STATE OF MICHIGAN

COURT OF APPEALS

LEONARD E. WANZER and EMILY S. WANZER,

Plaintiffs-Appellants,

v

JUANITA GULLEY GRANT and CHRISTOPHER A. GULLEY,

Defendants-Appellees.

UNPUBLISHED
May 13, 2003

No. 237057
Van Buren Circuit Court
LC No. 99-046034-CH

TONY THOMAS and GINA THOMAS,

Plaintiffs-Appellants,

v

JUANITA GULLEY GRANT and CHRISTOPHER A. GULLEY,

Defendants-Appellees.

No. 237058
Van Buren Circuit Court
LC No. 99-046035-CH

Before: Saad, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right separate judgments of no cause of action entered under MCR 2.504(B)(2). We affirm.

These cases involve claims to quiet title to real property. Plaintiffs Wanzer own lot 17 and plaintiffs Thomas own lot 18 in the Trails End Park subdivision in Paw Paw Township in Van Buren County. A public road called Douglas Drive separates plaintiffs' lots from Eagle Lake. To the east of plaintiffs' property, between Douglas Drive and Eagle Lake, there is an area of beach property that is the property in dispute. At some point in 1992, defendants received and recorded a quitclaim deed to the beach property. At trial, plaintiffs argued that they had a prescriptive easement to use the beach property or that they had ownership rights to the beach property because their lots were riparian land under *Croucher v Wooster,* 271 Mich 337; 260

NW 739 (1935). The trial court disagreed and after trial entered separate judgments of no cause of action.

Actions to quiet title are equitable, and this Court reviews de novo a trial court's ruling regarding such an action. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). We review the trial court's factual findings for clear error. *Id.*

Plaintiffs argue that the trial court erred in holding that they did not have an easement by prescription to use the beach property located east of their respective lots between Douglas Drive and Eagle Lake. "An easement is a right to use the land of another for a specific purpose." *Id.* "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." *Id.* at 258-259. "A party may 'tack' on the possessory periods of predecessors in interest to achieve this fifteen-year period by showing privity of estate." *Id.* at 259. The party claiming a prescriptive easement has the burden of proving that the use was of such character and continued for such length of time as to create an easement by prescription. *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000).

In this case, plaintiffs acquired title to their respective lots in 1999. Therefore, the only way plaintiffs can achieve the fifteen years necessary to obtain a prescriptive easement to use the disputed property is to tack on the possessory periods of their predecessors in title. Even assuming that plaintiffs' predecessors have satisfied the elements of a prescriptive easement, however, plaintiffs must demonstrate privity before they can be permitted to tack their predecessors' possession. We conclude that under the facts of this case, plaintiffs cannot demonstrate privity and therefore cannot tack the possession of their predecessors in interest.

Privity can be shown by "including a description of the disputed acreage in the deed" or by "an actual transfer or conveyance of possession of the disputed acreage by parol statements made at the time of conveyance." *Killips, supra* at 259. In this case, plaintiffs' deeds mention lots 17 and 18, but neither deed expressly mentions or describes the disputed beach property. In addition, there was no evidence at trial or in the lower court record regarding any oral statements made at the time lots 17 and 18 were conveyed to plaintiffs. Therefore, because plaintiffs are unable to demonstrate privity, they cannot tack the possessory periods of their predecessors in interest. Without tacking, plaintiffs cannot achieve the fifteen-year period required to obtain a prescriptive easement. Therefore, the trial court did not err in dismissing plaintiffs' claims that they have an easement by prescription to use the beach property.

Plaintiffs also argue that the trial court erred in ruling that plaintiffs lots were not riparian land. Again, we disagree. Riparian land is '"a parcel of land which includes therein a part of or is bounded by a natural water course."' *Little v Kin*, 249 Mich App 502, 508; 644 NW2d 375 (2002), lv granted 467 Mich 898-899 (2002), quoting *Thompson v Enz*, 379 Mich 667, 677; 154 NW2d 473 (1967) (Kavanagh, J.). People who own riparian land possess certain exclusive rights, such as the right to erect and maintain docks along the lakeshore and the right to anchor boats permanently off the lakeshore. *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985). "The general rule is that, in order for land to be riparian, it must border on the water." *Williamson v Crawford*, 108 Mich App 460, 463; 310 NW2d 419 (1981). An exception to this rule provides that a lot separated from a lakeshore by a highway that is contiguous to the lakeshore is also riparian land. *Croucher, supra* at 344-345; *Dobie v Morrison*, 227 Mich App

536, 538; 575 NW2d 817 (1998). However, a lot that is separated from the lakeshore by a highway is not riparian if there is "substantial and valuable land intervening between" the highway and the lakeshore. *Croucher, supra* at 344.

According to plaintiffs, their land is riparian because at the time the lots were originally conveyed by the platters of the subdivision, there was no appreciable land between Douglas Drive and Eagle Lake. The plat of the Trails End Park subdivision was recorded in 1924. There was no testimony at trial regarding the amount of beach property in existence at the time the subdivision plat was recorded. However, copies of the plat reveal that Douglas Drive was twenty feet wide in 1924. Although the plat does not specifically state the distance between Douglas Drive and Eagle Lake, the plat clearly shows that the beach property east of Lots 17 and 18 between Douglas Drive and Eagle Lake was wider than Douglas Drive at the time the subdivision was platted. Our examination of the plat reveals that the lakeshore was not contiguous to Douglas Drive because twenty feet of beach certainly is "substantial and valuable land." *Id.* Based on our examination of the plat, the trial court's finding of fact that the beach property was twenty to twenty-five feet deep was not clearly erroneous. Moreover, because the beach property east of lots 17 and 18 between Douglas Drive and Eagle Lake was substantial and valuable, lots 17 and 18 are not riparian land. The trial court therefore did not err in concluding that plaintiffs' land was not riparian and that plaintiffs did not own the beach property east of their respective lots between Douglas Drive and Eagle Lake.

Affirmed.

/s/ Henry William Saad
/s/ Patrick M. Meter
/s/ Donald S. Owens