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ENTERED
JUN 16 2025

IN THE COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

LEE G. ROBINSON,	:	**CASE NO. A 2405363**
	:	
Plaintiff,	:	
	:	**JUDGE PATRICK T. DINKELACKER**
vs.	:	
	:	**ENTRY/DECISION**
	:	
HPSRD LLC, et al,	:	
	:	
Defendants.	:	

This matter came before the Court pursuant to a Preliminary Injunction Hearing requested by Plaintiff. The Court conducted the hearing involving a number of witnesses covering multiple hours of testimony, reviewed a multitude of admitted exhibits, listened to and read arguments of counsel and reviewed and analyzed the appropriate law.

I. LAW

- Ohio Rules of Civil Procedure 65
- Ohio Revised Code 2727
- Case Law involving "Four Factors" standard
- Pertinent Case Law regarding Prescriptive Easement

A) PRESCRIPTIVE EASEMENT

A prescriptive easement as defined under Ohio law allows a person to access and/or use another person's real property without obtaining consent of the property owner or without obtaining actual ownership of property. To obtain a prescriptive easement over the real property of another, the person claiming the acquisition of a prescriptive easement must show they have had open, continuous, adverse and notorious possession or easement rights for at least 21 years.

B) BURDEN OF PROOF

To establish, for purposes of securing a prescriptive easement, a person must establish the appropriate legal factors by clear and convincing evidence.

C) LEGAL STANDARD FOR PRELIMINARY INJUNCTION RELIEF

"Four Factors" Issues – The Court is bound to consider and evaluate the following four factors in determining if a movant is entitled to injunctive relief.

1) Whether the movant has a substantial likelihood or probability of success on the merits;
2) Whether there is an immediate threat of irreparable harm;
3) Whether the granting of a preliminary injunction would cause substantial harm to any third party; and
4) Whether the public interest is best upheld by granting the preliminary injunction. These four factors are to be used as a means to effectuate a balancing test to determine the appropriateness of injunctive relief.

II. DISCUSSION

The Plaintiff, Lee G. Robinson, Trustee ("Plaintiff") has implored the Court to enter a Preliminary Injunction against HPSRD, LLC ("Defendant") declaring and finding Plaintiff has the rights and benefits of a prescriptive easement over Defendant's property allowing access to Plaintiff's property. Plaintiff claims all the elements necessary to find the existence of a prescriptive easement have been proven by clear and convincing evidence and the Court must find for Plaintiff. Defendant counters that Plaintiff has not proven the existence of a prescriptive easement over HPSRD's property and Plaintiff has not met the legal/equitable requirements for granting injunctive relief.

The evidence indicates Plaintiff's request for a prescriptive easement finding is because Defendant's property at issue is the ONLY appropriate manner for Plaintiff (or customers, employees, etc.) to enter onto and exit from Plaintiff's property with a vehicle to gain access to parking spaces on Plaintiff's property.

A) DISCUSSION OF ELEMENTS OF PRESCRIPTIVE EASEMENT

1) OPEN

The Easement at issue was transparent and able to be seen going back many, many years. Until relatively recent blockage by the Defendant due to strategic striping and signs, the pathway of access to Plaintiff's parking spaces was obvious and clear. Ian Edwards testified the flow of traffic over the easement area was obvious. Doug Van Der Zee and Harry Barnaclo testified all of their contact with the easement area showed no attempt by Plaintiff to conceal the driving over the easement area. Persons, including Plaintiff, driving their vehicles over the easement area was clearly visible to the owners of the property at issue. Additionally, Defendant witnesses Nicholas Lingenfelter and William Ryan Dean testified to seeing persons use the drive for entrance and egress.

2) NOTORIOUS

The evidence clearly indicates that the driving entrance and exit onto Defendant's property was known to the community and used by the community for many years without interruption. Plaintiff's witnesses Ian Edwards, Doug Van Der Zee and Harry Barnaclo all testified to this regarding various dates. Plaintiff further testified to viewing the flow of drivers including persons parking in Plaintiff's parking spaces for a long time. The evidence attests to the use of the easement area was known to Defendants both present and past.

3) CONTINUOUS FOR 21 YEARS

The easement area at issue has been used for ingress and egress to various degrees and extents since 1956. The photographic images admitted as exhibits along with the testimony of a number of witnesses attests to that. Specifically, Plaintiff's ownership of the Robinson property and the parking spaces which are part of the property since 1999 and no challenge to the use of the

easement area, until the May 21, 2021 letter, prove a continuous use for over 21 years. The Court is absolutely convinced the easement area at issue has been used for access purposes for at least 21 years.

4) ADVERSE

For over 21 years, Plaintiff and Plaintiff's permitees used the easement area to cross over the drive from Edwards Road and the other two areas at issue (ie. orange and purple) to park on Plaintiff's 6 parking spaces. This vehicle crossing was done with no benefit whatsoever to the owners of the property. The use for ingress and egress for over 21 years was certainly not consistent with Defendant (and prior owner's) best interests in the property. Further, based on the evidence the Court cannot find a permissive use was granted to Plaintiff. The use of the easement area for vehicle crossing to gain access to parking spots must be found to be adverse to defendants.

B) FURTHER DISCUSSION

Defendant asserts several contentions to Plaintiff's request for ruling a prescriptive easement exists. The Court is this decision cannot directly address each and every point in dispute raised by the defendant. Defense counsel did an excellent job of presenting their counterpoints. The Court will address the assertions that need to be singled out for addressing. The assertion that Mr. Rothenberg charged Plaintiff's tenants to gain access to Plaintiff's parking spaces and resultantly said permission negated elements of the requested prescriptive easement is not an assertion the court can agree with or factually find. The Court's recollection is that the payers of the money to Mr. Rothenberg were not even certain as to why the money was being paid to Rothenberg and what the payments effectuated.

