

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0159, William E. Evans & a. v. Stonefence Acquisitions, LLC & a., the court on April 21, 2006, issued the following order:

The respondents, Stonefence Acquisitions, LLC and Charron Industries, appeal the trial court's order in the quiet title action brought by the petitioners, William E. and Marguerite J. Evans, Richard S. and Deborah E. Lumsden, Dianne Vercammen, Edward F. and Donna M. Ricarte, Anthony A. DiCalogero, Brian Beaupre, Rose B. Cardarelli, James R. and Pamela L. Cott, Andrew J. and Kathryn A. Giovanni, Josephine Graney, individually and as trustee of Centenary Avenue Realty Trust, Lynda A. Kramer, Ruth Ann Morrissey, Salvatore J. and Ann-Marie Piccolo, Steven Ciano, Walter E. Regan, Robert D. and Shirley DeCotis and Edward M. Morrissey. We affirm.

The respondents first argue that the trial court erroneously found that the petitioners had a right to use Little Beach because of a private prescriptive easement. Essentially, the respondents assert that the evidence was insufficient to support the trial court's finding that the petitioners had a private prescriptive easement. We will not overturn the factual findings of the trial court, particularly when aided by a view of the property in question, when they are supported by the evidence. Arcidi v. Town of Rye, 150 N.H. 694, 702 (2004).

To establish a prescriptive easement, the petitioners had to prove, by the balance of the probabilities, that they used Little Beach for twenty years and that their use was "adverse, continuous, and uninterrupted . . . in such a manner as to give notice to [the respondents] that an adverse claim was being made to it." Sandford v. Town of Wolfeboro, 143 N.H. 481, 484 (1999) (quotation omitted). Contrary to the respondents' assertions, the petitioners did not have to show that they exclusively possessed the property in question. See Seward v. Loranger, 130 N.H. 570, 576-77 (1988). While exclusivity is one of the requirements of adverse possession, it is not required for a prescriptive easement. See id.

Having reviewed the record, we conclude that it supports the trial court's finding that the petitioners used Little Beach in a continuous and uninterrupted manner from at least 1975 through 2003. Although some of the individual petitioners used the property for fewer than the requisite twenty years, there was sufficient evidence to support a finding that the entire neighborhood used the Little Beach area for more than twenty years, which would include the predecessors in title of those petitioners who did not personally use the property for this amount of time.

The evidence also supports the trial court's findings that the use of the Little Beach area was sufficiently open to give notice to the world that the petitioners were using the property. The evidence likewise supports the trial court's finding that the petitioners' use of the property was adverse to the respondents' rights to the land. Further, we disagree with the respondents that the trial court's ruling was inconsistent with the petitioners' pleading. As the petitioners note, their pleading sought both a private and a public prescriptive easement.

The respondents next assert that the trial court erroneously denied their motion for nonsuit with respect to petitioners Salvatore J. Piccolo, Shirley DeCotis and Robert DeCotis. The respondents concede that the trial court correctly ruled that these petitioners were not required to be present at trial. See Carveth v. Latham, 110 N.H. 232, 233 (1970). They argue, however, that "the trial court erred in finding that there was sufficient testimony by way of other testimony to find that [these petitioners] had the same rights to [the Little Beach area] as the other [petitioners]." We conclude that the trial court did not err in this respect.

Finally, the respondents contend that the trial court erroneously found an implied easement to use Epworth Avenue and Lakeworth Avenue. "[A]n [implied] easement is presumed to exist if during unity of title the owner imposes an apparently permanent and obvious servitude on one tenement in favor of another, which at the time of severance of title is in use and is reasonably necessary for the fair enjoyment of the tenement to which such use is beneficial." Blaisdell v. Raab, 132 N.H. 711, 716 (1990) (quotation and ellipsis omitted). "The law is well settled that an easement by implication will not be found merely because it would be convenient to have the grant. An easement by implication arises only because the parties so agreed." Id. at 716-17 (citations omitted).

Whether there is an implied easement was a question of fact for the trial court; we will not disturb its finding if a reasonable person could have reached the same conclusion based upon the evidence presented. Id. at 717. Having reviewed the evidence presented, we conclude that the trial court reasonably found that the petitioners had an implied easement to use Epworth and Lakeworth Avenues. See Regan v. Hovanian, 115 N.H. 40, 42-43 (1975). The evidence supports the trial court's determination that all four elements of the Raab test for an implied easement were met in this case. We are unpersuaded by the respondents' remaining arguments that the trial court committed various errors of law in finding an implied easement.

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.