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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOANNE HABIBI et al., Plaintiffs and Appellants, v. RAMIN SOOFER et al., Defendants and Respondents.	2d Civil No. B259102 (Super. Ct. No. 1383317) (Santa Barbara County)

This appeal involves a dispute over two driveway easements. Joanne and Ali Habibi claim title by prescription and adverse possession to portions of those easements. They allege that their neighbors, Ramin and Denise Soofer, unlawfully removed landscaping and other items from those portions.

The trial court granted the Soofers' motion for summary adjudication of the Habibis' causes of action to quiet title to the affected portions of the easements. It determined that the Subdivision Map Act (SMA), Government Code section 66410 et seq.,[1] and issues of public safety preempted their claims of adverse possession, prescriptive easement and declaratory and injunctive relief. We conclude this was error, and reverse and remand for a trial on those claims.

[1] All statutory references are to the Government Code unless otherwise stated.

FACTS AND PROCEDURAL HISTORY

The Habibis own residential property at 228 Ortega Ridge Road in Summerland. The property to the east of their property, at 226 Ortega Ridge Road, is owned by the Soofers through their family trust. The property to the west of the Habibi property, at 230 Ortega Ridge Road, is owned by the Burney family.[2]

To access their respective properties, the Habibis must cross the Burney property and the Soofers must cross both the Burney and Habibi properties. Accordingly, the Habibi property is burdened by a 20-foot wide easement in favor of the Soofer property, while the Burney property is burdened by a 30-foot wide easement in favor of the Habibi and Soofer properties. The easements, which consist of a single continuous driveway over the two properties, end at the gate to the Soofer property.[3]

The Soofer and Habibi properties were created through a 1972 lot split of a single larger parcel. A third property, located on another street, also was created through the lot split. During the approval process for the 1972 lot split, the Summerland-Carpinteria Fire Department submitted a letter to the County of Santa Barbara (County), which referenced a driveway with "a minimum graded width of 20 feet" over the Habibi property. Thus, the recorded parcel map shows a 20-foot wide easement across the Habibi property for the benefit of the Soofer property. The actual paved driveway, however, was approximately 12.5 feet wide.

The Habibis purchased their property in 2000. Since then, they have encroached on both the 30-foot and 20-foot easements by planting trees and gardens, and by putting in bricks, pavers, large boulders, patios and trellises up to the edge of the paved driveway. The final planting of trees allegedly occurred in 2006.

The Soofers bought their property in 2011. They wanted to widen the paved driveway on both the Habibi and Burney properties. When the parties were unable

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[2] The owners of the Burney property are no longer involved in this action.

[3] The relative locations of the three properties, including the easements at issue, are depicted on the map attached as Exhibit A to this opinion.

to agree on the issue, the Soofers decided to widen it without the Habibis' cooperation. They instructed the Habibis to remove any encroachments within the access easements, and advised that anything left in the easement area would be considered abandoned.

In October 2011, the Soofers used a bulldozer or backhoe to forcefully remove the Habibis' vegetation, trees, stone and tile work and trellises within the easement areas. The Soofers then expanded the paved driveway to a width of 19-1/2 feet.

The Habibis subsequently filed this action. The first amended complaint against the Soofers alleges claims for (1) declaratory and injunctive relief; (2) quiet title to a portion of the 30-foot easement by prescription; (3) quiet title to a portion of the 20-foot easement by prescription; (4) quiet title to a portion of the 20-foot easement by adverse possession; (5) injury to trees; (6) trespass; (7) nuisance and (8) conversion. The Soofers cross-complained against the Habibis.

The Habibis allege that for over 40 years, the two easements were limited to an approximately 12-1/2 foot wide driveway and that, consequently, they have vested property rights in approximately 7-1/2 feet of the northern side of the 20-foot easement and 8-1/2 feet of the southern side of the 30-foot easement. The trial court sustained without leave to amend the Soofers' demurrer to the Habibis' third cause of action to quiet title to a portion of the 20-foot easement by prescription. The Soofers then moved for summary adjudication of the Habibis' first, second, fourth and seventh causes of action and claim for exemplary damages. The Habibis opposed the motion. The court overruled the evidentiary objections filed by both sides.

The trial court granted the motion for summary adjudication as to the four causes of action. It ruled that any adverse possession or prescriptive easement claim was preempted by the SMA (§ 66410 et seq.), and that any change to the easements had to be made by application to the County. It further ruled that adverse possession could not take place because a driveway narrower than that contemplated in the 1972 lot split created a fire hazard.

