

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD FRIEBURG and LOIS FRIEBURG,

Plaintiffs-Appellants,

v

ERNEST LATREILLE and BELVA J. LATREILLE,
a/k/a JOYCE LATREILLE,

Defendants-Appellees.

UNPUBLISHED
October 16, 1998

No. 204952
Kent Circuit Court
LC No. 95-004216 CH

Before: Whitbeck, P.J., and McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right a determination that they had not acquired an easement by prescription in an eight-foot wide graveled private road. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

As a general rule, 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).

Plaintiffs argue the trial court erred when it determined that their continuity of use was interrupted in 1976 and 1984, thereby depriving them of the requisite fifteen years of continuous use needed to establish an easement by prescription. We disagree.

Continuous use does not mean constant use. *Dyer v Thurston*, 32 Mich App 341, 344; 188 NW2d 633 (1971). Instead, whether a use is continuous depends upon the nature and character of the right claimed. *Id.* Accordingly, a pathway to a summer cottage is considered to be in continuous use if it is used merely seasonally. *Id.* Interference with an individual's use of the land by the owner of the land breaks the continuity and so defeats the claimed prescriptive easement. 1 Cameron, Michigan Real Property Law (2d ed), § 6.14, p 207; 25 Am Jur 2d, Easements and Licenses in Real Property, § 68, pp 636-637. In other words, when the potential servient owner, by either threats or physical barriers,

* Circuit judge, sitting on the Court of Appeals by assignment.

succeeds in causing a discontinuance of the use, no matter how brief, the running of the prescriptive period is stopped. 4 Powell on Real Property, § 34.10, p 34-138.

Although plaintiffs testified they used the graveled road without interference for thirty-one years, the court found defendants' testimony credible with regard to whether Roger Chaterdon blocked the graveled road and, thereby, twice interrupted plaintiffs' use of the road. This Court does not assess credibility anew. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Accordingly, accepting defendants' testimony as true, Chaterdon first blocked plaintiffs' use of the graveled road in 1976, twelve years after plaintiffs first began using the road in 1964. He next blocked plaintiffs' use of the graveled road in 1984, eight years later. Finally, defendants blocked plaintiffs' use of the graveled road on May 11, 1995, eleven years later. On this record, the court did not clearly err when it determined that plaintiffs failed to establish uninterrupted use for the requisite fifteen-year period. MCR 2.613(C). Moreover, because plaintiffs failed to show uninterrupted use for the requisite period, the court correctly determined that plaintiffs had failed to establish their right to a prescriptive easement in the graveled road. *Goodall*, *supra* at 645.

Because our resolution of the first issue is dispositive, we decline to address plaintiffs' remaining issue.

Affirmed.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks