FOURTH DIVISION
December 22, 2016

No. 1-15-3111

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SGS LAND, LLC, an Illinois limited liability company, and STRATTON HATS, INC., an Illinois corporation,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellees,	)	No. 15 CH 1168
v.	)	
EFN BELLWOOD PROPERTY, LLC, an Illinois limited liability company,	)	Honorable Peter Flynn
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment reversed. Trial court's finding that plaintiffs were entitled to prescriptive easement was against manifest weight of evidence, where no competent evidence proved clearly and distinctly that plaintiffs' use of property lasted for requisite 20-year period.

¶ 2 In this declaratory judgment action, defendant, EFN Bellwood Property, LLC (EFN), appeals the trial court's decision that plaintiffs, Stratton Hats, Inc. (Stratton Hats) and SGS Land, LLC (SGS), had acquired a prescriptive easement to use the driveway on EFN's property as a result of Stratton Hats's adverse use of the driveway for a continuous 20-year period.

¶ 3 EFN argues that the trial court's finding that plaintiffs had used the driveway for the 20-year period necessary to establish a prescriptive easement was incorrect because the trial court: (1) failed to apply the correct burden of proof; and (2) relied on incompetent and inadmissible hearsay evidence. EFN also challenges the trial court's finding that plaintiffs' use of the driveway was adverse and argues that the court: (1) incorrectly found that the origin of the way was not shown and that the presumption of adversity applied; and (2) failed to properly evaluate whether the use of the driveway was permissive based on neighborly courtesy.

¶ 4 Because we agree with EFN that there was no competent evidence on which plaintiff could establish that its use of the driveway was of the requisite 20-year duration, we reverse the trial court's judgment.

¶ 5 II. BACKGROUND

¶ 6 This lawsuit involves, to some extent, three different neighboring properties located on Randolph Street in Bellwood, Illinois.

¶ 7 The middle property is 3200 Randolph Street, which we will call the "Stratton Property." It was purchased by Plaintiff Stratton Hats in 1972 and houses the hat-manufacturing facility for Stratton Hats. The building faces south and fronts Randolph Street.

¶ 8 To the immediate east of the Stratton Property is 3100 Randolph, which we call the "EFN Property." It was purchased by defendant EFN in 2014.

¶ 9 To the immediate west of the Stratton Property is 3201 Randolph Street, which was leased by a company called Packaging Products in 1985. It is now occupied by a senior center (Senior Center Property).[1]

[1] The building currently on the Stratton Property was originally part of a larger structure. That structure had a western portion located on what is now the Senior Center Property, which

¶ 10 The EFN Property includes a driveway (the "EFN Driveway") that is approximately 200 feet long and runs north-south along the border of the EFN-Stratton property lines (though it is undisputed that this driveway is on the EFN Property). This EFN Driveway is the subject of the lawsuit, the piece of property over which Stratton claims a prescriptive easement.

¶ 11 Before some time in the "early 90s," the EFN Driveway led northbound from Randolph Street to a guardrail that divided the EFN-Stratton boundary. In other words, before that time in the "early '90s," someone travelling northbound on the EFN Driveway from Randolph Street would not be able to access the rear (north) end of the Stratton Property; the EFN Driveway would dead-end into the guardrail.

¶ 12 In the "early '90s," however, that guardrail was cut. That happened when Packaging Products, which had already leased the property to the west of the Stratton Property, decided to lease the property to the east of the Stratton Property, too—effectively sandwiching the Stratton Property in between two Packaging Products properties. When that happened, Packaging Products needed its trucks to travel to and from the west and east properties, and the only way to accomplish that was to travel along the rear (north) path of the properties—and the only way to accomplish *that* was to cut the guardrail, so the trucks could freely drive back and forth, passing over the back of the Stratton Property in the process.

¶ 13 Once that guardrail was cut, of course, nothing prevented a vehicle turning off Randolph Street from driving along the EFN Driveway and accessing the rear (north) end of the Stratton Property.