The Habibis filed a writ petition challenging the trial court's order. (*Habibi et al. v. Santa Barbara Superior Court* (July 15, 2013, B249955).) We summarily denied

the petition, with Presiding Justice Gilbert concurring and stating, "I join in the denial, but wish to stress that the denial is without prejudice to any parties' right to seek relief on appeal, if at that time they deem such action appropriate." (*Id.*, Order at p. 2.)

The Habibis and the Soofers later settled their disputes regarding the Soofers' cross-complaint and the Habibis' causes of action for injury to trees, trespass, nuisance and conversion. The trial court entered judgment in favor of the Soofers on the first cause of action for declaratory and injunctive relief, second cause of action to quiet title to a portion of the 30-foot easement by prescription, third cause of action to quiet title to a portion of the 20-foot easement by prescription and fourth cause of action to quiet title to a portion of the 20-foot easement by adverse possession. The Habibis appeal the portion of the judgment summarily adjudicating the first, second and fourth causes of action. The third cause of action is not in issue.

DISCUSSION

The Habibis' second cause of action alleges that they acquired an easement by prescription to a portion of the 30-foot easement on the Burney property. The fourth cause of action alleges that they acquired title by adverse possession to a portion of the 20-foot easement on their own property. The first cause of action seeks declaratory and injunctive relief based on those same theories.

"To establish the elements of a prescriptive easement, the claimant must prove use of the property, for the statutory period of five years, which use has been (1) open and notorious; (2) continuous and uninterrupted; (3) hostile to the true owner; and (4) under claim of right. [Citations.] To establish adverse possession, the claimant must prove: (1) possession under claim of right or color of title; (2) actual, open, and notorious occupation of the premises constituting reasonable notice to the true owner; (3) possession which is adverse and hostile to the true owner; (4) continuous possession for at least five years; and (5) payment of all taxes assessed against the property during the five-year period. [Citation.]" (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1305; see Civ. Code, § 1007; Code Civ. Proc., § 321.)

Here, the trial court determined there was a triable issue of material fact as to whether the Habibis had occupied the disputed portions of the easements to the extent necessary to gain title by prescription or adverse possession. The Soofers do not contest this finding. The issue before us is whether the trial court properly adjudicated the first, second and fourth causes of action against the Habibis on other grounds.

The trial court concluded that, pursuant to the SMA, an easement established in a subdivision map may only be extinguished by amending or modifying the subdivision map pursuant to section 66472.1.[4] Under its analysis, once an easement for a right-of-way is created by reference to a subdivision map, the easement may not be extinguished or altered by adverse possession or prescription. The court observed that the SMA is the primary regulatory control governing the subdivision of real property in California and "has three major goals: 'to encourage orderly community development, to prevent undue burdens on the public, and to protect individual real estate buyers.'" (*Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1602.) The court determined that "[h]ere, there is a clear public purpose: fire protection, a major concern of any community within fire prone areas and critical to the subdivision planning process. Elimination of a portion of the easement through adverse possession or prescription would . . . both fail to protect the Soofers as individual real estate buyers and impose a public burden given the 'significant safety hazard.' . . . [The] public safety must take precedence over common law and statutory claims that would eviscerate the legislative intent to promote and preserve orderly community development."

The Habibis argue the SMA does not abrogate common law or statutory title by prescription and adverse possession. They also challenge the conclusion that the driveway needed to be widened for safety, since the fire department and the County had

[4] Section 66472.1 states, in part, that conditions of a subdivision map may be modified due to changed circumstances "if the local agency finds there are changes in circumstances that make any or all of the conditions of the [subdivision] map no longer appropriate or necessary and that the modifications do not impose any additional burden on the fee owners of the real property, and if the modifications do not alter any right, title, or interest in the real property reflected on the recorded map . . . ."

never had an issue with the road's original width. The Habibis maintain they are not limited to the modification procedure in the SMA or other County regulations and that their causes of action for declaratory and injunctive relief and to quiet title based on adverse possession and prescription should proceed to trial. We agree with the Habibis. Not only do the Soofers fail to cite any authority supporting the trial court's interpretation of the SMA and its application to adverse possession and prescriptive easement law, but the record also demonstrates the SMA is inapplicable to the three properties at issue in this case.

Standard of Review

"A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).) A moving plaintiff has met his or her burden of showing there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. (*Id.*, subd. (p)(1).) Once the moving party has met this burden, the burden shifts to the nonmoving party to show that a triable issue of one or more material facts exists as to that cause of action or a defense to that claim. (*Id.*, subd. (p)(1), (2).)

