his uncle, Robert A. Paucke, to install piping from the Spring to serve Plaintiffs’ Residence. Since the date when that piping was first installed, the Spring has been the source of all water used by those now or formerly residing at the Plaintiffs’ Residence.
7. The oral permission secured by George from his uncle, Robert A. Paucke, to install piping from the Spring to Plaintiffs’ Residence, was secured after George began construction of the foundation for the home at Plaintiffs’ Residence, but before completion of the home.
8. The oral permission secured by George from his uncle, Robert A. Paucke, to install piping from the Spring to serve Plaintiffs’ Residence, was never reduced to writing.

9. The oral permission secured by George from his uncle, Robert A. Paucke, to install piping from the Spring to serve Plaintiffs' Residence, was never withdrawn during the lifetime of Robert A. Paucke.
10. George testified that he would not have completed construction of the home which he built at Plaintiffs' Residence, if he had not been able to secure oral permission from his uncle, Robert A. Paucke, to install piping from the Spring to Plaintiffs' Residence. That testimony includes at least some speculation, since the foundation of that home was commenced before he secured that oral permission.
11. On some date long after installation of the pipe from the Spring to Plaintiffs' residence, George drilled a second well at Plaintiffs' Residence. The second well did not produce water.
12. After the passing of Robert A. Paucke, Defendant's personal representative of the Estate advised Plaintiffs that she was terminating the oral permission granted by Robert A. Paucke, and thus that Plaintiffs could no longer secure water from the Spring.
13. Based upon all of the evidence, the Court has reached the following factual inferences:
  - a. At least part of the motivation for Robert A. Paucke to give Plaintiff George Paucke, Jr., a license to take water from his spring was their family relationship. The Court notes that George Paucke, Jr., purchased his parcel from Robert A. Paucke.
  - b. Robert A. Paucke must have had actual notice of the fact that George Paucke, Jr., completed construction of his home, and lived in the home for many years, all while using water from the spring located on Robert A. Paucke's adjacent real estate.
  - c. Since Robert A. Paucke never attempted to terminate the license during his lifetime, the Court infers that he had no intention to ever do so.

## **VI. CONCLUSIONS OF LAW**

1. Because Plaintiffs took water from the spring located on the Robert A. Paucke real property with the oral permission of Robert A. Paucke, which oral permission was neither confirmed in writing nor withdrawn during the lifetime of Robert A. Paucke, no easement by prescription was ever created.
2. Because Plaintiffs took water from the spring located on the Robert A. Paucke real property with the oral permission of Robert A. Paucke, Robert A. Paucke gave Plaintiff George Paucke, Jr., an oral license to take water from his spring.
3. The oral license given by Robert A. Paucke to Plaintiff George Paucke, Jr., to take water from his spring was neither confirmed in writing nor withdrawn, during the lifetime of Robert A. Paucke.
4. In reliance on the oral license given by Robert A. Paucke, to Plaintiff George Paucke, Jr., to take water from his spring, Plaintiff George Paucke, Jr., completed construction of a home on his real property, which home had been commenced prior to the license.
5. By completing construction of his home in reliance on the oral license given by Robert A. Paucke, to Plaintiff George Paucke, Jr., to take water from his spring, Plaintiff George Paucke, Jr., rendered that oral license irrevocable. Robert A. Paucke and the Estate of Robert A. Paucke are equitably estopped from revoking that license.
6. One who seeks equity must do equity. Plaintiffs will be required to bear the sole expense associated with pumping the water to their home, and to install wiring and fixtures needed for that purpose. Plaintiffs' use of the water should not materially exceed their use of the water during Robert A. Paucke's lifetime.

ORDER

**AND NOW**, this 12<sup>th</sup> day of August 2024, it is hereby Ordered as follows:

- a. For the reasons more fully set forth above, decision in quiet title is entered in favor of Plaintiffs and against Defendant. It is the holding of the Court that, because Plaintiff George Paucke, Jr., completed construction of his home in reliance on the oral license given to him by Robert A. Paucke, to take water from his spring, Plaintiff George Paucke, Jr., rendered that oral license irrevocable. For that same reason, Robert A. Paucke and the Estate of Robert A. Paucke are equitably estopped from revoking that oral license.
- b. Plaintiffs, and their successors in title, will also enjoy a license to periodically enter upon the land which contains the spring, to the extent reasonably required to complete necessary repairs and replacement of pumps, fixtures, and the like.
- c. The Court notes that one who seeks equity must do equity. Plaintiffs, and their successors in title, will be required to bear the sole expense associated with pumping the water to their home, to install wiring and fixtures needed for that purpose, to complete necessary repairs and replacement of pumps, fixtures, and the like for that purpose, to pay for utility service to pump water to their land, and to indemnify Defendants and their successors in interest for any damages resulted from those activities by Plaintiffs and their successors in interest.
- d. Plaintiffs' irrevocable license to take water from the spring will run with the title to the land for both parcels, and will be binding upon all successors in title.
- e. Plaintiffs' use of the water, and the use by successors in title, should not materially exceed the use of the water during Robert A. Paucke's lifetime.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

CC: Court Administrator  
Marc S. Drier, Esquire  
Scott T. Williams, Esquire