¶ 14 At some point after this guardrail was cut, Stratton Hats started doing just that—its delivery trucks started using the EFN Driveway to travel from Randolph Street to the rear of the

---

was separated by a party wall. In 2011, a third party demolished the western portion of the structure to build the senior center.

Stratton Property, where its loading docks are located. When, precisely, that use began is the critical question.

¶ 15 Before it started using the EFN Driveway, Stratton Hats had used another route to reach its loading dock in the rear, a route that passed around the west property that is now the Senior Center Property. Stratton Hats continued to use that route, as well as the EFN Driveway, until 2010, when that western property was demolished and the senior center was built. Thus, as of 2010 and through the present time, the only way that oversized delivery trucks can reach the rear Stratton Property loading dock is to travel along the EFN Driveway.

¶ 16 As we have mentioned, EFN purchased the east property, 3200 Randolph Street, in 2014. In October 2014, shortly after acquiring the property, EFN installed concrete posts, with attached locked chains, at the front and back of the EFN Driveway. These barricades prevented Stratton Hats delivery trucks from using the EFN Driveway to access Stratton Hats's rear loading dock.

¶ 17 Stratton Hats naturally balked. The parties worked out an agreement. In exchange for monthly rent payments of $1,500 from Stratton Hats, EFN removed the chain during November and December 2014. But in January 2015, EFN increased the payment amount to $3,000. Stratton Hats refused to pay the increased monthly payment.

¶ 18 In January 2015, plaintiffs filed this declaratory judgment action. Plaintiffs claimed they had a prescriptive easement over the EFN Driveway, based on Stratton Hats's adverse, uninterrupted, continuous, and exclusive use of the driveway, under a claim of right, for a period in excess of 20 years. Plaintiffs also sought to enjoin EFN from barring plaintiffs and their invitees the right to continue using the EFN Driveway.

¶ 19 There were many contested issues at trial, including whether Stratton Hats's use of the EFN driveway was "adverse" or whether it had grown out of some agreement or permission or

neighborly courtesy from EFN's predecessor owners. But for our purposes, the relevant dispute was whether Stratton Hats's use of the EFN Driveway had lasted the requisite 20 years.

¶ 20 As to that issue, it is undisputed that EFN blocked the use of its driveway in October 2014 when it barricaded access to it, so the question became whether Stratton Hats could prove that it had been using the EFN Driveway since at least October, 1994.

¶ 21 During the bench trial, the only witness who testified in plaintiffs' case-in chief was Steven Stratton. Mr. Stratton is the president and principal shareholder of Stratton Hats, which was started by his grandfather in 1932. He is also the manager of SGS, the entity that leases the Stratton Property to Stratton Hats. Mr. Stratton started working full-time at Stratton Hats in 1980 and became its president in 1997.

¶ 22 It is undisputed that, on four separate occasions before trial, Mr. Stratton swore under oath that he had personal knowledge that Stratton Hats had used the EFN Driveway since 1972. Specifically:

- Mr. Stratton signed the verified complaint in this case, which alleged: "From 1972 through 2010, Stratton Delivery Trucks accessed the Loading Dock through the (1) West Path on the 3300 Property or (2) [the EFN] Driveway on the 3100 Property."
- In an affidavit, he repeated this identical statement quoted above and further swore that the use of the EFN Driveway "started in 1972 and was already in place by the time I started working full-time in 1980."
- Mr. Stratton signed and certified Stratton Hats' interrogatory answers, which included this response to a request to identify all facts supporting the claim that the easement started in 1972: "Stratton worked full-time for SHI starting in 1980 and part-time

during 1974-79. Before then, he would, on occasion, play behind the buildings (*i.e.*, to the North). While there, he saw Delivery Trucks come to the Service Door."

- Finally, in his deposition, Mr. Stratton testified that the first date he believed a Stratton delivery truck began using the East Driveway was "[e]ither 1972 or '73 when we moved in." When asked how he knew he answered: "I was there." He also testified that he had believed Stratton Hats had the right to use the EFN Driveway "ever since we moved there, because we have used it ever since we moved there. Don't have to form a belief. It's just what was happening."

