

SC91898, Robert L. Bateman, et al., James K. Owens, et al. v. Platte County, Missouri

Appeal from the Platte County circuit court, Judge Abe Shafer IV

Argued and submitted Thursday, Dec. 1, 2011; opinion issued April 3, 2012

Attorneys: The property owners were represented by James C. Bowers Jr., Mary Jo Shaney and Patricia R. Jensen of White Goss Bowers March Schulte & Weisenfels P.C. in Kansas City, (816) 753-9200; the county was represented by Robert H. Shaw of McGinniss & Shaw LLC in Platte City, (816) 858-2630; and Bateman was represented by Jonathan Sternberg of Jonathan Sternberg, Attorney, PC in Kansas City, (816) 474-3000.

Overview: A county and certain property owners appeal a trial court's judgment that a particular road is a private, not public, road. In a unanimous decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri affirms the judgment. Because the county never pleaded a specific statute of limitations as a defense before the trial, it waived this defense. Further, the evidence supports the trial court's finding that the road never was used by the public.

Facts: Owners of three properties separating the property of Yiddy Bloom from Mace Road in Platte County granted Bloom three separate, contiguous easements extending from Mace Road to Bloom's property. The easements provided the only access from Bloom's property to Mace Road and specifically granted him and his "successors and assigns" a "street and right of way easement." In the 1980s, the county approved two plats that showed a road named Bridle Parc Lane on Bloom's easements from Bloom's property to Mace Road. Bloom did not sign either plat but later sold his property to an individual who sold the subdivided property to other individuals. In 1985, the county amended the second plat, rededicating the lane to public use. In 2005, a developer attempted to plat a new subdivision within BP-II and sought the county's approval to use the lane as a public road. BP-II resident Robert Bateman objected and notified the county of the private easements on which the lane was situated. The county responded by determining that the lane is within the public right of way. In July 2006, Bateman sued the county, asserting that the lane could not be dedicated to public use at the time the subdivisions were platted because the easement owners never had consented to the dedication. The trial court subsequently permitted other owners in the two subdivisions to intervene as either plaintiffs or defendants. After a trial by the judge rather than a jury, the court entered its judgment declaring the lane to be a private road. It found the lane never legally was dedicated to public use and that the lane was used as a private, not public, road. The county and other property owners appeal.

AFFIRMED.

Court en banc holds: (1) The trial court properly declined to address the county's statute of limitations argument because the defense was waived. Rule 55.08 requires a party to plead all affirmative defenses, including a statute of limitations defense, but when seeking to take advantage of a statute of limitations, the defendant must plead specifically, before the case is decided, the provisions on which he depends. Here, the county's answers pleaded only that Bateman's claims were "barred by the statute of limitations." The fact that Bateman referenced the 10-year statute of limitations of section 516.010, RSMo, in pleadings filed after the trial was over cannot constitute trial by express or implied consent pursuant to Rule 55.33(b).

(2) The trial court properly found that the lane is a private road. It is undisputed that Bloom was granted three contiguous “street and right of way” easements that conferred a right to use part of the property now in the first subdivision for the purpose of maintaining an access road from Bloom’s property to Mace Road. His easements, which also were granted to his “successors and assigns,” were not dedicated to the public. The property owners in the first subdivision cannot eliminate unilaterally the easements that belonged to Bloom and that transferred to the new owners of his land, which now is in the second subdivision, because they cannot eliminate what does not belong to them. Further, the successor owners of Bloom’s former land are entitled to retain their easement because neither Bloom nor his successors relinquished easements, and there was no legal proceeding to divest them of the easements. Further, the plat subdividing what had been Bloom’s property did not refer to the easements across the land covered in the first subdivision plat and, therefore, did not purport to dedicate those easements to public use. Additionally, at the time Bloom’s former property was platted in the second subdivision, the lane did not connect to a public road. Further, there was ample testimony from residents in the two subdivisions to support the trial court’s finding that there was no public use of the lane. This disposes of the county’s remaining arguments that the lane was dedicated as a public road pursuant to section 228.190.1, RSMo, common law dedication and establishment of a prescriptive easement, all of which require actual use by the public.