Rel: March 29, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0481

Phoenix East Association, Inc.

v.

Perdido Dunes Tower Condominium Association, Inc., a Master Association

Appeal from Baldwin Circuit Court
(CV-15-900468)

MITCHELL, Justice.

This appeal arises from a property dispute between neighboring condominium associations on the Gulf Coast. Perdido Dunes Tower

Condominium Association, Inc., a Master Association ("Perdido Dunes"), sued Phoenix East Association, Inc. ("Phoenix East"), to quiet title to a two-and-a-half-foot-wide strip of land between their properties. Perdido Dunes alleged in the complaint that it had acquired title to the disputed property through adverse possession. The Baldwin Circuit Court issued a judgment granting Perdido Dunes a prescriptive easement over the disputed property. Phoenix East appealed. We affirm.

Facts and Procedural History

In 1984, Perdido Dunes' predecessor, Perdido Dunes Association, Inc. ("PDAI"), built a two-story condominium complex on beachfront property in Baldwin County. As part of that construction, PDAI also installed electrical power poles and sewer lines on part of what it believed to be the eastern edge of its property. In the mid-1990s, Phoenix East purchased the plot of land immediately east of PDAI's property and built a 14-story condominium complex. When Phoenix East had its property surveyed, the results showed that some of PDAI's power poles and sewer lines were actually on Phoenix East's property, about two and a half feet beyond PDAI's property line. What transpired between the owners of the two properties after that survey was completed is disputed, but Phoenix

East's developer decided to build a retaining wall approximately two feet back from the surveyed property line, which enabled PDAI to continue using the power poles and sewer lines. For the next decade, PDAI maintained the power poles and sewer lines, paved the area around the utilities, and used the area for parking for its residents, all without any objection to or interference from Phoenix East.

A year after a hurricane destroyed PDAI's condominium building in 2004, PDAI dissolved its association and reformed as Perdido Dunes, which decided to build a much larger condominium tower on the property. Those plans raised the ire of Phoenix East condominium-unit owners, who believed the tower would obstruct their view of the shore. Since then, the condominium associations have engaged in extensive litigation.[1]

One of those disputes revolved around ownership of the strip of land that Perdido Dunes and its predecessor had been using for its utilities and parking. Perdido Dunes alleged that it had acquired the disputed property by adverse possession, but Phoenix East said that Perdido

[1]See Phoenix East Ass'n v. Perdido Dunes Tower, LLC, 295 So. 3d 1016 (Ala. 2019).

Dunes had only used the property with Phoenix East's permission. To resolve that issue, Perdido Dunes filed a quiet-title suit against Phoenix East in 2015.

The Baldwin Circuit Court held a bench trial. After hearing evidence from both sides ore tenus, the trial court entered a judgment holding that Perdido Dunes had acquired a prescriptive easement to "the entire disputed area." Phoenix East filed a motion for clarification, asking the court to specify whether the prescriptive easement included rights to the subterranean portion of the disputed property. The trial court denied that motion. Phoenix East appealed.

Standard of Review

When a trial court hears evidence ore tenus and "'resolves conflicting questions of fact in favor of one of the parties, its findings will not be disturbed on appeal unless they were clearly erroneous or manifestly unjust.'" Lilly v. Palmer, 495 So. 2d 522, 525 (Ala. 1986) (quoting Scarbrough v. Smith, 445 So. 2d 553, 555 (Ala. 1984)). "The presumption of correctness is particularly strong in adverse possession cases, because it is difficult for an appellate court to review the evidence in such cases." Rice v. McGinnis, 653 So. 2d 950, 950 (Ala. 1995).

Analysis

Phoenix East argues that the trial court erred for several reasons. First, it says that the Alabama Uniform Condominium Act ("the Condo Act"), § 35-8A-101, et seq., Ala. Code 1975, prohibited the trial court from awarding Perdido Dunes a prescriptive easement on Phoenix East's property. Second, Phoenix East contends that Perdido Dunes did not adequately prove adverse use or claim of right, which are two elements of a prescriptive easement. Finally, Phoenix East argues that the trial court's judgment is void because, in its complaint, Perdido Dunes did not name the Phoenix East unit owners individually, which Phoenix East says was required under Rule 19, Ala. R. Civ. P. We address each argument in turn.

A. The Condo Act Does Not Prohibit a Prescriptive Easement on Phoenix East's Property

Phoenix East first argues that the Condo Act categorically bars judicially imposed prescriptive easements. Phoenix East points to the language of § 35-8A-207(e), Ala. Code 1975, which says that "common elements" of condominiums "are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements

made without the unit to which that interest is allocated, is void." According to Phoenix East, the disputed property is part of its "common elements" and, because a prescriptive easement is an "encumbrance," the trial court's judgment granting that easement "partition[ed]" the Phoenix East unit owners' property in violation of the statute.