¶ 23 At trial, however, Mr. Stratton acknowledged that Stratton Hats could not have used the EFN Driveway before the guardrail was cut. Stratton testified that he now had "cause to doubt the accuracy" of his memory, and that his memory was possibly "incorrect."

¶ 24 We recite a portion of Mr. Stratton's direct testimony below:

" PLAINTIFFS' COUNSEL: Do you know when the trucks started entering the driveway to the east in order to reach the loading dock?

STRATTON: I believe, from somebody else's testimony, that it was 1991 or so. I thought—

PLAINTIFFS' COUNSEL: Well, let me ask you—let's back up.

THE COURT: Mr. Stratton, here's the rules.

STRATTON: I know, just answer –

THE COURT: You have to answer based on what you know.

STRATTON: Okay.

THE COURT: If you thought you knew something and you've now decided you were wrong, well, that happens to all of us. But if you're going to testify, you have to testify not because of what somebody else said but because of what you know.

STRATTON: Okay.

PLAINTIFFS' COUNSEL: To your knowledge, leaving apart other people, to your knowledge, when do you recall, when do you think that use of this driveway started and then with entry to the back entry into the loading dock from the east?

STRATTON: My memory, I recall that it was ever since I could remember, so I just assumed it was from 1972 on.

PLAINTIFFS' COUNSEL: And did there come a – after the inception of the case, do you have any cause to doubt the accuracy of your memory?

STRATTON: Yes, sir.

PLAINTIFFS' COUNSEL: And based on that information that you learned, do you now believe there are any other possibilities as to when the use began other than in 1972?

EFN'S COUNSEL: Objection to the form of the question.

PLAINTIFFS' COUNSEL: I don't want to ask with hearsay.

¶ 25 At this point, the following colloquy took place:

THE COURT: It's a little difficult to frame that question in another way and still get the same information.

EFN'S COUNSEL: I understand, your Honor, but they have the burden of proof to establish the elements of an easement.

THE COURT: They do.

EFN'S COUNSEL: He has to have personal knowledge of when the use began, and it can't be some abstract—

THE COURT: No, he doesn't have to have personal knowledge. He's got to offer competent testimony.

EFN's COUNSEL: There you go. And it can't be just off a question based on some information you learned while the case was pending. What is that, what does it mean, what's he referring to?

THE COURT: Maybe we'll find out, but the one thing that we won't find out is if he never answers the question. I mean, obviously if he says I think now for a bunch of reasons that the date was different, the next question is, what are the reasons, and we'll take it from there. We don't have a jury here, so I'm not worried that somebody is going to prejudice the jury with what they said. I do think it's important to avoid unnecessary hearsay, because you can't cross-examine hearsay. Nevertheless, our rules of evidence do allow for testimony which is, by definition, hearsay, for example, reputation elements. And in easement cases it is not at all uncommon that there isn't a witness or even two or three witnesses who know what the situation was 30, 40 years ago. So they're going from the best information they can.

We're going to work with what we need to work with. Either it meets the burden of proof or it doesn't. We'll figure out where we are when we get there.

But I'll let the witness answer this question, because I don't think that there is another way, at least that I can think of, conveniently to get to the testimony that the witness now believes to be accurate. He's testifying that he thought that the east driveway was used since 1970. We know that he worked for Stratton since 1980. So his memory would be for as

long as he's been there as he said. If counsel wants to challenge that, counsel has a right to impeach his own witness, and the witness has already indicated, I'm aware from the opening statements and so are you, that the witness thinks his recollection may not have been correct.

I'm interested in finding out what the facts are as best I can. So I'm going to overrule the objection and let the witness answer the question."

¶ 26 Plaintiff's counsel then had his initial question re-read by the court reporter:

"PLAINTIFFS' COUNSEL: And based on that information, is it possible that the use did not start until 1991?

STRATTON: It is possible.

PLAINTIFFS' COUNSEL: Do you specifically have a recollection as to when the back entryway was opened up?

STRATTON: No, sir.

PLAINTIFFS' COUNSEL: Do you have any recollection of there being a time when Stratton was not using the back entryway, the driveway to the east and back entryway?

