Filed 4/30/15 Junior Blind of America v. Kronsberg CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JUNIOR BLIND OF AMERICA et al., Plaintiffs and Appellants, v. GRAEME JOSEPH KRONSBERG et al., Defendants and Respondents.	B255941 (Los Angeles County Super. Ct. No. BC486504)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark V. Mooney, Judge. Affirmed.

Winston & Strawn, David P. Enzminger and Steven D. Atlee for Plaintiffs and Appellants.

Berra Connelly and Paul S. Berra for Defendants and Respondents.

Plaintiffs and appellants Junior Blind of America and William A. Bloomfield, as trustee of the Bloomfield Foundation (collectively, JBA) appeal from the judgment entered in favor of defendants and respondents Graeme Joseph Kronsberg (J. Kronsberg), R. Lynne Kronsberg, and The Graeme Joseph and R. Lynne Kronsberg Living Trust (collectively, the Kronsbergs) granting the Kronsbergs a prescriptive easement through JBA's property. We affirm the judgment.

BACKGROUND

The parties

JBA is a non-profit charitable organization that owns property in Malibu on which it operates Camp Bloomfield, a camp for disabled children. Camp Bloomfield is adjacent to approximately 10 acres of property owned by the Kronsbergs. Running through both properties is a creek bed that separates the Kronsbergs' home from a meadow where a shed owned by the Kronsbergs is located. The Kronsbergs access their meadow and shed by driving or walking through the Camp Bloomfield property and over a bridge that spans the creek bed.

The 2006 judgment

JBA sued the Kronsbergs in 2003 for various property related issues, including whether the Kronsbergs had established prescriptive easement rights to access their meadow through Camp Bloomfield. The case proceeded to a court trial that resulted in a 2006 judgment in favor of JBA.

The 2006 judgment found that the Kronsbergs had not established a prescriptive easement over the Camp Bloomfield property and could not enter that property to access their meadow. The court did not grant injunctive relief with respect to any future trespass. The 2006 judgment provides in pertinent part:

> "The Court finds the Kronsbergs have not established a prescriptive easement over the Camp Bloomfield property. The Court finds that, absent an agreement that would permit the Kronsbergs to traverse the Camp Bloomfield property to access their meadow, the Kronsbergs do not have the right to enter the Camp Bloomfield property. However, the Court does not find that it is appropriate or necessary at this time to issue an injunction against any of the parties in this case with respect to the future trespass."

The Kronsbergs did not appeal the 2006 judgment.

The instant action

After the 2006 judgment was entered, the Kronsbergs continued to traverse Camp Bloomfield, without JBA's permission, to access their meadow. On June 21, 2006, JBA's counsel sent the Kronsbergs a letter objecting to J. Kronsberg's continued entry onto Camp Bloomfield and requesting confirmation that he understood his obligations under the 2006 judgment and agreed to refrain from future violation of the judgment. The Kronsbergs did not provide the requested confirmation, and J. Kronsberg continued to access his meadow through Camp Bloomfield.

JBA sent a second letter dated February 8, 2010, demanding that J. Kronsberg stop trespassing onto the Camp Bloomfield property. When J. Kronsberg continued to do so, JBA contacted the Sheriff's Department.

On June 16, 2011, the Kronsbergs, through their attorney, sent JBA a letter in which they asserted that they had established a prescriptive easement over the Camp Bloomfield property. Before sending the June 2011 letter, the Kronsbergs had not expressly communicated to JBA, either orally or in writing, that their use of the Camp Bloomfield property was intended to be adverse, and not subordinate to, JBA's rights under the 2006 judgment.

On June 8, 2012, JBA sent a letter to the Kronsbergs stating that J. Kronsberg's entries onto the Camp Bloomfield property were unauthorized, contrary to the 2006 judgment, and unsafe to the camp management, counselors, and campers. On June 13, 2012, JBA filed the instant declaratory relief action seeking a determination that the Kronsbergs had acquired no prescriptive easement rights over the Camp Bloomfield property.

The matter proceeded to a jury trial at which Michael Bloomfield and Jay Allen testified on behalf of JBA and J. Kronsberg testified on behalf of the Kronsbergs.

Jury instructions and verdict

At the close of evidence, the trial court heard argument from both parties regarding jury instructions. JBA proposed the following three instructions regarding the effect of the 2006 judgment:

> "After a court has entered a judgment against a party finding that it has not established a prescriptive easement, mere use of the property, even if claimed to be adverse or hostile, is insufficient to establish a claim of right. [¶] A court previously entered a judgment against the Kronsbergs finding that they had not established a prescriptive easement over Junior Blind's property. In order to establish a claim of right, the Kronsbergs must communicate the claim of right to Junior Blind in a manner such that Junior Blind may know of the claim. It is not sufficient that the claim of right exists only in the mind of the person claiming it. The Kronsbergs' use must be such that Junior Blind is put on notice not only of the use of the property itself, but also the Kronsbergs' claim of right."

