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Franklin County Legal Journal
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Robert D. Geyer, Plaintiff vs. Jay Milton Brown and Dorothy Jo Brown, Defendants

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action No. 2017-3322

HEADNOTES

Preliminary Objections: Standing

1. In order to establish standing, the plaintiff must have a "substantial, direct and immediate interest in the claim sought to be litigated." Bergdoll v. Kane, 731 A.2d 1261, 1268 (Pa. 1999).

2. "A substantial interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law." Bergdoll, 731 A.2d at 1268 (citing South Whitehall Township Police Service v. South Whitehall Township, 555 A.2d 793, 795 (Pa. 1989)).

3. "A direct interest requires a showing that the matter complained of caused harm to the party's interest." Bergdoll, 731 A.2d at 1268.

4. "An immediate interest involves the nature of the causal connection between the action complained of and the injury." Bergdoll, 731 A.2d at 1268.

5. The test for standing does not require a specific property interest, rather a substantial, direct, and immediate interest.

Demurrer: Easements Appurtenant

6. There are two types of easements: an easement appurtenant and an easement in gross. Whether an easement is appurtenant or in gross "must be determined by the fair interpretation of the grant or reservation creating the easement, aided if necessary by the situation of the parties and the surrounding circumstances." Rusciolilli v. Smith, 171 A.2d 802 (Pa. Super. 1961) (citing Lindenmuth v. Safe Harbor Water Power Corporation, 163 A. 159 (Pa. 1932)).

7. The question of whether a plaintiff has established a prescriptive easement is a question of fact reserved for the fact-finder. Gehres v. Falls Tp., 948 A.2d 249, 251 (Pa. Cmwlth. 2008).

8. An easement appurtenant is one by which the dominant tenement enjoys the privilege, liberty, advantage, or convenience of the servient tenement. Ephrata Area School Dist. v. County of Lancaster, 886 A.2d 1169, 1174 (Pa. Cmwlth. 2005) rev'd, 938 A.2d 264 (Pa. 2007) (citing Morning Call, Inc. v. Bell Atlantic-Pennsylvania, Inc., 761 A.2d 139 (Pa. Super. 2000)).

9. "An easement is a right in the *owner* of one parcel of land by reason of such ownership to use the land of another for a special purpose not inconsistent with a general property in the owner." Clements v. Sannuti, 51 A.2d 697, 698 (Pa. 1947) (emphasis added).

10. "Creation of an easement appurtenant is accomplished by reserving unto the grantor an easement or right of way over the land conveyed, said right of way being intended to benefit other lands retained by the grantor. This reservation is conceptually fused with the land it benefits and passes with the land if there is a subsequent conveyance." Brady v. Yodanza, 425 A.2d 726 (Pa. 1981).

11. Pennsylvania law is clear that an easement appurtenant is innately intertwined with the rights of the dominant tenement.

12. Where plaintiff only lives on property and lacks any privity with the property owner, plaintiff is barred from establishing an easement appurtenant as a matter of law.

13. An easement in gross "is a mere personal right in the real estate of another because it is not appurtenant to other land owned by the grantee. An easement in gross benefits a particular entity rather than a particular piece of land. An easement in gross is an easement with a servient estate but no dominant estate." Ephrata Area School Dist., 886 A.2d at 1174 (citing Ladner on Conveyancing in Pennsylvania, §11.01 (Bisel, 4th ed. 1979)).

14. The Pennsylvania Superior Court stated in dicta that an easement in gross must be created by written grant. See Morning Call, Inc. v. Bell Atlantic-Pennsylvania, Inc., 761 A.2d 139, 144 n. 6 (Pa. Super. 2000) (citing Ladner on Conveyancing in Pennsylvania §§11.01, 11.02 (4th ed. 1979)).

15. However, in 1938, the Pennsylvania Supreme Court held that a private company was able to acquire an easement in gross by prescription from private individuals. Miller v. Lutheran Conference & Camp Association, 200 A. 646, 648 (Pa. 1938).