STRATTON: No, sir.

PLAINTIFFS' COUNSEL: As part of your investigation in refreshing your recollection, did you talk with older, more senior members of Stratton Hats?

¶ 27 The trial court intervened at this point:

"THE COURT: If you'll permit me, let's back up.

Mr. Stratton, you started out thinking that [the EFN Driveway] had been used since 1970, and you said that that was because, as far as you could recall, it

was always used when you were there. Something happened that caused you to ask yourself, is that really true, right?

STRATTON: Correct.

THE COURT: What happened?

STRATTON: I was informed of testimony from somebody that said that they have personal knowledge of it opening up in '91. I made my statement on my memory, and I asked two of our employees who have been with us since the very start, since 1972, and they also remembered us always using that other driveway. So between my own memory and theirs, that was my answer at the original deposition. It's possible that I could be mistaken.

PLAINTIFFS' COUNSEL: To your opinion, are you certain that the driveway was at least open from—and the back entrance at least open from at least 1991 or approximately to the present?

STRATTON: Yes, sir.

¶ 28 On cross-examination, defense counsel directed Stratton to the numerous instances in which Stratton had sworn, prior to trial, that Stratton Hats's use of the EFN Driveway began in 1972:

"EFN'S COUNSEL: You were basing those sworn signed statements in three different places and your oral deposition testimony, you were basing those statements on what other people had told you?

STRATTON: Not entirely.

EFN'S COUNSEL: And what those other people told you turned out to be inaccurate?

STRATTON: I'm not sure.

EFN'S COUNSEL: You assume that the use started in 1972?

STRATTON: As far as I could recall.

EFN'S COUNSEL: Those assumptions were based on information somebody else provided?

STRATTON: My own memory and information somebody else provided.

EFN'S COUNSEL: And as you sit here today, you believe your memory was incorrect?

STRATTON: Possibly.

EFN'S COUNSEL: And you're basing your belief or your assumption that the use started in 1991 now today instead of 1972, again, based off of information that someone else is providing you?

STRATTON: Correct.

***

EFN'S COUNSEL: Are you basing your assumption that the use started in 1991 based on anything anyone at your company has told you?

STRATTON: No, sir.

***

EFN'S COUNSEL: As you sit here today, you don't have any personal knowledge the use began in 1991, do you?

STRATTON: No.

EFN'S COUNSEL: It's not entirely clear to you when the use started over [the EFN Driveway]?

STRATTON: Not positively.

¶ 29 After plaintiffs' counsel ended his redirect examination, the trial court questioned Stratton as follows:

"THE COURT: You testified, as I understand it, that based on your personal knowledge that the [EFN Driveway] has been used since at least 1991?

STRATTON: Yes, sir.

THE COURT: But as I understand it, you're not entirely sure how much before 1991 it was used, is that fair?

STRATTON: Yes, that's fair.

THE COURT: 1991 is 24 years ago. Is there anything about 1991 as opposed to '92 or '90 or '87 that sticks in your mind that you pick on 1991 as the date that it began or might have begun?

STRATTON: Yes, sir. My cousin, who is my vice-president, came to work for us full time in 1990 when he finished college. And he started in the shipping room, and he insists that that is the only driveway we've ever used.

THE COURT: You say he insists that's the only driveway you've ever used.

STRATTON: Yep.

THE COURT: Does that differ from or add to your own recollection in any way?

STRATTON: Nope, not at all."

¶ 30 At the close of plaintiffs' case-in-chief, EFN moved for a directed verdict. Among many other arguments it made not relevant to our discussion, EFN argued that Mr. Stratton could not

testify from personal knowledge as to when the use of the EFN Driveway began. Counsel argued that "the only knowledge [Mr. Stratton] had of its claimed beginning of use was by a cousin who he claims started working at a certain point, but the cousin didn't come to testify today and we don't believe that's competent evidence."

¶ 31 The trial court denied EFN's motion for directed verdict.

