



Respondents.

OPINION FILED: March 23, 2021

Before Division Three: Karen King Mitchell, Presiding Judge, Gary D. Witt, Judge and Anthony Rex Gabbert, Judge

James Randolph ("Randolph") appeals the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), granting City of Kansas City's ("City") motion for summary judgment against Randolph's petition asking the court to quiet title in his favor over a strip of land adjacent to and between two properties that he purchased in separate transactions. Randolph's petition alleged several other causes of action, but all depended upon the court's finding in his favor as to ownership of the property at issue. The trial court

granted the City's motion for summary judgment¹ on the basis that Randolph could not have obtained the property via adverse possession as he claimed because the City had obtained the property through condemnation in the years 1906 and 1907, and a person cannot obtain public land via adverse possession. We affirm the judgment of the trial court.

Factual and Procedural Background²

Randolph purchased 551 Forest in Kansas City from the Land Trust of Jackson County, Missouri, in 1995. He purchased another property on Forest just to the South in 2013 from Missouri Department of Transportation. Between these two properties lies a strip of land in dispute that, along with 551 Forest, was owned by Edward Woods, Louise Woods, and John Woods ("the Woodses") in 1906.

In 1906-07, in response to a petition from neighbors living in the area, including the Woodses, the City began condemnation proceedings to create a public street between Forest and Tracy called Pacific Street. The City government enacted several ordinances for the establishment and construction of Pacific Street, neighbors affected, including the Woodses, were served with notice of the condemnation, and notice by publication was also ordered. A jury was empaneled, and it assessed amounts against the City for the property taken in the condemnation. In 1909, an ordinance provided for and authorized grading work on Pacific Street from Forest to Tracy. In 1912, an ordinance provided for the

¹ Randolph also filed a motion for summary judgment, which the trial court denied.

² We "review the record in the light most favorable to the party against whom judgment was entered, according the non-movant the benefit of all reasonable inferences from the record." *City of St. Louis v. State*, 382 S.W.3d 905, 910 (Mo. banc 2012) (internal marks omitted). Facts set forth "in support of a party's motion are taken as true unless contradicted by the non-moving party's response to the summary judgment motion." *ITT Com. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

installation of an electric light on Pacific Street between Forest and Tracy. Photographic and other evidence offered by the City appear to affirm the existence of Pacific Street, but Randolph objected to the trial court's consideration of many of these documents as not being properly authenticated. Area residents affirmed by affidavit that Pacific Street existed and that it was used as a public street until as late as 2013.³

Randolph alleges that Pacific Street was never properly completed, and alleges multiple deficiencies in the 1906-07 condemnation proceedings. He also alleges that certain records that the City was required to maintain pursuant to the City Charter in effect at the time of the condemnation were not adequately maintained and could not be produced by the City. Randolph concluded, therefore, that the City never actually condemned the property intended for Pacific Street, and that he, Randolph, subsequently obtained ownership over the Pacific Street property by adverse possession from the Woodses' successors in interest. Thus, he filed this suit to quiet title against the City in 2016.

Both Randolph and the City filed motions for summary judgment. The trial court denied Randolph's motion and granted the City's motion, concluding that the City had obtained the Pacific Street property via condemnation in 1906-07, and that it became public land at that time. Therefore, Randolph could not have acquired ownership of the public land through adverse possession. This appeal follows.

Standard of Review

Appellate review of the grant of summary judgment is essentially *de novo*. The criteria on appeal for testing the propriety of summary judgment are no

³ At some point, a highway was constructed that ran through or near the area, affecting Pacific Street. The part of Pacific Street that abuts Randolph's properties is presently overgrown with grass and resembles a vacant lot.

different from those which should be employed by the trial court to determine the propriety of sustaining the motion initially. This Court reviews the record in the light most favorable to the party against whom judgment was entered. Summary judgment is appropriate when the moving party has [established], on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law.

Newton v. Mercy Clinic E. Cmtys., 596 S.W.3d 625, 628 (Mo. banc 2020) (internal citations omitted). We "may affirm if the record shows that summary judgment was appropriate either on the basis it was granted by the trial court or on an entirely different basis, if supported by the record." *Brehm v. Bacon Twp.*, 426 S.W.3d 1, 4 (Mo. banc 2014).

Analysis

Randolph raises two points on appeal: 1) that the trial court erred in granting summary judgment to the City on the basis that it condemned the Pacific Street property in 1906 because the City failed to comply with the procedural requirements set forth in the 1898 City Charter which was in effect at the time; and 2) that the trial court erred in granting summary judgment to the City on the basis that it acquired the Pacific Street property through adverse possession because there are material issues of fact as to whether Pacific Street was ever completed as a paved street. In arguing his first point on appeal, Randolph raises a litany of procedural requirements that he claims there is "no record" that the City performed. There are many documents and "books" that Randolph argues the City should have retained and provided to prove that it did, in fact, properly condemn the Pacific Street property in the early 1900s. And in his second point on appeal, he objects to many of the documents the City produced to establish that Pacific Street was established, completed, and used as a public street as being not properly authenticated, not having sufficient

foundation, or constituting hearsay. This is largely because, although the photographs and maps produced by the City purport to be of the property in question, and appear to show an established and operable Pacific Street, no one is alive now and available who can testify as to their being authentic.