16. Where recent dicta contradicts previous holdings which remain good law, the Court cannot say that the plaintiff is barred from relief as a matter of law from establishing an easement in gross by prescription.

17. To establish a prescriptive easement, the plaintiff must aver adverse, open, notorious, continuous and uninterrupted use of land for a period of at least 21 years. Gehres v. Falls Tp., 948 A.2d 249, 251 (Pa. Cmwlth. 2008).

Appearances:

Jerrold A. Sulcove, Esq. *for the Plaintiff*

Alexander Sharpe, Esq. *for Defendants*

OPINION

Before Meyers, J.

PROCEDURAL HISTORY

This action was initiated by Dena Hockenberry and Robert Geyer on August 28, 2017, by filing a Complaint to Quiet Title against Jay Milton Brown and his wife Dorothy Jo Brown [collectively, "the Browns"]. On October 23, 2017, Mr. Geyer alone filed both an Amended Complaint to Quiet Title and a Praecipe for Lis Pendens against the property described in a deed dated August 24, 1998 as to property currently owned by the Browns.

On November 13, 2017, Mr. Brown alone filed Preliminary Objections to Mr. Geyer's Amended Complaint. On November 28, 2017, Mr. Geyer filed an Answer to Mr. Brown's Preliminary Objections along with a Praecipe to list the matter for argument. Mr. Brown filed his Brief

in Support of Preliminary Objections on January 2, 2018. Mr. Geyer filed his Brief in Opposition to Mr. Brown's Preliminary Objections on January 4, 2018. Oral argument was heard before the undersigned on February 1, 2018.

This matter is now ripe for decision by this Court.

FACTUAL HISTORY

Mr. Guyer and Ms. Hockenberry reside at 4990 Guitner Road, Hamilton Township, Franklin County, PA {hereinafter the Hockenberry property"]. Amended Complaint ¶1. Ms. Hockenberry alone purchased the property in 1976, but Mr. Guyer has permanently resided there since Ms. Hockenberry purchased the property. Id. at ¶3. The Browns live next door to Ms. Hockenberry and Mr. Geyer at 4940 Guitner Road, Hamilton Township, Franklin County, PA [hereinafter "the Brown property"]. Id. at ¶2. The Browns purchased this property in 1998. Id. at ¶4. The previous owners Milton Brown and Ruth Brown had owned the Brown property since 1986 and continued to occupy and visit the property after selling it to the Browns. Id. at ¶¶5-6. A twenty foot wide and 245 foot long gravel lane [hereinafter "the lane"] situated on the Brown property provides the Browns access to Guitner Road. Id. at ¶¶8-9, 12.

In 1987, Mr. Guyer built a garage in the rear curtilage of the Hockenberry property to store cars, tools and other equipment. Id. at ¶11. Since this time, Mr. Geyer has used part of the lane on the Brown property to access this garage. Id. at ¶12. Mr. Geyer has never received permission for the Browns or their predecessors in title to use this lane. Id. at ¶16.

Milton and Ruth Brown, the predecessors in interest of the Browns, executed a license agreement with Ms. Hockenberry dated December 21, 1991, which states that she could use the gravel lane to access the garage at the rear of her property. Defendants' Preliminary Objections at Ex. B. Mr. Geyer was not a party to this license agreement. Id. Paragraph four of the license agreement expressly limits the agreement to Ms. Hockenberry, and Milton and Ruth Brown; should either party sell or transfer ownership of their property, the license agreement would automatically terminate. Id. Therefore, based on the language of the agreement, the license expired in 1998 when the Browns purchased the Brown property from Milton and Ruth Brown.

DISCUSSION

I. APPLICABLE STANDARD: PRELIMINARY OBJECTIONS

The standard for evaluating preliminary objections, including demurrer, is laid out in Allegheny Sportsmen's League v. Ridge:

> [W]hen ruling upon preliminary objections, the Court must accept as true all well-pleaded allegations of material fact as well as all reasonable inferences deducible therefrom. The Court is not required to accept as true any conclusions of law or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by refusal to sustain them. A demurrer, which results in the dismissal of a suit, should be sustained only in cases that are free and clear from doubt and only where it appears with certainty that the law permits no recovery under the allegations pleaded.