¶ 32 In the defense's case-in-chief, EFN presented several witnesses, including Patrick Dillon, the former plant manager of Packaging Products, a company founded by his father and others. Packaging Products began operating in 1985 at 3201 Randolph Street to the immediate west of the Stratton Property.

¶ 33 Dillon worked at Packaging Products from 1985 until October 1997. He testified that, "[s]ometime in the early '90s," Packaging Products needed additional space after it purchased a competitor's business. When asked if he could be more specific than the "early '90s," he said, "I don't know the exact date." In any event, at that time in the "early '90s," Packaging Products expanded and leased the building at 3100 Randolph Street (now the EFN Property). Thus, as we have already detailed, at that point, Packaging Products was leasing property on both the east and west side of the Stratton Property. Dillon testified that a guardrail divided the Stratton Property and the EFN Property, but that Packaging Products cut the guardrail so that its trucks would be able to drive back and forth in the rear pathway between its two leased buildings.

¶ 34 Like Mr. Stratton, Mr. Dillon testified that, before the guardrail was cut, Stratton Hats used a path to the west of the Senior Center Property to access the loading dock at the rear of the Stratton Property, but that this route became inaccessible in 2010, when the Senior Center Property was purchased by the new owner and the senior center was built.

¶ 35 Dillon also testified regarding Stratton Hats's use of the EFN Driveway as follows:

"EFN COUNSEL: Sometime after the guardrail was cut, it's your understanding Stratton [Hats] began also using the same pathway in the area where the guardrail was cut?

DILLON: Yeah.

EFN COUNSEL: You're not sure when exactly that is, are you?

DILLON: No, I am not.

EFN COUNSEL: And at the time you were plant manager?

DILLON: Yes.

EFN COUNSEL: And you said you became plant manager after your father sold the business?

DILLON: Yes, in 1995."

¶ 36 On cross-examination, Mr. Dillon stated that he was contacted by EFN's counsel in March or April 2015 in connection with this case. When asked whether Mr. Dillon told EFN's counsel that it was approximately 1991 when the back guardrail was removed and the back passageway was being used, Dillon answered: "Yes, I think I said early '90s." Stratton Hats' counsel later asked, "And from around the time that the back passageway was opened in the early 1990s, you're aware that Stratton had trucks that would make deliveries up and back from this passageway?" Mr. Dillon answered, "Yes."

¶ 37 At the end of the trial, after written briefing and oral argument, the court ruled in favor of plaintiff Stratton Hats. On the issue of the 20-year use of the EFN Driveway, the court stated in open court that "[t]he evidence here is that the driveway was not usable for the purpose for which Stratton uses it until 1991, when Packaging [Products], not Stratton, cut the guardrail at the northeast corner of the Stratton property." The court further stated that "[t]he Stratton

testimony, although it is not as clear as one would like, on the other hand, we're talking a long time ago, [is] that the use began approximately with the cutting of the guardrail."

¶ 38 In response to the argument of EFN that Stratton Hats trucks did not start using the EFN Driveway until 1995, when Mr. Dillon became plant manager and recalled the Stratton Hats trucks using the EFN Driveway, the court stated:

> "Ironically, even if we were talking 1995 as the inception of the use of the driveway, we'd be shy of the 20 years by only about a year at the point in which this suit was brought. Given the somewhat flexible nature of the tests for a prescriptive easement, which I've discussed to some degree already, I'd be disinclined to get out an atomic clock for purposes of figuring out when the 20-year period exactly began. I think we have it here."

¶ 39 This appeal followed.

¶ 40 III. ANALYSIS

¶ 41 A. Prescriptive Easement

¶ 42 An easement is a right or privilege in the real estate of another, but it is a nonpossessory interest. *Nationwide Financial, LP v. Pobuda*, 2014 IL 116717, ¶ 29. Where an easement is found to exist, the owner of the easement has the right, for a limited purpose, to pass over or use the land of another. *Chicago Title Land Trust Co. v. JS II, LLC*, 2012 IL App (1st) 063420, ¶ 32.