Both of Randolph's arguments on appeal illustrate why challenges to condemnation proceedings or claims of adverse possession when no proper condemnation has been effected must be brought within ten years of the City's action, and this is a basis for our affirmance of the trial court's judgment. In its motion for summary judgment, the City raised statute of limitations as a basis for judgment as a matter of law. Actions for recovery of lands must be brought within ten years. Section 516.010;⁴ *City of Gainesville v. Morrison Fertilizer, Inc.*, 158 S.W.3d 872, 874-75 (Mo. App. S.D. 2005). So whether there was a condemnation that was improper, or whether the City took the property by damaging it in some way such that the owner would have a cause of action for inverse condemnation (which would have included damage to the title of the property), the action against the City would need to have commenced by 1916 or 1917. Section 516.010; *see also Shade v. Mo. Highway & Transp. Comm'n*, 69 S.W.3d 503, 512-13 (Mo. App. W.D. 2001). Had the City not properly completed all of the necessary requirements for condemnation of the Pacific Street property, or had it failed to compensate the Woodses for the taking of their land, the documentation and evidence would more likely have been available for the Woodses and the City to support their respective positions in a suit brought during the limitations period.

⁴ All statutory references are to R.S.Mo. 2016, as currently updated by supplement.

At argument, Randolph acknowledged that there was an appeal process available at the time of the condemnation proceedings, but he has no evidence that the Woodses, or any of the other Pacific Street neighbors, availed themselves of that process. If we were to hold that anyone seeking to obtain ownership of public land had only to challenge every minute procedural particularity occurring at the time of condemnation, however long ago, and then force the public entity to establish its compliance with every detail using documents and photographs that could be sufficiently authenticated using present-day standards, many public roads and highways would be in jeopardy. Alas, the statute of limitations prohibits such stale challenges.

Along the same lines, the City offered as a basis for summary judgment that Randolph could not bring his action challenging the condemnation because he was not the property owner at the time the condemnation occurred (or, as he alleges, was attempted), and any challenge to a condemnation or claim for inverse condemnation does not run with the land, but must be brought by the property owner at the time the "damage" whether physical damage to property or damage to title, could be ascertained. *Rose v. City of Riverside*, 827 S.W.2d 737, 738 (Mo. App. W.D. 1992). In the case of a condemnation, where a city enacts an ordinance purporting to affect the value of the property, it is upon passage of the ordinance that the potential damage to the property is first capable of ascertainment, and thus when the cause of action accrues. *Id.* And although Randolph argues that the condemnation was never completed because the City cannot prove (with documents that Randolph accepts as authenticated) that the street was ever paved, paving

is not a requirement for condemnation as a street. The condemning entity need not complete its stated purpose for the property for the damage to be capable of ascertainment.

See City of St. Louis v. Mo. Pac. Ry. Co., 114 Mo. 13, 21 S.W. 202, 206 (Mo. 1893) (property held by the city for public use as a highway was not acquired by adverse possession, notwithstanding that the property had "not been graded, paved, or otherwise improved by the city": "[t]he time when such improvements shall be begun rests in the discretion of the municipal authorities, and the circumstance that they have not seen fit yet to exercise that discretion does not impair the city's standing as owner"); *City of Poplar Bluff v. Knox*, 410 S.W.2d 100, 103 (Mo. App. 1966) (the "failure of a city to physically open and improve a dedicated street to make its actual use possible" did not bar application of section 516.090); *see also City of Gainesville v. Gilliland*, 718 S.W.2d 553, 564-65 (Mo. App. S.D. 1986) (rejecting argument that section 516.090 did not apply because the land had never been subjected to a public use).

Kan. City Area Transp. Auth. v. Donovan, 601 S.W.3d 262, 273 (Mo. App. W.D. 2020).

Although *Donovan* involved a property owner trying to adversely possess a property *from* a government body, instead of challenging a government body's condemnation or inverse condemnation of a property, it supports a conclusion that, even if the City had failed to pave Pacific Street, such failure would not have been fatal to its condemnation or adverse possession of the Pacific Street property. Because Randolph did not own any of the land in question when the City condemned it or attempted to condemn it for use as a public street and first obtained his interest in the adjoining land over 80 years later, he has no standing to challenge the condemnation, and the trial court could properly have granted summary judgment on this basis.

Conclusion

Because Randolph's action did not occur within ten years of the City's condemnation or attempted condemnation of the Pacific Street property and because Randolph was not

the owner of record of the property at the time of condemnation, the trial court's grant of summary judgment was proper, and we therefore affirm the judgment of the trial court.



Gary D. Witt, Judge

All concur