"We independently review an order granting summary adjudication. [Citation.] In determining whether there is a triable issue of material fact, we consider all the evidence set forth by the parties except that to which objections have been made and properly sustained. [Citations.] '[W]e strictly construe the moving party's evidence and liberally construe the opposing party's evidence.'" (*Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 476.) "[I]f a plaintiff who would bear the burden of proof by a preponderance of evidence at trial moves for summary judgment [or adjudication], he must present evidence that would require a reasonable trier of fact to find any underlying material fact more likely than not. By contrast, if a defendant moves for summary judgment [or adjudication] against such a plaintiff, he may present evidence that would require such a trier of fact *not* to find any underlying material fact more likely than not." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 845.)

Application of the SMA

The purpose of the SMA is "to encourage and facilitate orderly community development, coordinate planning with the community pattern established by authorities, and assure proper improvements are made, so that the area does not become an undue burden on the taxpayer. [Fns. omitted.]" (7 Miller & Starr, Cal. Real Estate (4th ed. 2015) § 20:1, p. 20-4.) The trial court determined that this policy required that the Habibis apply to the County for a change in the easements, as depicted on the subdivision map, rather than seek title by prescription or adverse possession. The problem with this ruling is that the easements at issue were not created under the SMA and, as a result, were not established by reference to a subdivision map.

It is undisputed that the Habibi and Soofer properties were created through a 1972 split of a larger parcel into three separate parcels. The trial court and the parties apparently assumed the 1972 lot split was made in accordance with the SMA, but the Soofers now concede the split did not create a "subdivision" under the law that existed at the time. The applicable statute in 1972 "defined a subdivision as '. . . any real property, improved or unimproved, or portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, which is divided for the purpose of sale, lease, or financing, whether immediate or future, by any subdivider into five or more parcels . . . .'" (*Bright v. Board of Supervisors* (1977) 66 Cal.App.3d 191, 193, quoting Stats. 1972, ch. 706, p. 1287, formerly Bus. & Prof. Code, § 11535.) The lot split here divided the original parcel into only three parcels, i.e., the Habibi and Soofer properties and a parcel on another street. Since fewer than five parcels were involved, it did not meet the then-applicable requirement for a subdivision under the SMA. (See Gov. Code, § 66499.30, subd. (d).) Consequently, while a 20-foot easement appears on a recorded parcel map, it does not appear on a subdivision map and therefore is not part of a "community development." (7 Miller & Starr, *supra*, at § 20:1, p. 20-4.)

The same is true of the 30-foot easement on the Burney property. The record does not reflect how the Burney property and its easement came into existence, but as with the other properties, there is no evidence they were part of a subdivision

created under the SMA. In the absence of a subdivision, there was no subdivision map for the Habibis to seek to amend or modify under section 66472.12. Nor was there a community development to safeguard by preventing undue burdens on the public and by protecting individual real estate buyers. (See *Blackmore v. Powell*, *supra*, 150 Cal.App.4th at p. 1602.) The trial court erred by concluding otherwise.

Moreover, even if the creation of the easements did fall within the ambit of the SMA, there is nothing in that statutory scheme that prevents a party from acquiring an easement within a subdivision by adverse possession or prescription. Indeed, "[i]t is well settled that an easement, regardless of whether it was created by grant or use, may be extinguished by the owner of the servient tenement upon which the easement is a burden, by adverse possession thereof by the servient tenement owner for the required statutory period. Perhaps more accurately stated an easement may be extinguished by the user of the servient tenement in a manner adverse to the exercise of the easement, for the period required to give title to land by adverse possession. [Citations.]" (*Glatts v. Henson* (1948) 31 Cal.2d 368, 370-371; *Sevier v. Locher* (1990) 222 Cal.App.3d 1082, 1084 ["easement obtained by grant may be extinguished by adverse possession by the owner of the servient tenement"].)

Tract Development Services, Inc. v. Kepler (1988) 199 Cal.App.3d 1374, is illustrative. The easement in that case was created at the time of the subdivision. When the plaintiff began grading a road subject to the easement, it discovered that the defendants had blocked it with a fence and were refusing to honor the easement depicted on the subdivision map. (*Id.*, at p. 1381.) The plaintiff sued, claiming it was entitled to the easement. The defendants asserted, inter alia, that the easement was terminated by prescription. (*Ibid.*) The trial court rejected that theory, not because the defendants had failed to seek a modification of the subdivision map, but because their actions had not been sufficiently hostile, open, notorious or under claim of right. (*Id.*, at pp. 1387-1388.) The Court of Appeal affirmed, implying that if those factual elements had been present, the easement could have been extinguished even though it was created as part of the original subdivision. (*Ibid.*) Indeed, the court observed that "[a]n easement obtained by

grant, *such as the one here,* may indeed be lost by prescription, e.g., when the owner of the servient tenement makes a use of his or her own land in a manner which is adverse to the rights represented by the easement. [Citation.]" (*Id.*, at p. 1386, italics added; see *Glatts v. Henson, supra,* 31 Cal.2d at p. 368.)

