

NORTH CAROLINA COURT OF APPEALS

Department of Transportation v. Mountain Villages, LLC

2022-NCCOA-709 · No. COA21-684 · Decided November 1, 2022

SUMMARY

The North Carolina Court of Appeals affirmed an interlocutory order in a condemnation action determining that Mountain Villages, LLC failed to establish a prescriptive easement over a parking island owned by another party. The court held that the trial court’s findings were supported by competent evidence and that Mountain Villages did not prove adverse, hostile, or nonpermissive use for the required prescriptive period. The court also upheld the exclusion or limited consideration of additional evidence, including an affidavit from a prior property owner.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| COURT                 | North Carolina Court of Appeals                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Collins, Judge; Arrowood, Judge; Gore, Judge                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| JURISDICTION          | North Carolina                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| DECIDED               | November 1, 2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | COA21-684                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Interlocutory appeal by Mountain Villages, LLC, from an order entered after a condemnation action section 108 hearing determining issues other than damages, including that Mountain Villages failed to establish a prescriptive easement over the Parking Island.                                                                                                                                                                                                                                |
| STANDARD OF REVIEW    | For issues decided under N.C. Gen. Stat. § 136-108 by a judge without a jury, the appellate court reviews whether competent evidence supports the findings of fact and whether the conclusions of law are proper in light of those facts. Unchallenged findings are binding on appeal, and conclusions of law are reviewed de novo. The trial court's ruling on affidavit admissibility is reviewed for abuse of discretion, with a requirement that the appellant also show resulting prejudice. |
| PRECEDENTIAL VALUE    | Published North Carolina Court of Appeals opinion; precedential unless modified or overruled.                                                                                                                                                                                                                                                                                                                                                                                                     |
| PARTIES               | Mountain Villages, LLC v. Department of Transportation                                                                                                                                                                                                                                                                                                                                                                                                                                            |

## TOPICS

prescriptive easements

eminent domain

appellate jurisdiction

standard of review

appellate procedure

## PRACTICE AREAS

real estate

eminent domain

property litigation

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether competent evidence supported the trial court's challenged findings of fact concerning Mountain Villages' notice of ownership, use of the Parking Island, and signage.
2. Whether the trial court erred by failing to consider the Department of Transportation's estimated compensation deposit, a late-filed affidavit, and other evidence.
3. Whether the findings of fact supported the conclusion that Mountain Villages failed to establish a prescriptive easement.
4. Whether the Department of Transportation was judicially estopped from denying that Mountain Villages possessed a prescriptive easement because its condemnation pleadings and compensation estimate included the easement under an extraordinary assumption.
5. Whether the interlocutory order was immediately appealable because it affected a substantial right concerning title or the area taken in the condemnation action.

## HOLDINGS

1. An interlocutory order determining title or the area taken in a condemnation action affects a substantial right and is immediately appealable under N.C. Gen. Stat. §§ 1-277(a) and 7A-27(b)(3)(a) and (b).
2. Mountain Villages failed to meet its burden of proving a prescriptive easement because it did not establish that its use was adverse, hostile, or under a claim of right; open and notorious such that the true owner had notice; and continuous and uninterrupted for at least twenty years.
3. The challenged findings of fact were supported by competent evidence and were binding on appeal; the trial court was not required to recite every item of evidence or make findings on evidence it did not credit.
4. The Department of Transportation's deposit of an estimated amount of just compensation was not evidence establishing Mountain Villages' title or interest in the Parking Island and did not bind the Department to the estimate.
5. The exclusion of the affidavit executed one day before the section 108 hearing was not an abuse of discretion, and Mountain Villages also failed to show prejudice.
6. Judicial estoppel did not apply because the Department's estimated compensation, which included the claimed easement under an extraordinary assumption, was not clearly inconsistent with its position that Mountain Villages did not own a prescriptive easement.

## KEY QUOTATIONS

*“To establish an easement by prescription, a claimant must prove that “(1) the use is adverse, hostile or under claim of right; (2) the use has been open and notorious such that the true owner had notice of the claim; (3) the use has been continuous and uninterrupted for at least twenty years; and (4) there is substantial identity of the easement claimed through the prescriptive period.”” (§ 37)*

*“Prescriptive easements are not favored in the law, and the burden is therefore on the claiming party to prove every essential element thereof.” (§ 37)*

*“First, a party’s subsequent position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position in a later proceeding might pose a threat to judicial integrity by leading to inconsistent court determinations or the perception that either the first or second court was misled. Third, courts consider whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.” (§ 42)*

## FACTUAL BACKGROUND

The Department of Transportation condemned part of commercial property owned by Mountain Villages, LLC, including property used by Mountain Villages and its customers for parking. The Parking Island was directly across from Mountain Villages' property but was actually owned by Samuel and Michelle Hopkins. Mountain Villages claimed a prescriptive easement based on longstanding use, while the evidence showed that the public also used the area, no recorded easement or conveyance existed, and there was insufficient evidence that the use was hostile, under a claim of right, or nonpermissive for at least twenty years.

## PROCEDURAL HISTORY

The Department of Transportation initiated a condemnation action in Jackson County Superior Court in 2015 and deposited an estimated amount of just compensation. After the filing of a plat, Mountain Villages sought a hearing under N.C. Gen. Stat. § 136-108 to determine issues other than damages, including its claimed prescriptive easement and related inverse-condemnation claims. The superior court concluded that Mountain Villages failed to establish a prescriptive easement and reserved just compensation for determination by a jury. The Court of Appeals accepted the interlocutory appeal and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- N.C. Dep't of Transp. v. Stagecoach Vill., 360 N.C. 46, 619 S.E.2d 495 (2005)
- Anthony Marano Co. v. Jones, 165 N.C. App. 266, 598 S.E.2d 393 (2004)
- Lab. Corp. of Am. Holdings v. Caccuro, 212 N.C. App. 564, 712 S.E.2d 696 (2011)
- Stikeleather Realty & Invs. Co. v. Broadway, 241 N.C. App. 152, 772 S.E.2d 107 (2015)
- Supplee v. Miller-Motte Bus. Coll., Inc., 239 N.C. App. 208, 768 S.E.2d 582 (2015)

- Tolbert v. Hiatt, 95 N.C. App. 380, 382 S.E.2d 453 (1989)
- Long v. Long, 71 N.C. App. 405, 322 S.E.2d 427 (1984)
- Yadkin Valley Land Co., L.L.C. v. Baker, 141 N.C. App. 636, 539 S.E.2d 685 (2000)
- Dickinson v. Pake, 284 N.C. 576, 201 S.E.2d 897 (1974)
- Whitacre P'ship v. Biosignia, Inc., 358 N.C. 1, 591 S.E.2d 870 (2004)
- Old Republic Nat'l Title Ins. Co. v. Hartford Fire Ins. Co., 369 N.C. 500, 797 S.E.2d 264 (2016)
- Causey v. Cannon Surety, LLC, 269 N.C. App. 134, 837 S.E.2d 414 (2020)

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