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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THOMAS LUCAS,

Plaintiff and Respondent,

v.

RICHARD BARON,

Defendant and Appellant.

2d Civil No. B293749
(Super. Ct. No. 56-2017-
00498037-CU-OR-VTA)
(Ventura County)

Thomas Lucas acquired a parcel of land with an access easement appurtenant to it. The easement burdened two other parcels of land, including one owned by Richard Baron. Baron denied Lucas access to the easement, claiming that he had acquired it through adverse possession. The trial court disagreed.

Baron contends the trial court erred when it determined that: (1) he did not occupy the easement under circumstances that gave reasonable notice to its former owner, and (2) his possession was not hostile to the former owner's title. We affirm.

FACTUAL AND PROCEDURAL HISTORY

The parcels at issue

The facts of this case are undisputed.¹ It involves three contiguous parcels of land outside Moorpark: The southernmost parcel is the Lucas parcel; the middle parcel is the Baron parcel; and the northernmost parcel is the Lim parcel. The Lucas and Baron parcels were created as part of a 1977 subdivision. At the time of the subdivision, the Lucas parcel had access to Los Angeles Avenue on the south and Grimes Canyon Road on the east. The Baron parcel did not abut any road or highway, but its northern edge did reach to within approximately one-quarter mile of Stockton Road. The Lim parcel had access to Stockton Road on the north.

Two easements were created in conjunction with the 1977 subdivision. An easement appurtenant to the Lucas parcel ran from Stockton Road south across the Lim parcel to the northwest corner of the Baron parcel, east across the northern part of the Baron parcel, then south across the Baron parcel to the northeast corner of the Lucas parcel. An easement appurtenant to the Baron parcel overlaid the portion of the Lucas easement that crossed the Lim parcel. That portion of the easement is paved, and provides the only access from Stockton Road to the Baron parcel.

Motomi Arao bought the Lucas parcel in 1979. He built a home on the parcel in 1981, and resided there with his family until 2015. Though it was described in his deed, Arao was unaware of the easement appurtenant to his property.

¹ We grant Lucas's unopposed request to augment the record on appeal with an exhibit admitted at trial.

Baron acquired his parcel in 2000. He constructed a home on it, and has lived there since then. The easement burdening his parcel was not described in his deed, and he had no knowledge of it until 2017. He was aware of his easement across the Lim parcel, however, which he used to access Stockton Road.

Lucas purchased his parcel from Arao in 2016. He became aware of the easement appurtenant to his parcel when he reviewed the title report.

The boundary between the Lucas and Baron parcels

A barbed-wire fence marked the boundary between the Lucas parcel and the Baron parcel. The fence was in poor condition. The fenceposts and wires were down in several places. A person could drive a vehicle through it.

There was a gate on the edge of the Lucas parcel, less than one foot south of the boundary with the Baron parcel. The gate was in the same location as the southern terminus of the easement appurtenant to the Lucas parcel. It is unknown who constructed the gate.

The gate was locked from the Lucas side of the property boundary. Arao did not put the lock on the gate. Neither did Lucas or Baron. None of them had a key to the lock. No one ever asked Baron to unlock it, and he never opened it.

The area on Baron's side of the gate had piles of mulch, tree trunks, eucalyptus droppings, and other debris on it. Baron maintained part of his nursery operations there. He had a cactus garden and blueberry patch nearby. He also used the area to store containers of various plants for his nursery.

Baron's improvements to his parcel

Baron made several improvements to his parcel after he acquired it. In addition to the construction of his home, he

built a lake, dug streams, and erected a barn. He graded a service road that traversed the northern edge of his parcel, and extended it around the property so he could access a botanical garden he intended to build. He planted a hedge and erected a fence along parts of the road.

The service road followed the path of the easement appurtenant to the Lucas parcel along the northern edge of the Baron parcel. The road did not overlap the easement along the eastern edge of the Baron parcel. Much of that portion of the easement remained impassable.