790 A.2d 350, 354 (Pa. Cmwlth. 2002) (internal citations omitted). Preliminary objections must state specifically the grounds upon which relief should be granted. See Foster v. Peat Marwick Main & Co., 587 A.2d 382 (Pa. Cmwlth. 1991).

II. ANALYSIS

A. FIRST PRELIMINARY OBJECTION: LACK OF STANDING

Mr. Brown deems his argument as to standing as duplicative of his argument as to demurrer in that Mr. Guyer lacks an ownership interest in the Hockenberry property and therefore lacks standing. As such, Mr. Brown fails to present any traditional standing analysis on his First Preliminary Objection. Although related to the underlying issue of whether Mr. Guyer is barred from relief as a matter of law to assert his claims, standing determines whether Mr. Geyer can bring an action, while demurrer determines whether the law bars him from relief. In light of the different applicable standards of demurrer and standing, the Court will address each separately. In order to establish standing, the plaintiff must have a "substantial, direct and immediate interest in the claim sought to be litigated." Bergdoll v. Kane, 731 A.2d 1261, 1268 (Pa. 1999).

"A substantial interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law." Id. (citing South Whitehall Township Police Service v. South Whitehall Township, 555 A.2d 793, 795 (Pa. 1989)). In the instant case, Mr. Geyer has an apparent interest in the result of this litigation beyond that of all citizens. Mr. Geyer keeps personal property in the garage and will be barred from accessing it if this Court rules that he is not entitled to access

by a prescriptive easement. Only Mr. Geyer's use of the easement in this instance sheds light on the existence of a prescriptive easement appurtenant or in gross. Therefore, the Court finds that Mr. Geyer has a substantial interest in the instant action.

"A direct interest requires a showing that the matter complained of caused harm to the party's interest." Bergdoll, 731 A.2d at 1268. There is no question here that if the Court ruled in Mr. Brown's favor, Mr. Geyer would be prohibited from using the gravel lane to access his garage on the rear of the Hockenberry property and would consequently also be denied the full use of that structure which he built and has used since 1987. Therefore, the Court finds that Mr. Geyer has a direct interest in the instant action.

"An immediate interest involves the nature of the causal connection between the action complained of and the injury." Bergdoll, 731 A.2d at 1268. The result of the instant litigation is determinative of whether Mr. Geyer can access and fully utilize the garage he erected on the Hockenberry property in 1987. There is a clear causal connection between the result of this litigation and Mr. Geyer's ability to access his personal property in the garage. Therefore, the Court finds that Mr. Geyer has an immediate interest in the instant action.

The test for standing does not require a specific property interest, rather a substantial, direct, and immediate interest. Mr. Brown purports that Mr. Geyer does not have standing because he cannot state a cause of action due to the alleged absence of an ownership right in the Hockenberry property. However, this assertion conflates two distinguishable questions. The Court finds that based on well-established Pennsylvania law, Mr. Geyer has standing to bring the present action. Whether he can succeed in this action is a different question which has no bearing on his mere ability to bring this case before a judge. Therefore Mr. Brown's First Preliminary Objection is OVERRULED.

B. SECOND PRELIMINARY OBJECTION: DEMURRER

Mr. Geyer's Amended Complaint sets forth one Count of easement by prescription. There are two types of easements: an easement appurtenant and an easement in gross. Whether an easement is appurtenant or in gross "must be determined by the fair interpretation of the grant or reservation creating the easement, aided if necessary by the situation of the parties and the surrounding circumstances." Rusciolilli v. Smith, 171 A.2d 802 (Pa. Super. 1961) (citing Lindenmuth v. Safe Harbor Water Power Corporation, 163 A. 159 (Pa. 1932)). However, this question of the type of easement potentially present here is not currently before the Court.[1] The singular

1 The question of whether a plaintiff has established a prescriptive easement is a question of fact reserved for the

question before this Court at this stage is whether Mr. Geyer is barred from relief as a matter of law *as to either type of easement* where he has no ownership interest in the Hockenberry property and there is no written grant to use the lane. The Court will analyze Mr. Brown's claim for demurrer as to each type of easement.