The Soofers argue that regardless of the applicability of the SMA, the Habibis had to comply with certain County regulations, particularly Santa Barbara (SB) County Code section 21-15.9,[5] to change the easement boundaries depicted on the recorded parcel maps. As the Habibis point out, if claims of adverse possession or prescriptive easement necessarily required an administrative boundary change on a parcel map, then no such claim could ever be made without governmental approval. Governmental approval is not an element of either claim, and the Soofers cite no statutory or case authority for such a rule. (See *Finley v. Yuba County Water Dist.* (1979) 99 Cal.App.3d 691, 696-697 [a party may claim title to another's land by adverse possession by "prov[ing] all five of the [requisite] elements"].) Nor is there any authority supporting the Soofers' argument that a party claiming adverse possession or prescriptive easement must exhaust administrative remedies before pursuing the claim. To exact such a requirement would entirely defeat the legitimate policies underlying the doctrines of adverse possession and prescription, which "express a preference for use, rather than disuse, of land. They are designed not to reward the taker or punish the dispossessed, but to reduce litigation and preserve the peace by protecting long-standing possession. [Citation.]" (*Hirschfield v. Schwartz* (2001) 91 Cal.App.4th 749, 769; *Gilardi v. Hallam* (1981) 30 Cal.3d 317, 324; see *Oglesby v. Hollister* (1888) 76 Cal. 136, 142 [adverse possession ensures the productive use of land by creating an incentive for property owners to assert their rights or risk losing their property to someone who is making good use of it].)

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[5] SB County Code section 21-15.9 provides that any modification to a parcel map shall be approved by the County only if, among other things, the modification does not alter any right, interest or title reflected by the recorded final or parcel map, lot split plat or lot line adjustment. (*Id.*, at subd. (4).)

Public Safety Concerns

The trial court also determined that title by adverse possession or a prescriptive easement cannot occur if it would compromise public safety. The court took judicial notice under Evidence Code section 452, subdivision (h) "that Southern California and particularly Santa Barbara County are particularly vulnerable to wild fires." Neither the Soofers nor the court cite any authority for the rule that no adverse possession or easement by prescription may occur if there is a possibility that it will create a public safety concern, such as increasing the spread of wild fires. That is a novel theory unsupported by both the law and the record in this case.

Furthermore, the Habibis presented evidence that the public agencies involved were not concerned with the 12-1/2 foot width of the paved driveway. When the Soofers and their predecessors in interest asked the Carpinteria-Summerland Fire Protection District to require that the paved area be increased to 20 feet, the District responded that the current driveway satisfied its standards and that it could be considered "grandfathered in" after the passage of so many years. In a letter dated September 2011, the District stated: "The section of the driveway fronting on 228 Ortega Ridge Road [the Habibi property] is currently in compliance with the fire district requirements. This section of driveway serves the property at 226 Ortega Ridge Road and was measured at twelve feet." There also was evidence that the County had processed planning permits related to the two properties between 2000 and 2011 and had never expressed any concern about the width of the driveway.

We conclude the trial court erred by determining that the Habibis' claims of adverse possession and prescriptive easement were preempted by the SMA or by public safety concerns. Because triable issues of material fact exist regarding whether the Habibis have satisfied the elements of those claims, the judgment on their first, second and fourth causes of action must be reversed and the matter remanded for trial.

The Soofers invite us to affirm the summary adjudication of the second cause of action for prescriptive easement on the ground that the Habibis' "exclusive use" of portions of the 30-foot easement on the Burney property precludes a prescriptive

easement. (See *Silacci v. Abramson* (1996) 45 Cal.App.4th 558, 564 [a prescriptive easement that completely prohibits the property owner from using its land is an exclusive prescriptive easement and is typically unenforceable].) The Habibis respond that their use of that easement was not "exclusive," and that the owners of the Burney property are also free to plant in that area. As previously discussed, prescriptive easements require proof of "'open, notorious, continuous, and adverse'" use of land "'for an uninterrupted period of five years.'" (*Pulido v. Pereira* (2015) 234 Cal.App.4th 1246, 1250.) No factual findings have been made regarding these elements, and we leave it to the trial court to address on remand the Soofers' challenge to the prescriptive easement claim.

DISPOSITION

The portion of the judgment summarily adjudicating appellants' first, second and fourth causes of action in respondents' favor is reversed and the matter is remanded for trial on those claims. The portion of the judgment sustaining respondents' demurrer to the third cause of action is affirmed. Appellants shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

James Herman, Judge

Superior Court County of Santa Barbara

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