Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-403

MAY TERM, 2005

Raymond J. and Irene M. Groleau, Ricky R. and Denis M. Roberts, Arthur J. and Linda M. Perry, George J. and Mary E. Donald-Abair	}	APPEALED FROM:
v.	}	Washington Superior Court
Vermont Railways, Inc. and Rock of Ages, Inc.	}	DOCKET NO. 328-6-02 Wncv
		Trial Judge: Alan W. Cook

In the above-entitled cause, the Clerk will enter:

In this action to quiet title, plaintiffs seek reversal of a summary judgment entered in favor of defendants Vermont Railways, Inc. and Rock of Ages, Inc. Plaintiffs contend that there are material facts in dispute about the extent of their ownership interest in a strip of land abutting their Barre Town properties. The superior court determined that plaintiffs' proof of ownership in the land was nonexistent. We agree and affirm.

Plaintiffs own land in Barre Town, Vermont that abuts a railway used by Rock of Ages, a granite quarrying operation. Defendants describe this action as the latest in a series of attempts by these plaintiffs to stop defendants from using a portion of the railway near their homes. In 2001, defendant Vermont Railways obtained a preliminary injunction enjoining plaintiffs from obstructing the rail line and harassing railway employees. Defendants explain that before filing the present action, plaintiffs sought relief from the Act 250 District Commissioner, the Barre Town zoning administrator, and the Federal Surface Transportation Board, all to no avail.

Plaintiffs filed this lawsuit in June 2002 after obtaining quitclaim deeds purporting to convey a railway easement to plaintiffs. The deeds, dated March 2002, came from James and Maurice Kelley. The deeds purported to convey whatever interests the Kelleys had in an abandoned railroad bed formerly owned by the Wells Lamson Quarry Company. Plaintiffs hoped to prove that their land was burdened by that easement. By purchasing the easement from the Kelleys, plaintiffs sought a declaration that the easement was extinguished by merger, and plaintiffs may now lawfully prevent defendants from using the railroad tracks.

In April 2003, plaintiffs moved for summary judgment. Defendants responded with their own summary judgment motion in May. The trial court entered judgment against plaintiffs, concluding that plaintiffs could not prove that they owned the land at issue. After the court entered summary judgment for defendants, the parties filed a stipulated motion to dismiss defendants' claims to the land. The court granted the motion, and plaintiffs took the present appeal.

On appeal, plaintiffs frame the question before us as whether defendant "Rock of Ages . . . owns a fee interest in land along Plaintiffs' properties." That question is not, however, before this Court. The issue of whether Rock of Ages has an interest in the disputed land was dismissed pursuant to a motion plaintiffs filed jointly with defendants.[*] Plaintiffs filed this action claiming ownership of the disputed land and the court entered judgment against them. Thus, the only question on appeal is whether the trial court erred by entering summary judgment against plaintiffs where plaintiffs supplied no proof supporting their claims of ownership.

Avoiding needless trials is a key purpose of summary judgment. A court may enter summary judgment when the moving party demonstrates that no genuine issue of fact exists for trial and judgment in its favor is required under applicable law. State v. G.S. Blodgett Co., 163 Vt. 175, 180 (1995). "If the nonmoving party fails to establish an essential element of its case on which it has the burden of proof at trial, the moving party is entitled to summary judgment as a matter of law." Id.; Gallipo v. City of Rutland, 163 Vt. 83, 87 (1994) ("Summary judgment will be granted if, after an adequate time for discovery, a party fails to make a showing sufficient to establish an essential element of the case on which the party will bear the burden of proof at trial.").

It is undisputed that plaintiffs bear the burden to prove their claims of ownership. To prevail in this case then, plaintiffs must prove that (1) they own land on which the railroad bed sits; (2) the land is burdened by an easement for railroad tracks; (3) the Kelleys owned the easement burdening plaintiffs' land; and (4) the Kelleys conveyed the railroad easement to plaintiffs through the March 2002 deeds. The proof plaintiffs offered in support of their summary judgment motion, and in opposition to defendants' motion, fails to establish any of those material facts.

It is an elementary rule of real property law that one's interest in land, including an interest in an easement, must be set forth in writing. Restatement (Third) of the Law of Property: Servitude § 2.7 (2000). Therefore, plaintiffs' deeds, or the deeds in plaintiffs' chains of title, should reference the easement burdening plaintiffs' land. If the easement is not referenced in plaintiffs' chains of title, then, at a minimum, some other documentary evidence must establish the existence of the easement burdening plaintiffs' land. The record before the trial court reveals that plaintiffs filed claims lacking the requisite documentary support.

We begin with the deeds to plaintiffs' respective properties to demonstrate the unsubstantiated nature of their claims. The most that we can say about their deeds is that they prove that plaintiffs own certain properties in Barre Town, and that some of the properties abut a railroad right of way. For example, plaintiffs Raymond and Ilene Groleau acquired their property in 1995 from Paul and Nancy McGinley. Plaintiffs Ricky and Denise Roberts also acquired their property from the McGinleys. The deeds both couples received contain a fairly detailed description of their property and both include references to boundaries abutting a railroad right of way. Neither deed contains any additional description of the right of way, and there is no language indicating that the right of way burdens either couple's land.

Plaintiffs Arthur and Linda Parry obtained title to their Barre Town property from Michael and Janet Leclair in 1970. Their warranty deed describes the property by referring to a different deed and a survey on file in the Barre Town land records. Neither that deed nor the survey are in the record. The Parrys' deed references a railroad right of way, but, as the trial court noted in its decision, the sentence containing the reference is illegible. Plaintiffs have not supplied the missing language, and the legible text does not permit an inference that the property is burdened by a railroad easement.

The property described in the quitclaim deed from John Donald to plaintiffs George Abair and Mary Donald-Abair is of little value without additional evidence, which plaintiffs did not provide. The property description in the Abairs' deed refers to the property description set out in the 1958 deed of the Abairs' predecessor in interest. The 1958 deed is not in the record, and without additional evidence, the Abairs' deed fails to establish the existence of a railroad easement over their property. Indeed, absent additional evidence, the deed does not prove that a railroad is even located nearby the Abair property.

Even if plaintiffs do not own the disputed tract of land in fee, they claim to own an easement. This claim arises from the Kelley quitclaim deeds plaintiffs acquired. Coincidentally, those deeds came into existence several months after the superior court enjoined plaintiffs from obstructing the railway. Plaintiffs theorize that the easement was conveyed by the Barre Chelsea Railroad to the Wells Lamson Quarry Company in 1948. Wells Lamson conveyed its property to Rock of Ages in 1986, but plaintiffs assert (without any evidentiary support) that Wells Lamson excepted the easement from that conveyance. Wells Lamson subsequently dissolved, granting any remaining property to the Jones Brothers Company in 1988. The Jones Brothers allegedly conveyed the easement to the Kelleys, and the Kelleys conveyed it to plaintiffs in 2002. The only way the 2002 Kelley deeds could convey the easement to plaintiffs, therefore, is if Wells Lamson retained an interest in the easement when it conveyed all of its other property to Rock of

Ages in 1986.

Turning to the record, it is clear that Wells Lamson received an interest in a railway from Barre Chelsea Railroad in 1948. The record is also clear that in 1986, Wells Lamson conveyed its property, including whatever interest it had in the railway that it acquired from Barre Chelsea, to Rock of Ages. The 1986 deed to Rock of Ages does not except any Wells Lamson property from the conveyance. More importantly, the 1986 deed to Rock of Ages states that the property Wells Lamson acquired from Barre Chelsea in 1948 is included in the conveyance. Because the record establishes no genuine dispute that Wells Lamson conveyed its interest in the easement to Rock of Ages in 1986, Jones Brothers could not have obtained an interest in it when Wells Lamson dissolved. In turn, the Kelleys could not have acquired an interest in the railway from Jones Brothers. The Kelleys' attempt to convey an easement to plaintiffs in 2002 was, therefore, ineffectual because the Kelleys had no interest in the easement to convey.

Lacking evidence to support the claims made in their complaint, plaintiffs were not entitled to a trial on the merits. Therefore, the trial court correctly entered summary judgment against plaintiffs.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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[*] Plaintiffs' attempt to frame the question here as whether Rock of Ages holds an interest in the railroad tracks is troublesome considering plaintiffs agreed to dismiss that claim. We must assume that plaintiffs included that statement in their brief unintentionally and that the statement was not meant to confuse the Court or the issues on appeal.