1. Easement Appurtenant

An easement appurtenant is one by which the dominant tenement enjoys the privilege, liberty, advantage, or convenience of the servient tenement. Ephrata Area School Dist. V. County of Lancaster, 886 A.2d 1169, 1174 (Pa. Cmwlth. 2005) rev'd, 938 A.2d 264 (Pa. 2007) (citing Morning Call, Inc., v. Bell Atlantic-Pennsylvania, Inc., 761 A.2d 139 (Pa. Super. 2000)). "An easement is a right in the *owner* of one parcel of land by reason of such ownership to use the land of another for a special purpose not inconsistent with a general property in the owner." Clements v. Sannuti, 51 A.2d 697, 698 (Pa. 1947) (emphasis added). "Creation of an easement appurtenant is accomplished by reserving unto the grantor an easement or right of way over the land conveyed, said right of way being intended to benefit other lands retained by the grantor. This reservation is conceptually fused with the land it benefits and passes with the land if there is a subsequent conveyance." Brady v. Yodanza, 425 A.2d 726 (Pa. 1981).

Pennsylvania law is clear that an easement appurtenant is innately intertwined with the rights of the dominant tenement. In the instant case, Mr. Geyer has no ownership interest in the Hockenberry property. Furthermore, it has not been alleged that Mr. Geyer is in privity with Ms. Hockenberry as a lessee, tenant, or by some other means. Rather, it is only alleged that he has been living on the property with Ms. Hockenberry's permission since 1976. In the absence of an ownership interest in the Hockenberry property or some privity with Ms. Hockenberry, this Court cannot grant him an easement appurtenant as a matter of law. Therefore, as to establishing an easement appurtenant, Mr. Brown's Second Preliminary Objection is SUSTAINED.

2. Easement in Gross

In comparison, an easement in gross "is a mere personal right in the real estate of another because it is not appurtenant to other land owned by the grantee." Ephrata Area School Dist., 886 A.2d at 1174 (citing Ladner on Conveyancing in Pennsylvania, §11.01 (Bisel, 4th ed. 1979)). "An easement in gross benefits a particular entity rather than a particular piece of land." Id. "An easement in gross is an easement with a servient estate but no dominant estate." Id.

fact-finder. Gehres v. Falls Tp., 948 A.2d 249, 251 (Pa. Cmwlth. 2008).

Mr. Brown asserts that Mr. Geyer also cannot establish an easement in gross because such an easement must be granted in writing and there is no written document granting Mr. Geyer any use of the gravel lane. Specifically, Mr. Brown relies on a footnote in a Superior Court case, which states that an easement in gross must be created by written grant. See Morning Call, Inc., v. Bell Atlantic-Pennsylvania, Inc., 761 A.2d 139, 144 n. 6 (Pa. Super. 2000) (citing Ladner on Conveyancing in Pennsylvania §§11.01, 11.02 (4th Ed. 1979)). Mr. Geyer contends that this statement is merely dicta and would stand for the inaccurate proposition that an easement in gross can never be obtained by prescription. Plaintiff's Brief at 5. Upon performing its own independent research, the Court found only two trial court decisions from the same Judge in Lackawanna County, which adopt Morning Call's reasoning. See Durdach v. Revta, 2011 WL 7272290 (C.P. Lackawanna Cty. Oct. 19, 2011); Sayer v. Demkosky, 2007 WL 5156200 (C.P. Lackawanna Cty. Nov. 1, 2007).