¶ 43 In this case, the trial court found that Stratton Hats had established a prescriptive easement in the EFN Driveway. To establish a prescriptive easement, the claimant must prove that its use of the land existed for a 20-year period and was "(1) hostile or adverse, (2) exclusive, (3) continuous and uninterrupted, and (4) under a claim of right inconsistent with that of the true owner." *Brandhorst v. Johnson*, 2014 IL App (4th) 130923, ¶ 68; see also *Pobuda*, 2014 IL

116717, ¶ 44 (" ' adverse' " and " 'claim of right' " are synonymous terms that are equated with use that is not subordinate to owner's title).

¶ 44 EFN claims, and Stratton Hats agrees, that a party claiming a prescriptive easement bears the burden of proving all of these elements "distinctly and clearly." *Monroe v. Shrake*, 376 Ill. 253, 257 (1941); *Parker v. Rosenberg*, 317 Ill. 511, 518 (1925) (to establish prescriptive easement, "it is essential that all the elements necessary to establish such right should be clearly and distinctly proven."); *Chicago, Burlington & Qunicy Railroad Co. v. Hammond*, 210 Ill. 187, 193 (1904) ("all the elements that go to establish such a right should be clearly and distinctly proven"). In more recent cases, this court has repeated and adhered to that heighted standard of proof articulated by the supreme court. See, *e.g.*, *Brandhorst*, 2014 IL App (4th) 130923, ¶ 68; *Chicago Title Land Trust Co.*, 2012 IL App (1st) 063420, ¶ 32; *Bogner v. Villiger*, 343 Ill. App. 3d 264, 269–70 (2003); *Deboe v. Flick*, 172 Ill.App.3d 673, 675 (1988).[2]

¶ 45 EFN claims, among other things, that Stratton Hands failed to establish, "clearly and distinctly," its use of the EFN Driveway for the period of 20 years.

¶ 46 The establishment of a prescriptive easement is almost always a question of fact. *Brandhorst v. Johnson*, 2014 IL App (4th) 130923, ¶ 69. We should not overturn a trial court's findings merely because we disagree with the lower court, or because we might have reached a different conclusion as the fact finder. *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 452 (2009);

[2] The trial court applied that standard of proof, too, despite EFN's argument to the contrary. Among other comments the trial court made was this: "The burden of proof is on the plaintiff here, and the burden of proof is that the plaintiff has to show distinctly and clearly. That seems not to fit a mode in which the Court endeavors to tease out a possibility." Any other comments the trial court may have made did not alter this statement; the trial court was not required to continually repeat this standard of proof throughout the oral argument or ruling.

People v. A Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois, 217 Ill. 2d 481, 510 (2005); *Bazydlo*, 164 Ill. 2d at 214. In reviewing a decision following a bench trial, we owe deference to the findings of the trial court. *Chicago Title Land Trust Co.*, 2012 IL App (1st) 063420, ¶ 31.

¶ 47 We will not disturb the trial court's decision unless it is against the manifest weight of the evidence. *Brandhorst*, 2014 IL App (4th) 130923, ¶ 69; *Chicago Title Land Trust Co.*, 2012 IL App (1st) 063420, ¶ 31. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 17; *Halpin v. Schultz*, 234 Ill. 2d 381, 391 (2009).

¶ 48 On the other hand, the "manifest weight standard is not a rubber stamp" and "does not require mindless acceptance in the reviewing court." *People v. Anderson*, 303 Ill. App. 3d 1050, 1057 (1999). The deference we afford the findings of fact " 'is not boundless.' " *Kouzoukas v. Retirement Board of Policemen's Annuity & Benefit Fund of City of Chicago*, 234 Ill. 2d 446, 465 (2009) (quoting *Wade v. City of North Chicago Police Pension Board*, 226 Ill.2d 485, 507 (2007)).

¶ 49 The trial court waded through several contested factual issues in this matter, including many we have not recited, and patiently and carefully articulated the controlling law on a number of topics relating to prescriptive easements. Much of the trial court's good work is not recounted here, because it is not necessary to our disposition. We must respectfully hold, however, that the trial court's finding that Stratton Hats clearly and distinctly established its use of the EFN Driveway for the requisite period of 20 years was against the manifest weight of the evidence. We believe that this finding was not based on the evidence, and that the opposite conclusion is

clearly evident—that Stratton Hats did *not* distinctly and clearly demonstrate 20 years' use of that driveway.

¶ 50 It is undisputed that in October 2014, EFN raised an objection to Stratton Hats using its driveway and blocked the way. So the question is whether Stratton Hats established that it began using that driveway for at least 20 years prior to that time—no later than October 1994.

¶ 51 But we find no evidence that reliably fixes that point in time, or earlier. Nor did the evidence competently establish a window of time that would demonstrate a 20-year usage.

¶ 52 The trial court found that the guardrail was cut in 1991, and that Stratton Hats began to use the EFN Driveway around the time the guardrail was cut. We do not believe that the trial court's finding that the guardrail was cut in 1991 was based on the evidence.

¶ 53 The only witness who testified for Stratton Hats was Mr. Stratton. It is undeniable that, from personal knowledge, Mr. Stratton was unable to recall when the use of that driveway began. He could not even narrow it down to a particular decade. He swore under oath several times before trial that he had personal knowledge that the use of the EFN Driveway began in 1972, and he quite candidly conceded at trial that he was only "possibly" altering that opinion based on information he was learning from others—from Mr. Dillon's expected testimony that the guardrail was not cut until 1991, and thus the Stratton Hats trucks could not have been using the EFN Driveway before that time. But at trial, Mr. Dillon did not testify as expected. He did not say that the guardrail was cut in 1991. He was given that specific date but would only commit to saying the guardrail was cut in the "early '90s." Neither Mr. Stratton's testimony from his own personal knowledge, nor the expected testimony on which he altered his testimony, distinctly and clearly established 1991 as the date that Stratton Hats actually began using the EFN Driveway.

¶ 54 When later asked by the trial court how he pinned down the date of Stratton Hats's use of the EFN Driveway to 1991, Mr. Stratton added one new piece of information—he testified that his cousin, "who is [Stratton's] vice president," and who had worked at Stratton Hats since 1990, "insist[ed] that that is the only driveway we've ever used." What this cousin knew, obviously, was not Mr. Stratton's personal knowledge, and Stratton Hats did not call this cousin even though it could have done so (Mr. Stratton's use of the present tense to describe his cousin suggested that his cousin was still alive and well, and in his employ). But more to the point, nobody ever suggested that the guardrail was cut as early as 1990, when according to this cousin the EFN Driveway was supposedly already being used by Stratton Hats. And even Mr. Stratton himself testified that the EFN Driveway was never the "only" driveway the Stratton Hats trucks used. Even after Stratton Hats began using the EFN Driveway, whenever that was, Mr. Stratton testified (as did Mr. Dillon) that Stratton Hats trucks continued to also use the western path, around the Senior Center Property, until that path was demolished in 2010. Mr. Stratton, incidentally, had based his previous sworn testimony that his company started using the EFN Driveway in 1972 in part on conversations he had with other employees at the company, too.

¶ 55 Regardless, we agree with EFN's objection that Mr. Stratton's reliance on second-hand comments from his cousin or co-workers is not the sort of evidence that qualifies as "distinct and clear" evidence. The only conclusion we can possibly draw from the entirety of Mr. Stratton's testimony is that he had no idea when Stratton Hats began using the EFN Driveway.[3]

[3] EFN argues on appeal that the cousin's opinion was inadmissible hearsay. Stratton Hats argues that EFN forfeited the issue by not objecting contemporaneously at trial. But the trial court made it clear, as we recounted earlier, that there was no jury present, that it wanted to hear all the evidence, and that it would sort out for itself what was competent versus incompetent evidence. At all relevant times during the trial, EFN raised the argument that the reference to the cousin's opinion was incompetent testimony. We do not know if the trial court relied in any way

¶ 56 While there is no evidence whatsoever that reliably fixes the date of the cutting of the guardrail at 1991, as the trial court found, it does not automatically follow that we would reverse the judgment. We review whether the ultimate judgment was correct, and we may affirm on any basis in the record supporting that judgment, regardless of whether we agree with the trial court's specific reasoning. *City of Chicago v. Holland*, 206 Ill. 2d 480, 491 (2003); *In re Marriage of Coviello*, 2016 IL App (1st) 141652, ¶ 32. We could affirm the trial court's judgment even if we disagreed with the specific starting date found by the trial court. Ultimately, Stratton Hats did not need to prove that its use of the EFN Driveway began in 1991; it had to prove that its use began on or before October 1994.