> "After a court has entered a judgment against a party finding that it has not established a prescriptive easement, the defeated party must expressly communicate that continued use of the property was intended to be adverse, and not merely subject to the owner's superior right, to establish a claim of right. [¶] A court previously entered a judgment against the Kronsbergs finding that they had not established a prescriptive easement over Junior Blind's property. Unless the Kronsbergs expressly communicated a claim of right, the Kronsbergs' use of the owner's property is presumed to be in subordination to the owner's rights under the judgment."

> "A court previously entered a judgment against the Kronsbergs finding that they had not established a prescriptive easement over Junior Blind's property. Unless there has been an affirmative renunciation of the rights confirmed in the prior judgment, the Kronsbergs' continued use of Junior Blind's property is deemed permissive. Without affirmative renunciation, and in the absence of conduct unambiguously adverse to the judgment, the Kronsbergs' use of the Junior Blind's property is presumed to be in subordination to Junior Blind's rights as provided by the judgment."

The trial court declined to give the first two instructions, but gave the following special instruction nearly identical to the third proposed instruction submitted by JBA:

> "A court previously entered a judgment against the Kronsbergs finding that they had not established a prescriptive easement over Junior Blind's property. Unless there has been an affirmative renunciation of the rights affirmed in the prior judgment, the Kronsbergs' continued use of Junior Blind's property is deemed [per]missive. Without an affirmative renunciation and in the absence of conduct unambiguously adverse to the judgment, the Kronsbergs' use of the Junior Bind's property is presumed to be subordinate to Junior Blind's right as provided by the judgment."

The jury returned a verdict finding that the Kronsbergs had established a prescriptive easement over the Camp Bloomfield property. JBA then filed two motions to limit the scope of the easement by restricting the location of the easement to the Kronsbergs' prior, actual use, limiting use of the easement to the daytime hours, limiting the amount of time the Kronsbergs are allowed on the Camp Bloomfield property to the time necessary to access their meadow, and limiting the easement to the property owners.

Following a hearing on JBA's proposed restrictions, the trial court imposed one restriction, limiting the Kronsbergs to the path in front of a dining hall on the Camp Bloomfield property.

This appeal followed.

DISCUSSION

JBA contends the trial court erred by not instructing the jury that in light of the 2006 judgment, the Kronsbergs were required to give express notice to JBA that their continued use of the Camp Bloomfield property to access their meadow was under a new claim of right, and not subordinate to JBA's rights, in order to acquire a prescriptive easement over that property. JBA further contends the trial court erred by not limiting the scope of the easement to the Kronsbergs' actual use.

I. Standard of review

"The propriety of jury instructions is a question of law that we review de novo. [Citation.]" (*Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 82.) We review the scope of the prescriptive easement granted by the trial court under

the substantial evidence standard. (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570.)

II. Alleged instructional error

JBA cites *Jaffray v. Mies* (1947) 80 Cal.App.2d 291 (*Jaffray*) and *Buic v. Buic* (1992) 5 Cal.App.4th 1600 (*Buic*) as support for its argument that after entry of the 2006 judgment, the Kronsbergs were required to give express notice of their adverse claim in order to acquire prescriptive easement rights over JBA's property and that the trial court erred by not instructing the jury of this requirement.[1]

Jaffray involved an adverse possession claim against the record property owner. A judgment had previously been entered against the plaintiff's grantor and predecessor in interest in an earlier quiet title action against the property owner. The plaintiff claimed that after the previous judgment was entered, the grantor had continued to occupy the property without the owner's permission and had acquired title to the property by adverse possession. The grantor then transferred title to the plaintiff. (*Jaffray*, *supra*, 80 Cal.App.2d at p. 293.) The court in *Jaffray* rejected the plaintiff's adverse possession claim, holding that the grantor had to make an affirmative showing that his continued occupancy after entry of the prior judgment was intended to be adverse:

> "Not only was the evidence not sufficient, under the established rules, . . . to compel a finding in favor of the plaintiff on the issue of adverse occupancy and use of these lots for the required period, but something more was here required by way of notice to the other parties that any continued use of the property by [plaintiff's grantor], after the decree against him in the [previous] case, was hostile and under a claim of right and not merely permissive. The fact that a judgment had been entered quieting title against [the grantor] and enjoining him from claiming any interest in the property should not be lightly dismissed. Under such

---

[1] JBA also relies on *Clarke v. Clarke* (1901) 133 Cal. 667 for the proposition that express notice of adverse use must be given to the land owner before a prescriptive easement will lie. We read the case differently, noting at page 670, "The law will presume that the land belongs to the owner of the paper title, and that the use was by permission or silent acquiescence. If this presumption is overcome by evidence showing the use to have been hostile, and that the owner knew of such hostile claim, and took no steps to protect his property, for a period of five years, then the presumption changes."

> circumstances, some affirmative showing that any continued occupancy by the defeated party was intended to be adverse, and not merely subject to the other party's superior right, should be required.

(*Jaffray, supra*, 80 Cal.App.2d at p. 293.)