The shape of the Lucas easement was the same in 2017 as it was when Baron acquired his parcel in 2000. The hedge and fence marked the easement's boundary. The barn was erected next to it.

In 2000, a cable and padlock demarcated the Lucas and Baron easements' boundary with the Lim parcel. Within months of acquiring his parcel, Baron replaced the cable with swinging gates that could be locked in the middle. By 2005, he had installed wrought-iron gates across the main entrance to his parcel, set back slightly from the boundary with the Lim parcel. These gates closed automatically, and could be opened by key pad or remote control.

On either side of the wrought-iron gates were cement walls and tree plantings. The plantings extended to the boundary with the Lim parcel. At their ends were locked gates made of chain-link fencing that permitted access to the eastern and northern portions of the service road Baron constructed. The gates and road were rarely used.

Only Baron and the general manager of his nursery had keys to the locks on the chain-link gates. Baron never

authorized Arao to enter the Lucas parcel from Stockton Road via the Lucas easement. No one ever requested access to the easement until Lucas did in 2017. Baron denied that request.

Proceedings in the trial court

Lucas sued Baron to gain access to the easement appurtenant to his parcel. Baron counter-claimed that he had adversely possessed the easement from Arao, which extinguished Lucas's claim. The trial court determined that the dispositive issues in the case were: (1) whether Baron's actions gave Arao reasonable notice of his occupation of the easement, and (2) whether Baron's activities on and around the easement evidenced a hostile intent to extinguish it.

The trial court determined that Baron failed to carry his burden to prove both issues. As to the first, Baron erected no permanent structure on the easement. Its shape remained intact. Baron did not secure the gate at the easement's southern terminus. He could have easily moved the debris and containers that were nearby. His actions thus did not give Arao notice that he had occupied the easement.

As to the second, the trial court found that the locked gate at the easement's southern terminus had "diminished" significance. Because Arao accessed the Lucas parcel from the south, he had no need to use the easement. The gate benefitted both Arao and Baron by preventing others' access to their properties. Baron's improvements to the parts of the service road that overlaid the easement were "far from being adverse." Arao thus had "no occasion" to object to Baron's actions.

DISCUSSION

An easement is an interest in the land of another that gives its owner the right to use the other's property. (*Vieira*

Enterprises, Inc. v. McCoy (2017) 8 Cal.App.5th 1057, 1075 (*Vieira Enterprises*).) An easement created by grant cannot be extinguished by “mere nonuse.” (*Ibid.*) But it can be extinguished by adverse possession. (*Ibid.*) The owner of a servient tenement who claims they have adversely possessed a dominant easement must prove that they actually occupied the easement under circumstances that gave “reasonable notice” to the easement owner, their possession was hostile to the easement owner’s title, their possession was under color of title or claim of right, their possession continued uninterrupted for at least five years, and they timely paid all taxes levied during the period of possession. (*Ibid.*)

Only the first two of these requirements are at issue here. Generally, whether Baron proved them would present questions of fact for the trial court (*Sevier v. Locher* (1990) 222 Cal.App.3d 1082, 1087) that we would review for substantial evidence (*Machado v. Southern Pacific Transportation Co.* (1991) 233 Cal.App.3d 347, 362). But the facts here are undisputed. We thus independently review whether they satisfy the elements of adverse possession. (*Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898, 912-913.) Our role is to determine “whether the evidence compels a finding in [Baron’s] favor . . . as a matter of law. [Citation.]’ [Citations.]” (*Vieira Enterprises, supra*, 8 Cal.App.5th at pp. 1074-1075.)

Reasonable notice

Baron contends the trial court erred when it determined that he could not assert a claim of right against Arao because both parties were unaware of the easement’s existence. But the court recognized that adverse possession of an easement can occur even if the adverse possessor or easement owner is

unaware of an easement's existence. (See *Vieira Enterprises, supra*, 8 Cal.App.5th at pp. 1076-1078.) As the trial court noted, the issue is whether Baron gave Arao reasonable notice of his occupation of the easement. He did not.