Further, the Court must admit it is difficult to take all of the testimony of Rita Rothenberg as factual. The Court has issues with determining what testimony is worthy of full belief and what

testimony is not. No question, Rita Rothenberg did her best and tried hard to answer the questions posed to her. The Court in no way is making a finding Rita Rothenberg intentionally tried to mislead the Court. However, the Court unfortunately has issues in having full reliance on her testimony. Even if her testimony was taken in whole as factual, the "payments" to Mr. Rothenberg do not negate any of the elements of a prescriptive easement.

The evidence produced to the Court by the Defendant (Defense exhibit MM) regarding a letter to the Board of Revisions of Hamilton County in which Plaintiff stated, "There is no parking for the building..." does cause concern to the Court. Plaintiff's explanation for the statement was not overly convincing. However, in the overall scheme of things, the statement to the Board of Revisions does not change the overall facts relating to the existence or non-existence of a prescriptive easement. The evidence shows Plaintiff/Plaintiff's permitees used the easement area to gain access to the parking spaces attached to the Plaintiff's property.

The Defendant also points to the 1994 deed from Suburban Federal to Mr. Rothenberg and the language regarding "ingress, egress and parking rights". The evidence adduced in regards to this assertion also shows these "rights" were dependent on a "...letter from Schwartz, Manes & Ruby to Joe Hutchinson". No such letter was ever produced and the true meaning of the deed language was never determined. Further, HPSRD was, in fact, a Bona Fide Purchaser of the property including the easement area. According to Defendant, as such, the Defendant cannot be legally liable for an easement not noted in any legal document. However, such a claim falls short of legal justification if the Bona Fide Purchaser had notice of or was aware of the possibility of an existing easement on the property.

William Ryan Dean testified the easement area property was bought with the knowledge that a driven vehicle had to go through the easement area to get to Plaintiff's property and he knew

people parked on the easement area. Nicholas Ligenfelter testified that he was aware of the deed to Mr. Rothenberg possibly containing an easement, and reached out to determine if an easement existed. Though a Bona Fide Purchaser, Defendant had notice in the actual sense and constructive notice that an easement could exist on the property bought from Mr. Rothenberg and that existed a duty to investigate.

Finally, the Court cannot find a sufficient evidentiary basis to believe the easement area was a common parking area and hence not subject to a prescriptive easement. If the easement was found to be a common parking area and then consequently that constituted a permissive use and therefore a valid prescriptive easement could not exist. But such is not the case here. Multiple exhibits containing multiple photos, testimony from several witnesses and the Court's on-site visit indicate through the use of signs, striping, cement buckets, etc. the easement area was not for use as a common parking area. Parking without permission in that area was done at one's own peril.

Has the Plaintiff proved that the use of the property owned by Defendant by Plaintiff was open, notorious, adverse and continuous for 21 years by clear and convincing evidence? Though the defense has presented a well-crafted and very professionally done counter to Plaintiff's presentation, the answer to the posed question is yes. The use of the easement area owned by Defendant and Defendant's Predecessor's in real title by Plaintiff was open, notorious, adverse and continuous for 21 years. Resultantly, Plaintiff has proved entitlement to a finding of the existence of a prescriptive easement over the real property at issue.

Has the Plaintiff, upon the consideration of the Four Factors' test required by law, proved the issuance of a Preliminary Injunction Order is fair, legal and appropriate? To answer, the Court makes the following findings:

1) Does the Plaintiff/Movant have a substantial likelihood of success on the merits? The Court must answer in the affirmative.

2) Does there exist an immediate threat of irreparable harm? Yes, though, as almost always, money is a factor in this lawsuit. Also, the Plaintiff stands to lose use of real property in total or at least loss of a substantial aspect of use of the property. Resultantly, the Court finds there exists the threat of irreparable harm to Plaintiff.

3) Would the granting of the Preliminary Injunction cause substantial harm to any third parties? The Court cannot envision that the granting of a preliminary injunction would cause substantial harm to any third party.

4) Is the public interest best upheld by granting the preliminary injunction? The public best interests are upheld if the law is followed and the equitable powers of the Court are used to implement justice. Such is the case at hand. The granting of the Preliminary Injunction provides equitable relief to a citizen who qualifies for such relief and that bodes well for the entire pubic.

III. CONCLUSION

The Court, after a comprehensive review of the testimony adduced during the hours of hearing, after reviewing a submitted deposition, after reviewing the pertinent exhibits, after reviewing the astute arguments of Counsel and a solid review of the law, the Court finds the Plaintiff's Request for a Preliminary Injunction to be justified factually and legally and therefore grants the Preliminary Injunction.

The Court finds that a prescriptive easement over the Defendant's property does exist and provides to Plaintiff all the equitable relief Plaintiff is entitled regarding this finding. This includes Plaintiff's ability to drive over Defendant's described properties for access, ingress and egress to

Plaintiff's property. The Prescriptive Easement covers the property referred to and designated as the "pink", "orange" and "purple" parcels on various admitted exhibits and further described as Hamilton County Auditor Parcels 041-003-00 and 041-003-0039-00.

IT IS SO ORDERED.

6-16-25
DATE

JUDGE PARTICK T. DINKELACKER
6-16-25