Buic also involved an adverse possession claim asserted by the property owner's former wife. Following a marital dissolution judgment awarding the property to the owner, the ex-wife continued to reside on the property and paid the mortgage and property taxes. (*Buic, supra*, 5 Cal.App.4th at p. 1602.) Following the reasoning of *Jaffray*, the court in *Buic* held that express notice was required in order to establish an adverse possession claim following a judgment granting title to the property owner:

> "There is a presumption that Beatriz's continued possession of the property after the dissolution judgment awarded it to Joannes was subordinate to Joannes's rights, not adverse. . . . When a possessor of property remains in possession following a judicial decree awarding the property to another, the possessor's occupation is deemed subordinate to the true owner until express notice is given to the owner of the possessor's adverse claim. [Citations.]"

(*Buic, supra*, 5 Cal.App.4th at p. 1605.)

The court in *Buic* also discussed *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199 (*City of Los Angeles*),[2] a case that involved, as in the instant case, prescriptive rights. The plaintiff in *City of Los Angeles* had obtained a judgment against the defendants confirming its appropriative water rights as superior to the defendants' alleged prescriptive water rights. In a subsequent action, the defendants claimed to have newly acquired prescriptive rights by continuing their water usage after entry of the adverse judgment. The Supreme Court, citing *Jaffray*, concluded that unless there had been an "affirmative renunciation" of the appropriative water rights confirmed in the prior judgment, the defendants' continued use was deemed permissive. (*City of Los Angeles, supra*, at p. 269.) The Supreme Court noted, however, that such affirmative renunciation might be manifested by "conduct unambiguously adverse to the judgment":

---

[2] *City of Los Angeles* was disapproved on another ground in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1248.

"We do not preclude the possibility that a party subjected to a judgment declaring another party's prior water right could start the running of the prescriptive period by unequivocally manifesting to the other party a refusal to be bound any longer by the terms of the judgment. [Citation.] Without such affirmative renunciation, however, and in the absence of conduct unambiguously adverse to the judgment, the judgment defendants were presumed to be taking water and otherwise acting in subordination to the plaintiff's rights as provided by the judgment. [Citation.]" (*Ibid*., fn. omitted) The Supreme Court then explained, in a footnote, the type of adverse conduct that would manifest the requisite affirmative renunciation of rights: "An example of such adverse conduct might arise where a prior judgment imposed *immediate* limitations on the defendant's use of water from a particular source. His taking of water in excess of such limitations would then be adverse to the judgment plaintiff regardless of any express notice." (*Id.* at p. 269, fn. 65.)

The jury instruction given by the trial court in this case mirrors not only the Supreme Court's language in *City of Los Angeles*, but also the proposed jury instruction submitted by JBA. JBA nevertheless argues that the trial court should have instructed the jury that "express notice" to JBA of the Kronsbergs' adverse claim was required in order to establish a prescriptive easement over the Camp Bloomfield property. The "express notice" requirement, as articulated by the courts in *Jaffray* and *Buic*, applies to adverse possession claims asserted by persons who continuously occupied the subject properties before and after judgments confirming the landowner's rights had been entered. Under those circumstances, express notice to the landowner of the adverse possession claim might be warranted. The instant case, by contrast, involves open and notorious but intermittent use resulting in a prescriptive easement, similar to the prescriptive water usage rights at issue in *City of Los Angeles.* In such cases, "conduct unambiguously adverse" to the prior judgment can be sufficient manifestation of the claimant's refusal to be bound by the terms of the judgment, "regardless of any express notice." (*City of Los Angeles, supra*, 14 Cal.3d at p. 269 & fn. 65.)

We find the standard articulated by the Supreme Court in *City of Los Angeles* to be applicable to the circumstances presented here. The trial court accordingly did not err by applying that standard in lieu of the "express notice" standard applied by the courts in *Jaffray* and *Buic*.

III. Scope of easement

The scope of a prescriptive easement is determined by the use through which it is acquired. (*Connolly v. McDermott* (1984) 162 Cal.App.3d 973, 977, quoting *Hannah v. Pogue* (1944) 23 Cal.2d 849, 854.) In determining the scope of a prescriptive easement, a court must balance the burden on the servient tenement while allowing some flexibility in use by the dominant tenement. (See *Applegate v. Ota* (1983) 146 Cal.App.3d 702, 711.)

JBA contends the trial court erred by granting the Kronsbergs an easement broader in scope than that warranted by the evidence of their use. The evidence, JBA maintains, showed that the Kronsbergs took a specific path across the Camp Bloomfield property, only during the daytime hours, and that it took them only five minutes to do so. Because JBA was aware of only two instances when the Kronsbergs brought other persons onto the Camp Bloomfield property, it argues that the easement should have been limited to the property owners. The trial court imposed a single restriction, requiring the Kronsbergs to take one path in front of JBA's dining hall when accessing their meadow through the Camp Bloomfield property.

Substantial evidence supports the scope of the easement granted by the trial court. The evidence showed that J. Kronsberg walked or drove across the Camp Bloomfield property to access his meadow approximately two times a week and that he did so at "all times of the day." J. Kronsberg testified at trial and in deposition that he brought visitors with him when crossing the Camp Bloomfield property on 30 to 50 occasions after the 2006 judgment was entered. The trial court accordingly did not err by denying JBA's request to further restrict the scope of the easement.

DISPOSITION

The judgment is affirmed. The Kronsbergs are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT