

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Connolly v Trabue 4/10/12

Real Property; Prescriptive Easement; Laches

In 1995, Plaintiffs took title to two parcels of real property, near Garberville, in Humboldt County. In 2003, former defendant Dobbs agreed to purchase most of one lot, although plaintiffs would keep title to a portion of that lot, and a lot line adjustment would be accomplished. Plaintiffs alleged the lot line adjustment was specifically for the benefit of the real property they retained. In December 2003, plaintiffs purchased an adjacent parcel from the Cramers. That transaction, and the transaction with Dobbs closed, but the grant deed from plaintiffs to Dobbs, drafted by Dobbs, did not specify that a portion should be excepted, to be retained by plaintiffs. In 2004, Dobbs transferred his property to Jacobsen, who in 2008, transferred the property to defendant Trabue. Plaintiffs alleged both the grantees and the real estate agents were fully aware of the lot line adjustment, but none of the involved deeds conformed to the agreement between Dobbs and plaintiffs for the lot line adjustment.

In 1998, the plaintiffs constructed a fence which enclosed not only their property, but also the portion of the disputed lot which included the part which would become the subject of the proposed lot line adjustment. Unfortunately, neither Dobbs nor his real estate agents drafted the deed consistent with that agreement. In December 2007, plaintiffs and defendant Trabue met and discussed the Connollys' interest in the disputed portion. Plaintiffs informed defendant that they had maintained a claim to the land before it was acquired by defendant. In fact, plaintiffs had made improvements, including the fence, since 1995. Plaintiffs were never given permission, nor were they interrupted in their use. Plaintiffs file their action in 2009 to quiet title and establish their right to an easement over the disputed portion. Defendant filed a cross-complaint to halt the

use.

In December 2010, the trial court found the plaintiffs established their right to an easement, but their claim was barred by laches. In its judgment, the court stated that despite knowledge that Dobbs breached the contract of sale, the Connollys sat on their rights for an appreciable delay. The trial court also found that defendants would prevail on their quiet title action. Plaintiffs filed a motion to set aside the judgment, and plaintiffs timely appealed.

The First Appellate District Court, Division Two, began its opinion by noting its agreement with the trial court that the plaintiffs had acquired an easement by prescription over the disputed portion of the lot. [A prescriptive easement in property may be acquired by open, notorious, continuous, adverse use, under claim of right, for a period of five years.](#) If there is substantial evidence to support the trial court's finding of the existence of a prescriptive easement, the determination is not open to review on appeal. (*Applegate v Ota* (1983) 146 Cal.App.3d 702)

The trial court concluded the plaintiffs failed to bring their lawsuit in a timely fashion, sitting on their rights for an appreciable delay. The Justices turned to a key authority, *Marriage v Keener* (1994) 26 Cal.App.4th 186, in which the trial court dismissed a quiet title action similar to the Connollys' claim. In that opinion, the Third District stated that [laches requires a showing of unreasonable delay on the part of the plaintiff in bringing the action, which may show abandonment or waiver of a right, or the acquiescence by the plaintiff in the defendant's fault. The interrelated nature of laches and adverse possession creates an inherent incongruity to finding laches a defensive bar to a claim of adverse possession. Title gained by adverse possession rests upon the laches of the real owner who fails to assert his title against the one claiming adversely.](#) (*Berger v Horsfield* (1919) 188 A.D. 649)

[Laches is an implied waiver resulting from knowing acquiescence in existing conditions and an inexcusable delay in asserting a right which results in prejudice to the adverse party.](#) In other words, laches addresses delay in the pursuit of a right when a party must assert that right in order to benefit from it. Fee simple title vests in the adverse possessor by operation of law at the moment

the requisite conditions for adverse possession have been established for the statutory period. The adverse possessor is not required to take any further steps to acquire title once those conditions have been met. The statute of limitations runs against the title holder, not the adverse claimant. [There was no significant delay because the adverse possessors were under no obligation to take further action once they had acquired title by operation of law.](#) California law does not require a plaintiff to bring an action to perfect his or her claim of adverse possession. Rather, it is the record owner—not the intruder—who must bring an action within five years after adverse possession commences in order to recover the property. (CCP section 318) (*Keener*, at p. 190)

Here, the Connollys had, since 1998, been openly using some of the lot for their ranching activities, and had also fenced in that portion so as to effectively combine it with their other property. The First DCA also noted that this is an action in law, not equity, and it is well-established, in both California and generally, that [laches applies to equitable actions, not actions at law.](#) (See, e.g., *Abbott v City of Los Angeles* (1958) 50 Cal. 438) [An action to determine the existence of an easement by prescription, whether via a claim for quiet title or a request for declaratory relief, is an action at law and not equity.](#) (*Arciero Ranches v Meza* (1993) 17 Cal.App.4th 114)

Also, the Justices noted the record contained no substantial evidence as to when the plaintiffs discovered that their agreement with Dobbs had not been carried out. The evidence shows that the plaintiffs have used the property since at least 1998 and possibly as early as 1995. They did not agree with Dobbs to enter into a lot line adjustment until 2003. They did not learn of the failure of Dobbs to properly note the easement in either their deed with him or his deed with Jacobsen until late 2007. That is just before the defendant took title to the affected property. At that point, plaintiffs and defendant had a meeting about the disputed section.

The plaintiffs filed their suit in September 2008, just nine months later, a period which does not satisfy any test for laches, assuming it even applies. The doctrine of laches requires a showing of prejudice to the party allegedly affected. (*Lam v Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29) The Trabues cannot demonstrate any prejudice, nor is there any evidence in the

record to support such a claim.

The judgment in favor of the defendant on the declaratory relief, quiet title, and other claims brought against him by plaintiffs is reversed. The matter is remanded to the trial court with directions to enter judgment in favor of the Connollys in a manner consistent with the opinion. Costs on appeal are awarded to the Connollys.

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