An easement owner has reasonable notice of an adverse possessor's occupation of an easement if the owner has actual knowledge of the occupation, or if the occupation is "so open, visible[,] and notorious" that it raises a presumption of notice. (*Wood v. Davidson* (1944) 62 Cal.App.2d 885, 890.) Occupation is open, visible, and notorious if it is apparent that the possessor has "claimed the [easement] as their own." (*Sorensen v. Costa* (1948) 32 Cal.2d 453, 461.) To do so, the possessor must protect the easement with a substantial enclosure, cultivate it, or improve it. (Code Civ. Proc., § 325, subd. (a).) Whether they have met one or more of these requirements "depends on the particular land and its condition, locality, and appropriate use." [Citation.] (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 326.)

Baron does not show that he met the requirements of Code of Civil Procedure section 325. Though he erected gates and fencing at the northern terminus of the easement, he did not do so at the southern terminus. The fence and gate there were in poor condition. They lacked fenceposts and wires. A person could drive a vehicle through them. Baron did not maintain the fence and gate at the southern terminus, and took no steps to fix their dilapidated states. He thus did not substantially enclose the easement. (*Hayes v. Mitchell* (1960) 184 Cal.App.2d 301, 305 [no substantial enclosure where parts of roadway were unfenced]; *Ross v. Burkhard Inv. Co.* (1928) 90 Cal.App. 201, 210-211 [no substantial enclosure where fence left in disrepair].)

Nor did Baron cultivate it. Baron's cactus garden and blueberry patch were near the easement, but did not encroach on it. Neither did the hedgerow he planted. (Cf. *Lobro v. Watson* (1974) 42 Cal.App.3d 180, 184-185, 188 [land cultivated where planted with trees and flowers].)

And Baron did not improve the easement. The barn and fence he erected on his parcel did not touch the easement. The few items he placed on it—some brush and debris and plant containers—could easily be moved. His maintenance of the service road that followed the easement in places at the north end of his parcel did not improve those portions of it on the east side. (Cf. *Cleary v. Trimble* (1964) 229 Cal.App.2d 1, 11 [road “improved” where kept in condition for customary use].) Baron thus fails to show that the evidence compels the conclusion that he provided Arao with reasonable notice of his possession.

Hostility

Baron contends the trial court misapplied the law on hostility when it determined that his activities on and around the easement did not evidence a hostile intent. We disagree.

Hostility does not require “open aggression or combat.” (*Vieira Enterprises, supra*, 8 Cal.App.5th at p. 1078.) But it does require that the possessor either interfere with the owner's use of the easement or use it in a manner with ““such an appearance of permanency”” that it creates a doubt as to the easement's continued existence. (*Ibid.*) The possessor must also notify the owner in some way of their “exclusive ownership” of the easement. (*Furtado v. Taylor* (1948) 86 Cal.App.2d 346, 353.) Mere possession is not enough. (*Ibid.*)

Baron fails to meet these requirements. First, Baron did not interfere with Arao's use of the easement: Arao could

access the portion of the easement burdening the Baron parcel by traversing the unmaintained, dilapidated fence and gate at the southern terminus. He could access the part of the easement burdening the Lim parcel from Stockton Road. And even if the fences and gates could have limited Arao's access to the easement, they were of little significance since Arao did not use the easement to access his property. (*Vieira Enterprises, supra*, 8 Cal.App.5th at pp. 1081-1082.) Second, Baron's use of the easement did not have the appearance of permanency; the only items stored on it could be moved easily. Finally, Baron did not notify Arao of his exclusive ownership in any way; the permanent structures on his land did not encroach on the easement. (*Tract Development Services, Inc. v. Kepler* (1988) 199 Cal.App.3d 1374, 1386-1388 [no hostility where gate could access land and no testimony that possessors could use land as they pleased].) Baron thus fails to show that the evidence compels a finding of hostility as a matter of law.

DISPOSITION

The judgment is affirmed. Lucas shall recover his costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Vincent J. O'Neill, Jr., Judge
Superior Court County of Ventura

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