Phoenix East misreads the statute. Subsection (e) does not categorically prohibit encumbrances on common elements but instead prevents only encumbrances that "partition" common elements by untethering a unit owner's interest in the common element from the owner's interest in the unit itself. That prohibition has the effect of barring individual unit owners from, for example, selling their interest in a communal pool or their space in a condo parking lot unless they simultaneously sell "the unit to which that common element interest is allocated," Commissioner's Commentary to § 35-8A-207, cmt. 6; but it does not bar encumbrances that keep the link between a common element and each unit intact. The easement awarded to Perdido Dunes is precisely the sort of encumbrance that does not "partition" common elements from their units -- because each unit owner's proportional

interest in the common elements is unaffected by the easement. The easement therefore falls outside the scope of subsection (e).[2]

B. There Was Sufficient Evidence of a Prescriptive Easement

Next, Phoenix East argues that the trial court erred in awarding a prescriptive easement to Perdido Dunes because, it says, Perdido Dunes did not adequately prove adverse use and claim of right. See Bull v. Salsman, 435 So. 2d 27, 29 (Ala. 1983) (explaining that, "[t]o establish an easement by prescription, the claimant must use the premises over which the easement is claimed for a period of twenty years or more, adversely to the owner of the premises, under claim of right, exclusive, continuous, and uninterrupted, with actual or presumptive knowledge of the owner").

---

[2]Dorsett v. Singla, 195 So. 3d 299 (Ala. Civ. App. 2015), which Phoenix East cites, is distinguishable. In Dorsett, a condominium-unit owner attempted to sever his interests in a parking space and a storage space from his interest in the unit and convey them to a third party. As the Court of Civil Appeals held, that attempted conveyance is precisely the sort of partitioning of the common elements that § 35-8A-207(e) anticipates and proscribes.

Village of Doral Place Ass'n v. RU4 Real, Inc., 22 So. 3d 627 (Fla. Dist. Ct. App. 2009), which invalidated a tax sale of a condominium pool, is similarly unhelpful to Phoenix East. Decisions by courts of our sister states are not binding on our Court. Simcala, Inc. v. American Coal Trade, Inc., 821 So. 2d 197, 202 (Ala. 2001). And while they may be persuasive, see id., Doral is not because it relies on inapplicable statutes.

Because there was sufficient evidence from which the trial court could conclude that Perdido Dunes had met its burden, we reject both arguments.

1. Adverse Use

First, Phoenix East contends that Perdido Dunes failed to overcome the presumption that its use of the disputed property was permissive. See Ford v. Alabama By-Prods. Corp., 392 So. 2d 217, 219 (Ala. 1980) (noting that "[t]here is a presumption that the user is permissive rather than adverse unless shown otherwise"). Phoenix East asserts that Perdido Dunes "did not present any evidence that it barred Phoenix East" from accessing the disputed property and that Perdido Dunes failed to repudiate "'permissive use as to afford notice of an adverse claim.'" Phoenix East's brief at 20-21 (citation omitted).

But adverse possession does not require Perdido Dunes to demonstrate that it barred access to the disputed property. Although barring the record owner from accessing his property may evince an adverse intent, it is not the sole touchstone. Adverse use simply means that a claimant "assert[s] dominion and control over the disputed property" by using the property without permission from the record

owner. Strickland v. Markos, 566 So. 2d 229, 233 (Ala. 1990) (citing Reynolds v. Rutland, 365 So. 2d 656 (Ala. 1978)).

Perdido Dunes presented ample evidence that its use of the disputed property was not permissive. Perdido Dunes installed and maintained power poles and sewage lines on the property; it paved the property and cleared storm debris from it; and its residents used the property for parking. And while Tommy Robinson, one of Phoenix East's developers, testified that he gave permission to Perdido Dunes' predecessor to use the disputed property in the 1990s, there was other evidence admitted at trial -- including Robinson's own prior statements -- that contradicted that testimony.[3]

After hearing this evidence, the trial court "resolve[d] conflicting questions of fact" in favor of Perdido Dunes, Donaldson v. Jaguar Co., 516 So. 2d 619, 620 (Ala. 1987), and found that it had rebutted the presumption that its use of the disputed property was permissive. Fisher

[3]In an earlier deposition, Robinson testified that he did not remember ever giving anyone at Perdido Dunes permission when he discovered Perdido Dunes was using Phoenix East's property in the 1990s. Additionally, several Perdido Dunes condominium unit owners testified at trial that Phoenix East had never given them permission to use the disputed property.

v. Higgenbotham, 406 So. 2d 888 (Ala. 1981). Because there was credible evidence to support that determination, we will not disturb it on appeal. See Mims v. Mims, 368 So. 2d 854, 855 (Ala. 1979) (explaining that "[w]here conflicting testimony is taken ore tenus … the findings of the court on the facts … will not be disturbed on appeal unless plainly and palpably wrong").

