State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 25, 2021 530256

MONICA HULETT et al.,
Respondents,
v MEMORANDUM AND ORDER

TERRI KORB,
Appellant.

Calendar Date: February 10, 2021

Before: Lynch, J.P., Clark, Aarons, Reynolds Fitzgerald and Colangelo, JJ.

Maynard, O'Connor, Smith & Catalinotto, LLP, Albany (Justin W. Gray of counsel), for appellant.

LeCours, Chertok & Yates, LLP, Saratoga Springs (Daniel G. Chertok of counsel), for respondents.

Clark, J.

Appeal from an order of the Supreme Court (Nolan Jr., J.), entered September 4, 2019 in Saratoga County, which granted plaintiffs' motion to set aside a verdict and directed a verdict in favor of plaintiffs.

Plaintiffs and defendant own neighboring parcels of land in the Town of Saratoga, Saratoga County. Since 1986, plaintiffs have accessed their property through the use of a roadway, known as Rodgers Lane, that crosses over a number of their neighbors' parcels, including a roughly 250-foot-long portion of defendant's parcel. In 2012, after defendant

installed gates and made other modifications to Rodgers Lane, plaintiffs commenced this RPAPL article 15 action seeking, as relevant here, a declaration that they have a prescriptive easement over the portion of Rodgers Lane that crosses defendant's property. Defendant joined issue, and the parties thereafter engaged in discovery and motion practice. During the course of such motion practice, Supreme Court ruled that plaintiffs had established three of the four elements required for a prescriptive easement by showing that their use of Rodgers Lane from 1986 through 2002 was open, notorious and continuous for a period of 10 years, thereby giving rise to the presumption that such use was hostile to the prior owners of defendant's property.[1] The court, however, concluded that a question of fact existed as to whether defendant could rebut the presumption of hostility with evidence that plaintiffs had permission to use the disputed portion of Rodgers Lane during the relevant time frame. The matter proceeded to a jury trial solely on that limited issue, with the jury ultimately finding for defendant that plaintiffs' use of Rodgers Lane from 1986 through 2002 had been permissive. Thereafter, upon plaintiff's motion pursuant to CPLR 4404 (a), Supreme Court set aside the verdict and directed judgment in plaintiffs' favor, finding that their use of Rodgers Lane had been hostile for the required statutory period and, thus, that plaintiffs had acquired a prescriptive easement over the relevant portion of Rodgers Lane. Defendant appeals.

Defendant argues that she rebutted the presumption of hostility at trial and that, therefore, Supreme Court erred in setting aside the verdict and directing judgment in favor of plaintiffs. Pursuant to CPLR 4404 (a), a trial court may, upon motion or its own initiative, "set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law." To set aside the verdict and direct judgment as a matter of law, the verdict must be "utterly irrational" – that is, there must be "simply no valid line of reasoning and permissible inferences which could possibly lead rational [jurors] to the conclusion reached by the jury on the basis of the evidence presented at

[1] Defendant acquired her parcel in 2002.

trial" (Cohen v Hallmark Cards, 45 NY2d 493, 499 [1978]; accord Warner v Kain, 186 AD3d 1844, 1845 [2020]; see Killon v Parrotta, 28 NY3d 101, 108 [2016]).

To rebut the presumption of hostility at trial, defendant had to establish that, during the period of 1986 through 2002, plaintiffs received permission to use the portion of Rodgers Lane that passes over defendant's property from defendant's predecessor(s) in interest (see generally Rensselaer Polytechnic Inst. v Schubert, 170 AD3d 1307, 1310 [2019]; Gorman v Hess, 301 AD2d 683, 685 [2003]). To that end, defendant relied upon an affidavit that plaintiff Harold Hulett signed in 2010 in connection with unrelated litigation over a land dispute between his neighbors. In that affidavit, Hulett attested that he had used and maintained Rodgers Lane for more than 20 years. He stated that he received permission to use Rodgers Lane from "Anthony Rogers, his niece and the other neighbors" and that he had "permission from the neighboring landowners whose land the path crosses." The parties stipulated to facts establishing defendant's chain of title, and it was thereby undisputed that Anthony Rogers and his niece were not prior owners of defendant's property. We agree with Supreme Court that Hulett's vague and general references to unspecified neighbors falls short of establishing, as a matter of law, that defendant's particular predecessor(s) in interest had granted plaintiffs permission to use the relevant portion of Rodgers Lane between 1986 and 2002 (compare Asche v Land & Bldg. Known as 64-29 232nd St., 12 AD3d 386, 387 [2004]). In the absence of any other evidence that plaintiffs received such permission or that plaintiffs' relationship with defendant's predecessor(s) in interest was "one of cooperation and neighborly accommodation" (Boumis v Caetano, 140 AD2d 401, 402 [1988]), Supreme Court properly concluded that there was no valid line of reasoning and permissible inferences which could possibly lead the jurors to conclude that plaintiffs' use of the relevant portion of Rodgers Lane was permissive, so as to rebut the presumption of hostility. Accordingly, we discern no error in Supreme Court setting aside the jury verdict and directing judgment in favor of plaintiffs (see CPLR 4404 [a]).

Defendant's remaining arguments, to the extent not expressly addressed herein, have been examined and found to be lacking in merit.

Lynch, J.P., Aarons, Reynolds Fitzgerald and Colangelo, JJ., concur.

ORDERED that the order is affirmed, with costs.

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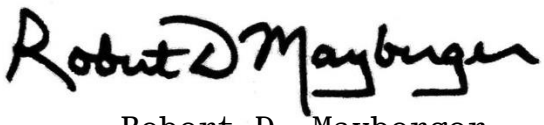

Robert D. Mayberger
Clerk of the Court