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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RICHARD CLAYTON et al., Plaintiffs and Respondents, v. HOLLY HAWK, Defendant and Appellant.	B277571 (Los Angeles County Super. Ct. No. MC025335)

APPEAL from a judgment of the Superior Court of Los Angeles County, Randolph Rogers, Judge. Affirmed in part and reversed in part.

Michael B. Montgomery for Defendant and Appellant Holly Hawk.

Fidelity National Law Group and Susan M. Hutchison for Plaintiffs and Respondents Kenneth Price, Colleen Price, Marcy A. Watton, Harold Conroy, Deborah Conroy, Cynthia Landis, Dale L. Baer, Peter Kaye, Gayle Kaye, Matthew Fitzgerald, Christina Fitzgerald, Guyla Clayton, David Gantenbein, Janice Gantenbein, James I. Colburn, Leonte Guerrero, and Linda L. Bennett.

Richard D. Marks Professional Corporation, Richard D. Marks, Kyle B. Marks; Garrett & Tully, Ryan C. Squire, Zi C. Lin, and Adjoa M. Anim-Appiah for Plaintiffs and Respondents Michael Bach, Perri Bach, Christopher Moeller, Joanna Moeller, Thomas Norris, and Nona Norris.

In 2000, defendant and appellant Holly Hawk purchased an undeveloped parcel of land in northern Los Angeles County through which a dirt road known as Lost Valley Ranch Road (LVRR) passes. LVRR is not a public road, but the residents of the area have traveled on it across one another's properties for years. For many nearby landowners, the route on LVRR through Hawk's property is the only route to and from their properties. These landowners filed suit to obtain an easement on LVRR across Hawk's land. The trial court granted summary adjudication in favor of the landowners of the dependent properties (plaintiffs and respondents), finding that they were entitled to an equitable easement. In addition, the trial court granted summary adjudication in favor of Guyla Clayton and David and Janice Gantenbein (the Claytons and Gantenbeins),[1] whose driveways pass across Hawk's property on their way to connecting to LVRR. The court found that these landowners had met the requirements for prescriptive easements along their driveways. Hawk challenges the trial court's judgment, contending that the plaintiffs are not entitled to equitable easements on LVRR because she has dedicated the road to public use, and that no plaintiffs are entitled to prescriptive easements for their driveways. We reverse the trial court's grant of summary judgment with respect to the Gantenbeins' prescriptive easement. In all other respects, we affirm.

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[1] In the case of the Gantenbeins, their predecessors built the driveway. We refer to the Claytons in the plural because Guyla Clayton's now-deceased husband owned the property with her at the time these events occurred.

FACTS AND PROCEEDINGS BELOW

Hawk owns a tract of land in Leona Valley, an area west of Palmdale in the Antelope Valley. The land is undeveloped except for the presence of water wells and horse grazing. LVRR begins at the end of a paved public road and passes across Hawk's land and several other properties until it reaches a dead-end. For landowners in adjoining properties, LVRR is the sole means of accessing their properties by foot or vehicle, and those landowners have traveled across Hawk's property for years with the belief that they had the right to do so. The Claytons and Gantenbeins built driveways from their properties over a portion of Hawk's land to LVRR and used these driveways for several years to access LVRR.

In 2015, a group of the landowners who used LVRR filed a complaint seeking a prescriptive easement, an equitable easement, a permanent injunction, and to quiet title. All of the plaintiffs' causes of action were aimed at establishing their right to travel over LVRR through Hawk's property.[2] Hawk filed an answer alleging that LVRR "has been dedicated to the public need and has been used by the public as if it were a public road," and claiming that because she had posted signs on her property authorizing the public to use her portion of LVRR, it would not be appropriate to grant any further easements. Hawk also filed a cross-complaint against the Claytons and Gantenbeins, seeking declaratory relief denying them easements for their driveways.

The plaintiffs filed a motion for summary judgment or, in the alternative, summary adjudication. The Claytons and Gantenbeins

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[2] In addition to Hawk, the suit named as defendants a group of developers who owned land similarly situated to Hawk's. Plaintiffs have reached a settlement agreement with the developers, who are no longer part of this case. For the sake of simplicity, this opinion will refer only to plaintiffs' claims against Hawk.

filed a separate motion for summary judgment or summary adjudication. The trial court granted both motions for summary adjudication. The court found that plaintiffs were entitled to an equitable easement over Hawk's portion of LVRR. The court also found that the Claytons and Gantenbeins were entitled to prescriptive easements for their driveways. Because the award of these easements rendered the plaintiffs' remaining claims moot, the court dismissed the other claims without prejudice and issued a judgment in favor of plaintiffs.

DISCUSSION

In reviewing an order granting a motion for summary adjudication, we apply the same de novo standard of review that applies to the granting of summary judgments. (*Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1471.) Our Supreme Court has described that standard as follows: " 'Because this case comes before us after the trial court granted a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion. (*State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1034-1035 . . . .) " 'We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.' " (*Id.* at p. 1035.) We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142 . . . .)' (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037 . . . .)" (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 716–717.)

Summary judgment is proper when all the papers submitted on the motion show there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law.

(*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843; Code Civ. Proc., § 437c, subd. (c).) A plaintiff moving for summary judgment bears an initial burden of showing that "he 'has proved each element of a cause of action entitling' him 'to judgment on that cause of action.' " (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 849.) If the plaintiff meets this burden, the defendant has the burden to demonstrate "that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (*Ibid.*) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.* at p. 850.)

In this case, the trial court granted summary adjudication in favor of all plaintiffs for equitable easements over Hawk's section of LVRR, and in favor of the Claytons and Gantenbeins specifically for prescriptive easements on their driveways. We address each of these easements separately below.

I. Equitable Easement on LVRR

The parties do not disagree that plaintiffs have a right to travel on LVRR across Hawk's land. Hawk acknowledges that the plaintiffs and their predecessors have been using LVRR to access their land for many years, and she does not wish to deny that access now. The primary disagreement is whether, as plaintiffs argue and the trial court found, they are entitled to an equitable easement over Hawk's land, or whether Hawk has dedicated her portion of LVRR to public use, such that no easement in favor of plaintiffs is necessary. We agree with the trial court that plaintiffs have met the requirements for an equitable easement. In addition, we conclude that Hawk has failed to produce sufficient evidence by which a reasonable trier of fact could conclude that her section of LVRR was impliedly dedicated to the public. Consequently, we

need not decide whether an equitable easement would be proper on a roadway that has been dedicated to the public.

When the only way a party may access his or her property is by encroaching on a neighbor's privately owned roadway, a court may grant the encroaching party an equitable easement on the roadway. (See *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1008 [listing cases].) The court in *Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 265 described the requirements that must be met before an encroaching party is entitled to such an easement: First, the party seeking an easement must be innocent: " '[T]he encroachment must not be the result of [a] willful act, and perhaps not the result of . . . negligence.' " (*Ibid.*) Second, if an easement is to be granted, the property owner of the servient land must not " 'suffer irreparable injury by the encroachment.' " (*Ibid.*) Third, the encroaching party must prove that the hardship it would suffer if the easement were denied would "be greatly disproportionate to the hardship caused" to the servient landowner if the easement were granted. (*Ibid.*)

In this case, the undisputed facts show that plaintiffs met all the requirements for an equitable easement. All parties agree that plaintiffs have traveled on LVRR over Hawk's property "with the innocent belief that they had the right to do so." Hawk does not claim that she suffers irreparable injury by the plaintiffs' use of LVRR—her land is undeveloped, with no definite plans for future development. By contrast, plaintiffs could suffer enormously if the easement were denied, because if they ever lost access over LVRR, they would be "unable to access their residences and real property."

Nevertheless, Hawk contends that the trial court erred by creating an equitable easement across her land because the land was already dedicated to public use. As a result of this purported dedication, Hawk argues that the plaintiffs had free access to their land through LVRR, and the denial of an easement would pose

them no hardship. We reject this argument because Hawk has failed to produce sufficient evidence to create a triable issue of material fact as to whether LVRR was dedicated to the public prior to 1972, when the Legislature barred most future implied dedication of land in California.

The law of dedication allows a private landowner to "transfer an interest in real property to the public. Under the common law, a dedication may be made either expressly or by implication. [Citations.] Common law dedication, whether express or implied, requires both an offer of dedication and an acceptance of that offer by the public. [Citation.] An offer of dedication may be 'implied in fact' if there is proof of the owner's actual consent to the dedication. [Citations.] An offer of dedication may also be 'implied by law' [citation] if the public has openly and continuously made adverse use of the property for more than the prescriptive period." (*Scher v. Burke* (2017) 3 Cal.5th 136, 141 (*Scher*).)

