

COURT OF APPEALS OF OHIO, FIFTH APPELLATE DISTRICT, HOLMES
COUNTY

Miller v. Miller

2012-Ohio-4361 (Ohio Ct. App. 5th Dist. 2012) · No. 11CA025 · Decided September 20, 2012

SUMMARY

The Fifth District Court of Appeals considered a dispute over whether roadways in the Lake O'Dell subdivision were dedicated public roads and whether the defendants could claim adverse possession. The court affirmed the determination that the roadways were public and held that adverse possession could not be asserted against them. It reversed the order prohibiting the parties from encumbering the roadway and struck language concerning Washington Township's maintenance and improvement responsibilities.

CASE DETAILS

COURT	Court of Appeals of Ohio, Fifth Appellate District, Holmes County
WRITING FOR THE COURT	Sheila G. Farmer, P.J.; John W. Wise, J.; Julie A. Edwards, J.
JURISDICTION	Ohio
DECIDED	September 20, 2012
DOCKET	11CA025
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed from an order granting plaintiffs' motion for partial summary judgment concerning the public status of two subdivision roadways, dismissing defendants' adverse-possession claim, and restricting encumbrances on the roadways. Plaintiffs cross-appealed from additional language concerning the duties of nonparty Washington Township trustees.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with the appellate court applying the same standard and considering the same evidence as the trial court. Under Civ.R. 56, summary judgment is proper when no genuine issue of material fact remains, the movant is entitled to judgment as a matter of law, and reasonable minds can reach only a conclusion adverse to the nonmoving party when the evidence is viewed most strongly in that party's favor.

PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential under applicable Ohio appellate authority.
PARTIES	Dwight Miller, Sue Ann Miller v. Susan R. Miller, James Miller

TOPICS

real estate adverse possession summary judgment declaratory judgment appellate procedure

PRACTICE AREAS

Real estate Civil procedure Appellate procedure Remedies

QUESTIONS PRESENTED

1. Whether the trial court properly granted partial summary judgment declaring Lakeview Drive and Park Driveway dedicated public roads.
2. Whether defendants could assert adverse possession over the dedicated and re-platted roadways.
3. Whether the trial court properly ordered that neither party could encumber the roadway.
4. Whether the trial court improperly included language concerning Washington Township trustees' duties to improve or maintain the public roadways when the township was not a party.

HOLDINGS

1. The 1923 plat, its recording and acceptance by the Holmes County Commissioners, and the applicable law in effect at the time were sufficient to establish Lakeview Drive and Park Driveway as public roads.
2. A party cannot acquire a dedicated and re-platted public roadway by adverse possession.
3. The order stating that neither party could encumber the roadway was superfluous and outside the scope of the relief requested, and therefore had to be reversed.
4. Language purporting to bind Washington Township or relieve its trustees of responsibility was unlawful because the township trustees were not parties to the action and had to be stricken.

KEY QUOTATIONS

“Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made.” (§ 13)

“I hereby certify that I am the Proprietor and Owner of the Sub-Division shown on this Plat and the grounds shown hereon as roads, drives or streetes [sic] are hereby dedicated for public use.” (§ 18)

“One cannot make a claim of adverse possession on a dedicated and re-platted roadway.” (§ 34)

FACTUAL BACKGROUND

The parties owned lots in Lakeview Park in the Lake O'Dell subdivision in Washington Township, Ohio. The subdivision contained Lakeview Drive and Park Driveway, and the parties disputed the use and legal status of those roadways. The original 1923 plat stated that the roads, drives, and streets were dedicated for public use, and the dedication was approved and accepted by the Holmes County Commissioners in 1929. A 1989 re-plat supplied an updated legal description, and defendants' deeds referenced public highways or easements of record.

PROCEDURAL HISTORY

Plaintiffs filed an action seeking declaratory relief, a permanent injunction, an easement by prescription, and trespass damages concerning Lakeview Drive and Park Driveway. The trial court granted plaintiffs' motion for partial summary judgment, determined that the roadways were dedicated public roads, rejected defendants' adverse-possession claim, and stated that neither party could encumber the roadway. Plaintiffs then dismissed their remaining claims. The appellate court affirmed the public-road and adverse-possession rulings, reversed the restriction against encumbering the roadway, and struck language addressing Washington Township's responsibilities.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment was affirmed in part and reversed in part. The language prohibiting either party from encumbering the roadway and the language concerning Washington Township trustees' improvement, construction, and maintenance responsibilities were stricken. The judgment did not otherwise specify additional remand proceedings.

CASES CITED

- State ex rel. Zimmerman v. Tompkins, 75 Ohio St.3d 447, 448, 1996-Ohio-211
- State ex rel. Parsons v. Fleming, 68 Ohio St.3d 509, 511, 628 N.E.2d 1377 (1994)
- Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977)
- Smiddy v. The Wedding Party, Inc., 30 Ohio St.3d 35 (1987)
- State ex rel. Schmardebeck v. Bay Township Board of Trustees, 1993 Ohio App. LEXIS 6440
- Krzewinski v. Eaton Homes, Inc., 108 Ohio App. 175 (1958)
- Robinson v. Swing, 70 Ohio App. 83, 86-89 (1939)
- Carrico v. Drake Construction, 2006-Ohio-3138
- Dolan v. Dolan, 2002-Ohio-2440
- Cincinnati Insurance Company v. Colelli & Associates, Inc. (June 17, 1998), Wayne App. No. 97CA0042
- Heddleston v. Hendricks, 52 Ohio St. 460 (1895)
- Law v. Lake Metroparks, 2006-Ohio-7010

