STATE OF MICHIGAN

COURT OF APPEALS

ROD KILLIPS and STEPHANIE KILLIPS,

Plaintiffs/Counter-Defendants-Appellees,

v

RITA M. MANNISTO,

Defendant/Counter-Plaintiff-Appellant.

FOR PUBLICATION
January 5, 2000
9:00 a.m.

No. 223089
Alger Circuit Court
LC No. 99-003297-CZ

Before: Gribbs, P.J., and Kelly and Hoekstra, JJ.

GRIBBS, P.J.

This action arises out of a dispute over a triangular strip of land situated between the lots of two neighbors that has been used since approximately 1975 as a portion of plaintiffs' driveway but is in fact titled in defendant's name. Defendant appeals by right from the circuit court judgment granting plaintiffs the right to use a triangular strip of defendant's property pursuant to theories of prescription or acquiescence. We affirm.

On appeal, defendant argues that the trial court impermissibly shifted the burden of proof. There is no merit to this claim. The case cited by the trial court, *Wedmayer v Leonard*, 422 Mich 280, 290; 373 NW2d 538 (1985), clearly states that the burden of proof remains on the plaintiff during the trial. The trial court correctly noted that the burden of going forward with evidence shifts to defendant once plaintiff has made a sufficient showing, but there is nothing in the record to suggest that the trial court misunderstood the appropriate burden of proof.

Defendant also argues that the trial court erred in ruling that plaintiffs had acquired rights to use the triangular strip. We do not agree. Actions to quiet title are equitable; therefore, the trial court's holdings are reviewed de novo. *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993). The factual findings of the trial court are reviewed for clear error. *Grand Rapids v Green*, 187 Mich App 131, 135-136; 466 NW2d 388 (1991).

An easement is a right to use the land of another for a specific purpose. *Bowen & Buck v Fur Hunting Club*, 217 Mich App 191-192; 550 NW2d 850 (1996). An easement by prescription arises from a use of the servient estate that is open, notorious, adverse, and continuous for a period of fifteen years. *Goodall v Whitefish Hunting Club*, 208 Mich App 642, 645; 528 NW2d 221 (1995); *Dyer v Thurston*, 32 Mich App 341, 343; 188 NW2d 633 (1971). A party may "tack" on the possessory periods of predecessors in interest to achieve this fifteen-year period by showing privity of estate. *Dubois v Karazin*, 315 Mich 598, 605-606; 24 NW2d 414 (1946); *Connelly v Buckingham*, 136 Mich App 462, 474; 357 NW2d 70 (1984). This privity may be shown in one of two ways, by (1) including a description of the disputed acreage in the deed, *Arduino v Detroit*, 249 Mich 382, 384; 228 NW 694 (1930), or (2) an actual transfer/conveyance of possession of the disputed acreage by parol statements made at the time of conveyance. *Sheldon v Michigan Central Railroad Co*, 161 Mich 503, 509-510; 126 NW 1056 (1910); *Gregory v Thorrez*, 277 Mich 197, 201; 269 NW 142 (1936).

Here, plaintiffs can show privity to at least 1975, when defendant conveyed an easement to the property's former owner. The right to use the disputed strip was re-conveyed in 1986 to plaintiff's predecessor-owner by way of a quit claim deed. Defendant raised no objection to the use until the late 1990's. Contrary to defendant's implication, the term "hostile" is a term of art and does not imply ill will. Instead, "hostile" merely means a use that is inconsistent with the rights of an owner. *Plymouth Canton Community Crier v Prose*, ___ Mich App ___; ___ NW2d ___ (2000)(Docket No. 210896, issued 9-29-00, slip op at 3); *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976). Defendant was aware that the driveway was on her property throughout the entire course of its use. The trial court did not err in finding that plaintiffs had acquired a prescriptive use of the property. *Id.*

The doctrine of acquiescence provides that where adjoining property owners acquiesce to a boundary line for more than fifteen years, that line becomes the actual boundary line. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995); *McQueen v Black*, 168 Mich App 641, 644; 425 NW2d 203 (1988). The underlying reason for the rule of acquiescence is the promotion of peaceful resolution of boundary disputes. *Shields v Collins*, 83 Mich App 268, 271-272; 268 NW2d 371 (1978). The proper standard applicable to a claim of acquiescence is proof by a preponderance of the evidence. *Walters v Snyder (After Remand)*, 239 Mich App 453, 455; 608 NW2d 97 (2000). This is less stringent than the clear and cogent evidence standard used in adverse possession and prescriptive easement cases. *Id.*; *McQueen*, *supra* at 645 n 2.

Unlike a claim based on adverse possession, an assertion of acquiescence does not require the possession be hostile or without permission. *Walters*, *supra* at 456-457. The acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the statutorily mandated period of fifteen years. *Jackson v Deemar*, 373 Mich 22, 26; 127 NW2d 856 (1964). In *Siegel* v Renkiewicz Estate, 373 Mich 421, 426; 129 NW2d 876 (1964), our Supreme Court stated that no proof of a parol transfer is needed to establish tacking.

Here, plaintiffs and their predecessors actively used the driveway since approximately 1975. During that time defendant did nothing to stop the usage, despite her belief that the original easement had terminated. In fact defendant approached her neighbor in 1982 about

moving the driveway and the neighbor asserted that the right to use the driveway was permanent. From 1982 forward defendant did nothing to stop plaintiffs or their predecessors from using the driveway. While defendant marked the boundary with markers, these survey stakes did not block the driveway or otherwise interfere with plaintiffs' use. Plaintiffs and their predecessors used and apparently maintained the driveway during this entire post-1982 period. The trial court did not err in finding that plaintiffs had acquired the property by acquiescence.

Finally, defendant announces without explanation that plaintiffs increased the burden on the servient estate when they blacktopped the driveway. We find this claim meritless. One who holds an easement by prescription is allowed to do such acts as are necessary to make effective the enjoyment of the easement, and the scope of this privilege is determined largely by what is reasonable under the circumstances. *Mumrow, supra* at 699. Defendant has done nothing to explain why it was unreasonable for plaintiffs to blacktop the gravel driveway.

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly