Filed 9/29/16 Fields v. Longan CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THOMAS W. FIELDS et al.,

Plaintiffs and Appellants,

v.

JON LONGAN et al.,

Defendants and Respondents.

2d Civil No. B264985
(Super. Ct. No. 56-2012-00428465-CU-OR-VTA)
(Ventura County)

Plaintiffs brought an action to establish a prescriptive easement over a portion of their neighbors' property. The trial court denied plaintiffs' claim. The court found plaintiffs' use of the disputed area was in the nature of a fee and not an easement. We affirm.

FACTS

Plaintiffs Thomas and Debra Fields own a five-acre parcel of residential property in Moorpark. Defendants Jon and Kimberly Longan own the neighboring five-acre parcel. The parcels share a north-south border.

In October 1998, the Fieldses planted 23 myoporum trees on the Longans' property in the disputed area. Since that time they planted avocado trees, sycamore trees, an acacia tree and a succulent, native shrub and grasses garden in the disputed area. In addition, they added a propane tank, a pilaster and wall, pottery, landscaping stones,

irrigation lines and lighting. The Fieldses added the last of these improvements in February of 2007.

In 2012 the Longans discovered the true property line. They asked the Fieldses to stop planting and remove the existing improvements from their property.

The Fieldses brought the instant action for quiet title, injunction and declaratory relief. The action was based on the doctrines of adverse possession and prescriptive easement.

The trial court found the Fieldses failed to prove they paid property taxes on the disputed area. Thus they failed to prove adverse possession.

The trial court also found the Fieldses failed to prove they obtained an easement by prescription. The court ruled: "The trees, propane tank and other vegetation prohibit the Longans from making any use of that section of their property other than adding to the existing landscaping. The Fields[es] argue that they are welcome to plant there too but this is a hollow argument. The Fields[es] use of the easement area does not comply with the requirement of a slight burden to the servient tenement. It is truly in the nature of an ownership interest and therefore the claim fails."

The Fieldses appeal only the trial court's claim of an easement by prescription.

DISCUSSION

The Fieldses argue the trial court erred in using the "slight burden" standard in denying their claim to an easement by prescription.

A party claiming an easement by prescription has the burden of showing an open, notorious, continuous and adverse use of the property of another for a period of five years. (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570.) Whether the elements of a prescriptive easement have been established is a question of fact for the trial court. (*Ibid*.) Unlike a claim of adverse possession, a prescriptive easement does not require the payment of taxes. (*Gilardi v. Hallam* (1981) 30 Cal.3d 317, 321-322.)

An easement is a nonpossessory interest; that is, it gives only a restricted right to a specific use of the land of another. (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1306.) The limited right must be less than the right of a fee ownership. (*Ibid*.) When a claimant cannot satisfy the requirements of adverse possession, the claimant may not receive a prescriptive easement that extends so far it becomes the equivalent of a fee interest, dispossessing the owners of a part of their property. (*Id*. at p. 1300.) Thus, where the scope of the use of another's land is so broad as to amount to possession, a party cannot avoid the tax element of adverse possession by claiming a prescriptive easement.

Here the Fieldses' focus on the portion of the trial court's statement of decision in which the court describes an easement as a "slight burden" on the servient tenement. In context it appears the court meant "limited" burden. But whether "slight" or "limited" the court's meaning is clear: the Fieldses' use of the Longans' land was so broad as to amount to possession. Indeed, the evidence shows the Fieldses treated the disputed area as if they were the owners in fee.

The Fieldses claim that the cases produce a common theme: an easement is exclusive if it is enclosed or improved with a structure that physically prevents the landowner from using the easement area. (Citing e.g., *Raab v. Casper* (1975) 51 Cal.App.3d 866 [cabin and family home built on neighboring land]; *Silacci v. Abramson* (1996) 45 Cal.App.4th 558 [fenced in area and used as part of backyard].)

Certainly such cases present instances where the use was deemed possessory and not in the nature of an easement. But none of the cases hold that those are the only instances where a use can be found to be possessory.

The Fieldses' argument was rejected in *Harrison v. Welch* (2004) 116 Cal.App.4th 1084. In *Harrison*, the defendant placed a woodshed and landscaping on a portion of plaintiffs' property. Plaintiffs brought an action for quiet title and to enjoin the encroachment. Defendant sought to establish title to the disputed area by adverse possession or prescriptive easement. The trial court found defendant failed to establish adverse possession or prescriptive easement. In finding against defendant on

her claim of prescriptive easement, the court found the landscaping completely prohibits plaintiffs from using the landscaped part of their land. In affirming, the Court of Appeal determined that there need not be any physical or practical barrier to the plaintiffs' use of the landscaped area in order for the court to find defendant's use of the landscaped area was exclusive. (*Id*. at p. 1094.)

Harrison quoted the trial court's "thoughtful" comment: "'Granted the planter boxes and trees are arguably an attractive border for both lots and [the] Harrisons are not physically excluded from those portions of the encroachment area, but such facts do not make the encroaching use any less exclusive. It is the exclusivity of the use of the surface of the land in the encroachment area that is determinative, and the landscaping scheme of Welch has essentially co-opted the encroachment area to an exclusive use designed by Welch.'" (*Harrison v. Welch*, *supra*, 116 Cal.App.4th at p. 1094.)

So too here, that the Longans may enter the encroaching area at will and also plant shrubs and trees, the Fieldses' encroachment is no less exclusive.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Rebecca S. Riley, Judge

Superior Court County of Ventura

_____

Perez & Hawes LLP and Eric Everett Hawes for Plaintiffs and Appellants.

Fidelity National Law Group, Sean Bryn and Kevin R. Broersma for Defendants and Respondents.