¶ 57 But we can find no reliable information in the record to distinctly and clearly demonstrate that finding, either. It is undisputed that Stratton Hats trucks could not have used the EFN Driveway until the guardrail was cut. Again, Mr. Dillon testified that the guardrail was cut in the "early '90s." The "early '90s" could mean 1990, 1991, 1992, 1993, and possibly 1994. We can only guess which of these years it meant—there is nothing in the record to allow us, or to have allowed the trial court, to nail this down any further. Reasonable inferences are one thing, but rank speculation is another.

¶ 58 And that only speaks to when the guardrail was cut—the first moment in time that Stratton Hats possibly *could have* used the EFN Driveway. It was not necessarily the date that Stratton Hats did, in fact, start using that driveway. Mr. Dillon testified that "some time after the guardrail was cut," Stratton Hats started using the EFN Driveway. There is no way to know what amount of time "some time" afterward was intended to connote. One day after the guardrail was

---

on that testimony, but whether it did so is beside the point; we find that evidence wholly insufficient to distinctly and clearly establish 20-year usage, for the reasons given above.

cut? One month? Six months? Two years? Again, there is nothing in the record that even hints at an answer.

¶ 59 We know from Mr. Dillon's testimony that in 1995, when Mr. Dillon became the plant manager for Packaging Products after his father sold the business, Stratton Hats was already using the EFN Driveway. But we do not know when in 1995 Mr. Dillon became plant manager, and he could not say how long before his promotion to plant manager it was—one day, two months, or years before—that Stratton Hats began using the EFN Driveway.

¶ 60 Simply put, the evidence established a window of time in which Stratton Hats would have begun to use the EFN Driveway—a window of time beginning with the "early '90s," the first time that it would have been physically possible for Stratton Hats to use the EFN Driveway, and ending at some point in 1995, when Mr. Dillon became plant manager and Stratton Hats was already using the EFN Driveway. It is possible, of course, that the guardrail was cut in 1991, and Stratton Hats started using the EFN Driveway right away, well before October 1994 and easily satisfying the requisite 20-year period. It is just as possible that the guardrail was cut some time in 1993 or 1994, and Stratton Hats did not start using the EFN Driveway until some point in 1995. We could play with these dates to create endless scenarios, but they are all just as likely as the others. To pick any of those possibilities over the others is nothing short of a guess. It is not the sort of evidence we would characterize as "distinct and clear."

¶ 61 We know from Mr. Dillon that the guardrail was cut after Packaging Products acquired a competitor and, needing additional space, started leasing what is now the EFN Property, thus making it necessary for his company to travel to and from the east and west properties sandwiching Stratton Hats. When did Packaging Products start leasing the EFN Property? When did it acquire its competitor? One would think a piece of paper—a contract, a lease, public utility

records, tax records, corporate records—could have answered either of those questions rather easily. And Mr. Dillon said he became plant manager in 1995 after his father sold the business. Again, when, precisely, in 1995 his father sold the business seems to be something that could have been locked down with more specificity with the same kinds of records.

¶ 62 But none of that information was presented at trial. Even under an admittedly deferential standard of review, we can find no reliable evidence on which to base the conclusion that Stratton Hats carried its burden of proving, clearly and distinctly, that it began using the EFN Driveway on or before October 1994.

¶ 63 We hold that the trial court's finding of a 20-year use of the EFN Driveway by Stratton Hats was against the manifest weight of the evidence. The entry of judgment in favor of plaintiffs, declaring the existence of a prescriptive easement in the EFN Driveway, is reversed.

¶ 64 Reversed.