In order to establish an implied dedication, a party must "show that various groups of persons have used the land. If only a limited and definable number of persons have used the land, those persons may be able to claim a personal easement but not dedication to the public." (*Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29, 39 (*Gion*).) Thus, there could be no implied dedication of an alley that was used for many years by those who lived in adjoining lots but was of no interest to the wider public. (*Stallard v. Cushing* (1888) 76 Cal. 472, 473-474.) On the other hand, widespread public recreational use of land along the shore could be sufficient for implied dedication. (See *Gion*, *supra*, 2 Cal.3d at pp. 37, 43-44.) Implied dedication could also be found on a route widely used "by hunters, vacationists, miners and oil operators." (*Ball v. Stephens* (1945) 68 Cal.App.2d 843, 849.)

After the California Supreme Court held in *Gion*, *supra*, 2 Cal.3d at p. 44 that certain landowners impliedly and irrevocably

dedicated a portion of coastal land to the public by ignoring widespread public use of the property, the Legislature responded by enacting Civil Code section 1009.[3] That statute, which became effective in 1972, provides that no public use of a noncoastal property "shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use." (§ 1009, subd. (b).) The Court in *Scher*, *supra*, 3 Cal.5th at p. 150 held that this provision "contains no implicit exception for nonrecreational use of roadways."

Thus, in order to establish that her section of LVRR has been impliedly dedicated to the public, Hawk must produce evidence that this section of the road was used by a wide section of the public prior to 1972. There is some evidence in the record of use prior to 1972: all parties apparently agree that plaintiffs, other landowners, and their predecessors in interest, have been using LVRR "for a period of approximately fifty (50) years." But there is nothing to suggest that the broader public, as opposed to the landowners themselves, ever traveled over LVRR. At most, there is a statement from certain plaintiffs that "people visiting me or my neighbors, the mailman, the garbageman, meter readers for the gas company, school buses, and others use LVRR."

Although LVRR is a long road connecting several properties, all evidence in the record indicates that it functions like an alley. It is used almost exclusively by "those few persons who might dwell there, and those who approached them to minister to their wants." (*Stallard v. Cushing*, *supra*, 76 Cal. at p. 474.) With no evidence

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[3] Unless otherwise specified, subsequent statutory references are to the Civil Code.

that it was of use to a broader section of the public, it could not have been subject to implied dedication.

II. Prescriptive Easement on the Driveways

Hawk contends the trial court erred by granting summary adjudication in favor of the Claytons and Gantenbeins on their claim for prescriptive easements on the driveways leading from their properties across Hawk's property onto LVRR. We disagree with respect to the Claytons, for whom the undisputed facts establish all the elements required for a prescriptive easement. We agree with Hawk's contention regarding the Gantenbeins, however. There is a triable question of material fact as to whether Hawk interrupted the five-year period of adverse use required to establish a prescriptive easement by recording notice and posting signs on her property granting permission to cross her property.

To obtain a prescriptive easement, a party "must show use of the property which has been open, notorious, continuous and adverse for an uninterrupted period of five years. [Citations.] Whether the elements of prescription are established is a question of fact for the trial court." (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570.) Obtaining a prescriptive easement is thus similar to obtaining land through adverse possession, but there are important differences: The owner of an easement obtains only a nonexclusive right to use the land, and does not obtain title. (6 Miller & Starr, Cal. Real Estate (4th ed. 2014) § 15:30.) In addition, except in the rare instance in which the easement has been separately assessed, a party need not show the payment of property taxes in order to claim a prescriptive easement. (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1305.)

A. *The Claytons*

The Claytons have established all of the elements of a prescriptive easement with respect to their driveway. Hawk does not dispute that the Claytons have owned and resided at their property since 1976, nor that they built their driveway in 1983 after rains washed away their previous driveway. Furthermore, Hawk does not dispute that the Claytons have never asked Hawk's permission to build or use their driveway. The Claytons assert that they have used their driveway daily since 1983. Hawk claims that she disputes this fact, but she merely asserts that the Claytons sometimes use a different driveway to access LVRR, and that their engineer only recently delineated the driveway for purposes of creating an easement. These claims may be true, but they do not contradict the Claytons' statements regarding the use of their property. Consequently, the trial court did not err in granting summary adjudication in favor of the Claytons.