However, the Court also uncovered instances where easements in gross were granted without written instruments and by prescription. In Miller v. Lutheran Conference & Camp Association, the Miller brothers had been granted by deed the exclusive right to fish and board in a man-made lake. 200 A. 646, 648 (Pa. 1938). The brothers had formed a partnership to erect and operate boat and bath houses on the lake. Id. When one of the Miller brothers died, the partnership was dissolved, and his interests passed to his heirs. Id. These heirs and the living Miller brother went their separate ways and each granted licenses to third parties without reference to each other. Id. One of the heirs granted a license to the defendant in the case which owned of portion of ground abutting the lake. Id. This license granted permission to boat, fish, and bathe in the lake. Id. The living Miller brother and his wife filed for an injunction from among other things, the granting of any bathing licenses. Id. The living Miller brother argued that the original grant from the state to the Miller partnership had not contained any reference to bathing rights. Id. In response, the defendant asserted that the deceased Miller brother had not obtained bathing rights by grant, but by prescription such that they were alienable and divisible. Id. at 649. The Pennsylvania Supreme Court held that the original deed to the Miller brothers had granted only boating and fishing privileges, but that the facts were sufficient to establish title to bathing rights *by prescription as an easement in gross*. Id. (emphasis added). The Court reasoned that "[t]here is . . . no inexorable principle of law which forbids an adverse enjoyment of an easement in gross from ripening into a title thereto by prescription." Id. at 650. In summary, the Pennsylvania Supreme Court granted an easement in gross by prescription to the licensor of the defendant. See also Maranatha Settlement Ass'n v. Evans, 122 A.2d 679 (Pa. 1956) (holding bathing privileges in Miller were "acquired by a

named individual without reference to, or connection with, any ownership of land," and was therefore distinguishable).

Although the Morning Call Court stated in dicta that easements in gross must be in writing and presumably cannot therefore be acquired by prescription, past Pennsylvania Supreme Court cases have stated otherwise. In light of the Pennsylvania Supreme Court's holdings in both Miller and Marantha, this Court cannot say as a matter of law that Mr. Geyer is barred from establishing an easement in gross by prescription without a written instrument.

Therefore, the question of demurrer turns to whether Mr. Geyer has pled sufficient facts which accepted as true could establish a prescriptive easement in gross. To establish a prescriptive easement, the plaintiff must aver adverse, open, notorious, continuous and uninterrupted use of land for a period of at least 21 years. Gehres v. Falls Tp., 948 A.2d 249, 251 (Pa. Cmwlth. 2008). In the instant case, Mr. Geyer has pled that he built the garage on Ms. Hockenberry's property in 1987. Since then, Mr. Geyer alleges that he has continually used a portion of the lane to access this garage. Although Ms. Hockenberry was granted a license for use of the lane from the predecessors in interest of the Browns from December 21, 1991 to August 24, 1998, when the Browns purchased the property, Mr. Geyer was not a party to this license. Therefore, Mr. Geyer's Complaint alleges sufficient facts, which if accepted as true, could establish a prescriptive easement in gross.

As such, Mr. Brown's Second Preliminary Objection as to an easement in gross is OVERRULED.

CONCLUSION

Mr. Geyer has a substantial, direct and immediate interest in the issue being litigated in this case and therefore has standing. However, since Mr. Geyer does not have an ownership interest in the Hockenberry property and has not pled a relationship creating any privity with Ms. Hockenberry, Mr. Geyer is barred from relief as a matter of law from establishing an easement appurtenant. On the other hand, Mr. Geyer is not barred from relief as a matter of law from establishing a prescriptive easement in gross and has pled sufficient facts, which if accepted as true could establish the same. Therefore, Mr. Brown's Second Preliminary Objection as to an easement appurtenant is SUSTAINED. Mr. Brown's First Preliminary Objection as to standing and his Second Preliminary Objection as to an easement in gross are OVERRULED.

ORDER OF COURT

AND NOW THIS 5th day of March, 2018, upon review of Defendant Jay Milton Brown's Preliminary Objections, filed on November 13, 2017, and upon independent review of the record and applicable law,

IT IS HEREBY ORDERED that

1. Defendant Jay Milton Brown's First Preliminary Objection as to standing is OVERRULED.

2. Defendant Jay Milton Brown's Second Preliminary Objection as to Demurrer is SUSTAINED as to Plaintiff's claim of an easement appurtenant, and OVERRULED as to Plaintiff's claim of an easement in gross.

This Order is pursuant to the attached Opinion

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.