



**In the Missouri Court of Appeals
Western District**

ROBERT L. BATEMAN, et al.,)	
Respondent;)	
JAMES K. OWENS, JAMES K. OWENS)	
TRUST, BRENT J. OWENS, RITA)	WD71053
OWENS, MARY FRAZIER, JIMMY)	
HAGEN, KAREN HAGEN and JACK)	FILED: May 31, 2011
SLOAN,)	
Appellants,)	
v.)	
)	
PLATTE COUNTY, MISSOURI,)	
Respondent.)	

**APPEAL FROM THE CIRCUIT COURT OF PLATTE COUNTY
THE HONORABLE ABE SHAFER, IV, JUDGE**

**BEFORE DIVISION FOUR: LISA WHITE HARDWICK, CHIEF JUDGE, PRESIDING,
JAMES M. SMART, JUDGE AND DAREN ADKINS, SPECIAL JUDGE**

This appeal arises from a judgment that declared Bridle Parc Lane, located in Platte County, to be a private road. Platte County and various landowners in Bridle Parc Estates I and II contend the circuit court erred in failing to dismiss the declaratory judgment action because the claim was barred by the ten-year statute

of limitations in Section 516.010.¹ For reasons explained herein, we agree and reverse the declaratory judgment.

FACTUAL AND PROCEDURAL HISTORY

Bridle Parc Lane (“BP Lane”) is a street that begins at Mace Road in Platte County and runs south through two subdivisions known as Bridle Parc Estates I (“BP-I”) and Bridle Parc Estates II (“BP-II”). BP Lane dead-ends at the southernmost property in BP-II.

Historically, BP Lane was developed to provide access to property that was later platted as BP-II. In 1980, Yiddy Bloom owned the land presently subdivided as BP-II. Immediately north of Bloom’s property there were three properties now subdivided as BP-I. On September 16, 1980, the owners of the three properties (now known as BP-I), granted three contiguous 30’ wide street and right-of-way easements to Bloom. The easements provided the only access from Bloom’s property to Mace Road. The street now known as BP Lane generally tracks the path of the easements.

On December 28, 1981, the BP-I Plat was recorded with Platte County. The plat subdivided the land into ten lots and dedicated BP Lane to public use. All of the landowners within BP-I executed the plat, thereby consenting to the creation of the lots and the dedication of BP Lane to public use.

On September 11, 1984, Platte County approved the platting of Bloom’s property as BP-II. The plat subdivided the property into six lots and included an

¹ All statutory citations are the Revised Missouri Statutes 2000, as updated by the Cumulative Supplement 2009, unless otherwise noted.

extension of BP Lane that was dedicated to public use. Later that same month, Bloom conveyed his BP-II property and easements to Robert Pease, who immediately sold the six lots. All of the lot owners executed a consent to the BP-II plat, which dedicated BP Lane to public use.

The BP-II plat was amended in 1985 by consent of all of the BP-II landowners. The amendment corrected boundaries and rededicated a modified BP Lane to public use. The amended plat was recorded with Platte County on October 3, 1988.

On July 7, 2006, Robert Bateman filed a petition for declaratory and injunctive relief against Platte County. The petition sought a determination that BP Lane was a private road rather than a public road. Bateman and his wife owned a lot in BP-II, which they purchased in 1999. Bateman's petition asserted that BP Lane could not be dedicated to public use at the time BP-I and BP-II were platted because Yiddy Bloom had an ongoing interest in the easements and had never consented to the dedication.

Platte County filed an Answer denying the claims in the Petition. The Answer also asserted an affirmative defense that Bateman's claims were barred by the statute of limitations. The circuit court permitted other landowners in BP-I and BP-II to intervene as either plaintiffs or defendants in the lawsuit.

At the bench trial, Platte County and the defendant intervenors (collectively, "Defendants") argued that BP Lane had been statutorily dedicated to public use through the three recorded plats of BP-I and BP-II. Alternatively, they argued that

BP Lane became a public road through a common dedication or prescriptive easement. Bateman and the plaintiff intervenors (collectively, "Plaintiffs") argued that BP Lane was never dedicated to public use because the easement holders, beginning with Yiddy Bloom, did not relinquish their interest in the land as a prerequisite for public use.

Following trial, the circuit court entered a judgment declaring BP Lane to be a private road. The court found that BP Lane was "never legally dedicated to public use" because the easement holders did not consent to the dedication. The court did not address the statute of limitations defense.

Defendants filed a Motion to Amend the Judgment, which was partially based on the statute of limitations defense. The court denied the motion without explanation. Defendants appeal.²

ANALYSIS

The Defendants contend the circuit court erred in failing to determine that Bateman's claim for declaratory judgment was barred by the ten-year statute of limitations in Section 516.010. Whether a statute of limitations applies to an action is question of law subject to our *de novo* review. ***Stevens v. Howard*, 197 S.W.3d 182, 185 (Mo.App. 2006).**

Section 516.010³ provides that no action for the recovery of any lands or hereditaments shall be commenced unless the plaintiff or his predecessor was

² The Defendants raise four points on appeal. We need only address the fourth point, addressing the statute of limitations, because it is dispositive of the remaining issues.

³ The full text of Section 516.010 provides:

seized of the premises within ten years before the commencement of the action. Easements that run with the land are hereditaments subject to this statute of limitations. ***Terre Du Lac Property Owners' Assoc., Inc. v. Wideman*, 655 S.W.2d 803, 805 n.1 (Mo.App. 1983)** (Section 516.010 is the applicable statute of limitation for enforcing restrictive covenants, which are easements); see also ***Northridge Ass'n of St. Joseph, Inc. v. Welsh*, 924 S.W.2d 305, 307 (Mo.App. 1996)** (easement holders have ten years to bring a cause of action under Section 516.010).

Bateman filed his petition seeking declaratory relief against Platte County in July 2006. The petition alleged that Platte County's purported dedication of BP Lane as a public street violated the rights of the easement holders to maintain the street for private use. In assessing whether the Petition was timely filed, we must look to when this claim of right first accrued. Generally, a cause or right of action accrues to start the running of a statute of limitations when the right to institute and maintain a suit arises. ***Keiser v. Wiedmer*, 283 S.W.2d 914, 918 (Mo.App. 1955); *Hemar Ins. Corp. of America v. Ryerson*, 108 S.W.3d 90, 94 (Mo.App.**

No action for the recovery of any lands, tenements or hereditaments, or for the recovery of the possession thereof, shall be commenced, had or maintained by any person, whether citizen, denizen, alien, resident or nonresident of this state, unless it appear that the plaintiff, his ancestor, predecessor, grantor or other person under whom he claims was seized or possessed of the premises in question, within ten years before the commencement of such action.

2003). Thus, we must consider when the easement holders' private use of BP Lane was first seized.

The first challenge to the easement holders private use of BP Lane was the platting of BP-I and the recording of the plat with the Platte County recorder on December 24, 1981. The platting dedicated a portion of land in BP-I, including the easements, to public use.⁴ Yiddy Bloom, as the owner of the easements at that time, did not sign the plat, but he could have asserted a claim that the dedication violated his rights to use the easements as a private right of way. He did not do so.

Platte County approved the platting of Bloom's property as BP-II on September 11, 1984. Robert Pease purchased the Bloom property later that same month. Pease was also a property owner in BP-I and had signed the BP-I Plat dedicating BP Lane to public use. On September 28, 1984, Pease subdivided the land acquired from Bloom and then conveyed the easements with each tract sold in BP II.

BP II was platted with an extension of BP Lane dedicated to public use. We agree with the Defendants that this extension in 1984 further interfered with the private use of the easements because the public would have to cross the easements to reach BP Lane in BP II. However, at that time, none of the easement holders asserted a claim that the dedication violated their rights to a private easement.

⁴ Plaintiffs do not challenge the dedication of the plats or their validity in this action.

The evidence at trial demonstrated public use of BP Lane for a variety of reasons at least as far back as 1987. There was a Christmas tree farm located on a portion of the land which is now part of BP II. The public would use BP Lane to access the tree farm. Commercial traffic, including UPS drivers, moving trucks, construction companies, employees of home offices, and non-easement holders accessing their homes, made use of BP Lane. Police patrol the street on a regular basis to protect the residents of BP-I and BP-II. No one ever raised a question as to whether this routine vehicular traffic constituted trespass of a private road. Even if it is assumed that Plaintiffs' claim did not accrue until the public was clearly using BP Lane, their claim should have been brought no later than 1997, ten years after such obvious and consistent public use.

Plaintiffs claim their cause of action did not accrue until Defendant-Intervenor James Owens began taking steps in 2005 to develop his property, which would be accessed by BP Lane. We disagree. The cause of action accrued when the purported dedications of the public road right of way known as BP Lane were recorded in 1981 and 1984.

By 1984, Yiddy Bloom no longer had any ownership interest in the BP II property, or in the Easements. Every single successor to the title of Bloom signed the plat of BP II which conveyed the public road right of way known as BP Lane. Additionally, some of the same property owners, including the predecessors in title of Plaintiff Bateman, signed the plat of BP-I and consented to the dedication of BP Lane as a public road. Every successor in title to Bloom was aware of the

dedication. Everyone who had a right to raise a complaint concerning the dedication of public road right-of-way was informed by 1984. No one other than the successors in title had standing to assert rights based on the easement documents, and they did not do so within the statute of limitations period.

Statutes of limitation are favored in the law and rest upon sound public policy that they tend to promote the peace and welfare of society by avoiding stale claims. *State ex rel. Brandon v. Dolan*, 46 S.W.3d 94, 97 (Mo.App. 2001).

According to testimony at trial, by declaring BP Lane to be a private road, access rights to many of the BP-II properties would be thrown into question and several of the existing structures would be considered non-conforming uses affecting rights to building permits. This is the precise situation that statutes of limitation are designed to avoid.

Bateman's petition for declaratory judgment was filed more than twenty-four years after the 1981 recording of a plat that dedicated BP Lane for public use. His claim alleging that the dedication was improper or ineffective against the rights of the easement holders is barred by the ten-year statute of limitations in Section 516.010. Accordingly, the circuit court erred in granting judgment in favor of Bateman and the plaintiff intervenors.

CONCLUSION

The judgment of the circuit court is reversed.

LISA WHITE HARDWICK, CHIEF JUDGE

ALL CONCUR.