Hawk raises additional arguments in support of her claim that the Claytons are not entitled to prescriptive easements. We are not persuaded. First, Hawk claims that the Claytons do not need to use their driveway because they could access LVRR by other routes. This is irrelevant: "Necessity is not a required element for the creation of a prescriptive easement." (6 Miller & Starr, Cal. Real Estate (4th ed. 2014) § 15:29.) Courts have recognized prescriptive easements for roadways even where there are other routes by which the landowner could reach his or her property. (See, e.g., *Jordan v. Worthen* (1977) 68 Cal.App.3d 310, 326-327; *Stevens v. Mostachetti* (1946) 73 Cal.App.2d 910, 912 ["a right of way may be obtained by prescription over another's land even though there may be an alternate way of reaching the dominant tenement's property"].)

Hawk also notes that a portion of the Claytons' driveway passes over county-owned land, and that it is impossible to obtain a prescriptive easement over such land. But Hawk cites no authority holding that this prevents a party from obtaining a prescriptive easement over privately owned land, so long as all other requirements are met.

B. *The Gantenbeins*

The Gantenbeins are similarly situated to the Claytons, in that they also have used a driveway that passes over Hawk's property in order to access LVRR. Just as in the case of the Claytons' driveway, Hawk does not deny that the Gantenbeins have used their driveway daily to access LVRR. Although the Gantenbeins obtained an easement when they bought their property, their deed inaccurately described the easement, such that the land covered by the easement did not actually connect to LVRR. The Gantenbeins have not asked Hawk for permission to use their driveway.

Yet the Gantenbeins' case is somewhat more complicated because the Gantenbeins purchased and moved to their property more recently, in 2008. Hawk claims that she interrupted their five-year period of continuous adverse use of the driveway by providing notice in 2011 pursuant to sections 813 and 1008 that the use of Hawk's property was by permission. In a declaration, Hawk stated that she "posted [section]813 signs in areas of Clayton and Gantenbein properties in 2011, and recorded notices." (Capitalization omitted.) Section 813 allows a landowner to prevent a use of land from ripening into a prescriptive easement by recording a notice with the county granting the public permission to use the property. Section 1008 allows a landowner to achieve the same end by posting signs stating: "Right to pass by permission, and subject to control, of owner: Section 1008."

The Gantenbeins claim that Hawk's alleged actions were ineffective because she failed to comply with the statutory requirements. The Gantenbeins note that, in order for notice pursuant to section 813 to be effective against a user "other than the general public, any such notices . . . shall also be served by registered mail on the user." (§ 813.) They contend that Hawk never sent any such notice to them. The Gantenbeins also argue that Hawk's signs were insufficient under section 1008 because she did not post them "at each entrance to the property or at intervals of not more than 200 feet along the boundary." (§ 1008.) They contend further that at least some of the signs Hawk posted were no trespassing signs, and did not grant permission to use her property.

This disagreement regarding the adequacy of Hawk's signs and recorded notice presents a triable question of material fact regarding whether Hawk interrupted the five-year period for a prescriptive easement. The Gantenbeins did not make their claims regarding the insufficiency of Hawk's recorded notice or signage until the reply brief to their motion for summary judgment. Consequently, we may not infer from Hawk's silence on these issues before the trial court that she has conceded these points. Furthermore, because Hawk is the party opposing summary adjudication, we must construe her declaration liberally. (See *Shively v. Dye Creek Cattle Co.* (1994) 29 Cal.App.4th 1620, 1627; 6 Witkin, Cal. Procedure (5th ed. 2008) Proceedings Without Trial, § 244, p. 691.)

Nor is the Gantenbeins' claim that their predecessors used the driveway prior to 2008 sufficient for summary adjudication on this point. It may have been apparent to the Gantenbeins that the driveway was already in use as of 2008, but they have not produced evidence as to when the driveway was established.

DISPOSITION

The judgment of the trial court is reversed with respect to the Gantenbeins' driveway easement. In all other respects, the judgment is affirmed. All parties to bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.