2. Claim of Right

Phoenix East next argues that Perdido Dunes did not meet its burden of showing that its use of the disputed property was "under [a] claim of right," Bull, 435 So. 2d at 29, for three reasons. First, Phoenix East contends that Perdido Dunes did not "act[] as if it had any rights" to the disputed property until 2015, which is too recent to meet the 20-year minimum requirement for prescriptive easements. Phoenix East's brief at 22. But "claim of right" does not have the narrow interpretation that Phoenix East seems to give it. Claiming a right in property does not require an adverse possessor to explicitly notify the record owner of that intent. Rather, "claim of right" simply means that an adverse possessor has "an intention to claim title" to the disputed property. Hess v. Rudder, 117 Ala. 525, 528, 23 So. 136, 136 (1898); accord Taylor v. Russell, 369

So. 2d 537, 542 (Ala. 1979) (noting that acts "which unmistakenly convey notice" to the record owners are sufficient to establish an adverse claim of ownership).

When we view "claim of right" correctly, Phoenix East's first argument -- that Perdido Dunes did not demonstrate any claim of right until 2015 -- is legally inaccurate. Perdido Dunes' predecessor began using the disputed property for parking and installed power poles and sewer lines sometimes in the 1980s, and Perdido Dunes continued those uses from 2005 onward. Those types of adverse actions sufficiently manifested an intent by Perdido Dunes to possess the property "under [a] claim of right." Bull, 435 So. 2d at 29.

Second, Phoenix East says that Perdido Dunes only offered evidence of individuals' claims of right but failed to prove any actions demonstrating the requisite "corporate" claim of right to the disputed property. See, e.g., Robertson v. Fincher, 348 So. 2d 466 (Ala. 1977). Relying on Robertson, Phoenix East contends that Perdido Dunes only proved individual acts of adverse use of the disputed property; Phoenix East therefore argues that the trial court could not have "'discern[ed] the intent of [Perdido Dunes] … as a whole'" to claim a right to the disputed

property. Phoenix East's brief at 23 (quoting Robertson, 348 So. 2d at 468). But rather than undermine the trial court's finding of a corporate claim of right, Robertson supports it. The Robertson Court held that a church had demonstrated a corporate claim of right to the disputed property by using it as a parking lot and picnic area for its members. 348 So. 2d at 468. Likewise, Perdido Dunes' uses of the disputed property benefited the entity "as a whole." Id. Perdido Dunes built and maintained utilities on the disputed property, paved the property, and used it as parking for its unit owners -- acts that evinced a collective claim of right to the disputed property.

Finally, Phoenix East argues that Perdido Dunes' "recognition" of Phoenix East's superior title to the disputed property in its 2015 complaint and in a board meeting in the 1990s defeats its claim of right. Phoenix East cites Kittrell v. Scarborough, 287 Ala. 155, 249 So. 2d 814 (1971), and Kerlin v. Tensaw Land & Timber Co., 390 So. 2d 616 (Ala. 1980), but those cases do not stand for the blanket proposition that any recognition of the record owner's title defeats a claim of adverse possession. In Kittrell, the claimants offered to pay the record owner for the disputed property, which this Court held was "positive evidence that

the [claimants'] possession was not under a claim of right." 287 Ala. at 157, 249 So. 2d at 816. Similarly, the Kerlin Court, citing Kittrell, said that "efforts to buy the property from the record owner constitute acknowledgement of his superior title, and thus do disprove the adverseness, since there is then no claim of right." 390 So. 2d at 619. But Kittrell and Kerlin do not imply that any act of "recognition" undermines a claim of right. By definition, a party seeking to quiet title by adverse possession is acknowledging that, at one time, the other party was the record owner of the disputed property. That is all Perdido Dunes did; it did not offer to pay Phoenix East for the disputed property or otherwise do anything that "disprove[d] the adverseness" of its use. Id.

