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Easements: Adverse Possession of Streets and Parks in a Platted Area

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EASEMENTS: ADVERSE POSSESSION OF STREETS AND PARKS IN A PLATTED AREA

Mumaw v. Roberson, 60 So.2d 741 (Fla. 1952)

Mr. and Mrs. Mumaw and Mr. Shawn, defendants, purchased in 1936 and 1939, respectively, acreage outside the limits of any municipality in a platted area that was a wild, uncultivated product of the Florida "land boom." The description in the deed, for convenience only, was by reference to the plat as indicated by an accompanying memorandum describing the property by metes and bounds. Defendants took possession and by 1939 had built a fence inclosing their adjacent properties, including an area specifically reserved on the original plat for streets and a park. In 1950 plaintiffs, who had purchased lots in the same platted area three years previously, sought and obtained a decree directing defendants to remove the fence and restraining them from further obstruction of the street easements. On appeal, HELD, the easements were lost by, inter alia, adverse possession. Reversed and remanded.

It is well settled that the platting of land and the subsequent sale of lots create between grantor and purchasers a right of easement with regard to street and park areas designated on the plat.[1] Furthermore, it has been held that an injunction will issue to protect these rights of easement.[2] The action must be timely, as such rights may be destroyed by adverse possession,[3] which possession must be: (a) actual,[4] (b) continuous for the statutory period with color of title[5] or in certain cases without color of title,[6] (c) open and notorious,[7] (d) exclusive,[8] and (e) hostile.[9]

[1]Miami v. Florida E.C. Ry., 79 Fla. 539, 84 So. 726 (1920); Florida E.C. Ry. v. Worley, 49 Fla. 297, 38 So. 618 (1905); Adair v. Spellman Seminary, 13 Ga. App. 600, 79 S.E. 589 (1914); Collins v. Land Co., 128 N.C. 563, 39 S.E. 21 (1901); Baltimore & O. R.R. v. Snyder, 279 Pa. 50, 123 Atl. 858 (1924).

[2]See McCorquodale v. Keyton, 63 So.2d 906 (Fla. 1953); Huelsman v. Mills, 6 Ohio Dec. 1192 (1883).

[3]Price v. Stratton, 45 Fla. 535, 33 So. 644 (1903); Dulaney v. Bishoff, 165 Pa. Super. 207, 67 A.2d 600 (1949).

[4]Seymour v. Creswell, 18 Fla. 29 (1881).

[5]FLA. STAT. §§95.16, 95.17, 95.27 (1951), Coe v. Finlayson, 41 Fla. 169, 26 So. 704 (1899).

[6]FLA. STAT. §95.18 (1951).

[7]Watrous v. Morrison, 33 Fla. 261, 14 So. 805 (1894).

[8]Mullen v. Bank of Pasco County, 101 Fla. 1097, 133 So. 323 (1931).

[9]*Ibid.*

The intention of the modern statutes governing adverse possession is to protect those who have possessed land for the time specified by the statute under claim of right or color of title.[10] When one, under color of title, has been induced to enter upon and improve land, it would be unjust to enforce the claim of another who delayed until after the statutory period to bring action.[11]

Defendants in the present case had been in continuous possession of the land for the statutory period[12] and had met all other requirements of adverse possession. Color of title was established by the conveyances purporting to include portions of the streets and park; and defendants had fenced the entire tract, including areas designated as streets and park. It has been held that fencing of areas in which easements exist and holding for the prescriptive period are sufficient to constitute adverse possession.[13] Once the element of adverse possession is established, by applying the general rule the right of easement is extinguished.[14] It should be noted that the required statutory period had lapsed before conveyance was made to plaintiffs. Since a grantor can convey only the rights he has at the time of the conveyance, plaintiffs received the property subject to defendants' claim of adverse possession.

The decision of the Court conforms with the general doctrine; and its practicality rests on public policy, which regards with disfavor litigation by a plaintiff claiming easements after the defendant has held under color of title for the prescriptive period.

The effect of this decision is to carry out the philosophy of the doctrine of adverse possession, even when the party claiming such adverse possession is not the one who established the right of easement. There still is present the plight of the grantee, uninitiated in the law, who has purchased lots with reference to a plat that is no longer a true representation of existing rights.

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[10]Stolfa v. Gaines, 140 Okla. 292, 283 Pac. 563 (1929).

[11]Barrett v. Brewer, 153 N.C. 547, 69 S.E. 614 (1910).

[12]FLA. STAT. §§95.16, 95.17 (1951).

[13]Funk v. Whitaker, 314 Ky. 204, 234 S.W.2d 675 (1950); Cummins v. Dumas, 147 Miss. 215, 113 So. 332 (1927); Bowen v. Team, 6 Rich. L. 298, 60 Am. Dec. 127 (S.C. 1853).

[14]Price v. Stratton, 45 Fla. 535, 33 So. 644 (1903); Dulany v. Bishoff, 165 Pa. Super. 207, 67 A.2d 600 (1949).