In sum, Perdido Dunes presented sufficient evidence at trial that Phoenix East knew about its use of the disputed property and did not give it permission to use it. Consequently, the trial court's finding that there was a prescriptive easement is not "'clearly erroneous or manifestly unjust.'" Lilly, 495 So. 2d at 525; accord Ex parte Gilley, 55 So. 3d 242, 247 (Ala. 2010) (affirming the trial court's judgment because there was "some evidence in the record to support the trial court's holding that the

[counterclaim plaintiffs] have a prescriptive easement over the disputed property").

C. Perdido Dunes Joined All Necessary Parties to the Action

In the alternative, Phoenix East argues that the trial court's judgment is void because Perdido Dunes named only "Phoenix East Association" as a party to the action, without also naming each individual unit owner. According to Phoenix East, every unit owner was a necessary party required to be joined in the litigation under Rule 19(a)(2)(i), Ala. R. Civ. P., because each has "an interest relating to the subject of the action" -- the disputed property -- and disposing of the action in their absence would "as a practical matter impair or impede [their] ability to protect" their interests. But because Phoenix East adequately represented their interests, the unit owners were not necessary parties under Rule 19(a)(2)(i).

Rule 19 generally "provides for joinder of persons needed for just adjudication," Byrd Cos. v. Smith, 591 So. 2d 844, 846 (Ala. 1991), but there is "no prescribed formula for determining whether a party is a necessary one or an indispensable one," Holland v. City of Alabaster, 566 So. 2d 224, 227 (Ala. 1990). This Court has recognized that when a party

"adequately represent[s] the absent parties' interests," Rule 19 does not require those absent parties to be joined in the litigation. Byrd Cos., 591 So. 2d at 846. In Byrd Cos., for example, this Court held that the plaintiff was not required to name each condominium-unit owner in its complaint because the corporate manager of the condominium association adequately represented its unit owners' interests. 591 So. 2d at 847. The Court reasoned that the litigation "related to interests held in common by all of the [association's] property owners, not to individualized interests." Id. Similarly, the disputed property here "relate[s] to interests held in common by all of the [Phoenix East] property owners, not to individualized interests." Id.

In its reply brief, Phoenix East attempts to distinguish Byrd Cos., arguing that it is inapplicable because it involved an injunction extinguishing an easement, rather than an order granting an easement. That is a distinction without a difference. The holding in Byrd Cos. did not rest on the nature of the relief. Rather, the Court held that the unit owners were not necessary parties under Rule 19 because the unit

owners' interest in the easement rights was collective, not individualized. The same is true here.

Further, as Perdido Dunes points out, the Condo Act specifically contemplates that condominium associations will represent their individual members in litigation. See § 35-8A-302(a)(4), Ala. Code 1975 (granting associations the power to "[i]nstitute, defend, or intervene in litigation … in its own name on behalf of itself or two or more unit owners on matters affecting the condominium" (emphasis added)). That language, especially when combined with this Court's holding in Byrd Cos., makes clear that Perdido Dunes was not required to join every unit owner to the litigation.

Conclusion

There was credible evidence to support the trial court's holding that Perdido Dunes acquired a prescriptive easement. See Pinson v. Veach, 388 So. 2d 964, 968 (Ala. 1980). We therefore affirm the judgment.

AFFIRMED.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Stewart, and Cook, JJ., concur.

Sellers, J., concurs in the result, with opinion.

SELLERS, Justice (concurring in the result).

I concur in the result of the main opinion, which affirms the trial court's judgment that Perdido Dunes Tower Condominium Association, Inc. ("Perdido Dunes"), acquired a prescriptive easement over the strip of land at issue in this case. I concur in the result because I do not read the main opinion as clearly recognizing the important distinction between obtaining a prescriptive easement and obtaining a fee-simple interest in a parcel of land through adverse possession, the latter of which was the theory asserted by Perdido Dunes in its complaint. The difference between the two concepts lies in the rights acquired therefrom. "[O]ne who establishes adverse possession of property obtains title to the property while one who establishes an easement by prescription establishes only a right to use the property." Jackson v. City of Auburn, 971 So. 2d 696, 705 (Ala. Civ. App. 2006) (plurality opinion). See also Aman v. Gilley, 55 So. 3d 248, 249 (Ala. Civ. App. 2010) (holding that a trial court could enter a judgment awarding counterclaim plaintiffs a prescriptive easement over a parcel of land, even though they had claimed to own the property outright through adverse possession, because the parties had impliedly consented to try a claim for a

prescriptive easement). I also note that "the scope of a prescriptive easement is determined by the scope of the use that established the prescriptive right, and an easement holder is not entitled to materially alter the scope (or character) of its easement." Jackson, 971 So. 2d at 708 (plurality opinion).