

No. 1-12-2540

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IN THE APPELLATE  
COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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NATIONWIDE FINANCIAL, L.P.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09CH26587
	)	
MICHAEL THOMAS POBUDA and	)	The Honorable
LAURA J. POBUDA,	)	Franklin U. Valderrama,
	)	Judge Presiding.
Defendants-Appellants.	)	

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Howse and Justice Lavin concur in the judgment.

**ORDER**

¶ 1 *Held:* Trial court properly granted partial summary judgment on prescriptive easement claim where defendant failed to allege the requisite element of exclusive use of the disputed property. Affirmed.

¶ 2 Plaintiff Nationwide Financial (Nationwide) owns property in Barrington Hills, Illinois. Defendants Michael and Laura Pobuda (the Pobudas) own adjacent property. The Pobudas use a portion of the Nationwide property, and Nationwide complains that the Pobudas are trespassing on their property when they use this portion of land. The Pobudas admit they use this portion of

property, but claim that a prescriptive easement allows them to so use the land. The Pobudas filed a motion for summary judgment, asserting that their use of the land was not wrongful because they had a prescriptive easement. Nationwide filed a cross-motion for partial summary judgment, asserting that the Pobudas did not have a prescriptive easement because they had not established exclusive use over the disputed property. The trial court entered partial summary judgment in favor of Nationwide and against the Pobudas. The Pobudas appeal this ruling.

¶ 3

### I. BACKGROUND

¶ 4 A significant amount of motions have been filed and hearings held in this case. We recite here only the facts relevant to the instant cause.

¶ 5 In 1969, Mary Jane Burton and the Mary Jane Burton Trust (Burton) purchased property at 275 Donlea Road (the Nationwide property) in Barrington Hills. Burton owned this property continuously until June 2008. In June 2008, Nationwide purchased the property.

¶ 6 The adjacent parcel of property (the Pobuda property) was purchased by Mary Ann Mayworm in 1971. Mayworm owned this property continuously until December 1986. In December 1986, the Pobudas purchased this property.

¶ 7 In 1956, both the Nationwide property and the Pobuda property were granted an express easement to provide ingress and egress to the property from Donlea Road. There is also a utility easement attached to both the Nationwide and Pobuda properties. Neither of these easements are at issue in the instant dispute.

¶ 8 The portion of the Nationwide property in dispute here is described as: "the north 48 feet of the west line and the west 33 feet of the north line, in the northwest corner of [the Nationwide

property]."<sup>1</sup> Herein, we refer to this disputed property as "the Nationwide strip."

¶ 9 The Pobudas use the Nationwide strip for access to Donlea Road. Specifically, the Pobudas claim they have used the strip regularly "during the period of December 12, 1986

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<sup>1</sup> More specifically, the Pobudas describe the Nationwide strip as:

"That part of the West half of the South West quarter of Section 4, Township 42 North, Range 9 East of the Third Principal Meridian, describe as follows: Beginning on the East line of the West half of the South West Quarter of said Section 4, 166.7.9 feet (as measured along said east line) North of the South line of said South West quarter, thence West parallel with the South line of said South West quarter 478, thence North parallel with the West line of the South West quarter, a distance of 439.1 feet to the point of beginning, thence North parallel with the West line of the South West quarter, a distance of 48 feet, thence Easterly 33 feet to a point 451.3 feet west of the East line of the West half of the South West quarter of said Section 4, 2095 feet North of the South line of said South West 1/4, (as measured along the east line of the west 1/2 of the South West 1/4 of said Section 4), thence South-southwesterly along an arc of a circle, said circle having a radius of 41 feet, being convex to the Southeast, a distance of 60 feet, more or less, to the point of beginning."

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through and including the present date." In addition, they claim that the prior owner of the Nationwide property, Mary Jane Burton, observed them using the strip "when the automobiles owned by both the [Pobuda] and [Nationwide properties] passed while heading in opposite directions over and upon [the Nationwide strip]." The Pobudas assert that, from December 1986 to the present, they "continuously acted under claim of right, adversely and in disregard of the rights of others to use [the Nationwide strip]." They claim they "regularly plowed snow, mowed grass, filled in low spots with road gravel, raked leaves, swept debris, picked-up sticks, patched and seal coated the driveway surface, on, upon and across [the Nationwide strip]."

¶ 10 The Pobudas claim:

"During the period of December 12, 1986 through the present date, [the Pobudas], under a claim of right, openly, visibly, notoriously, and adversely, used the [Nationwide strip]:

¶ 11 A. to travel to and from his garage and his home located on his 281 Donlea Property;

B. to receive deliveries from the US Postal Service, from UPS, from FedEx and from other delivery services;

C. to receive services provided by home repair contractors, appliance repairmen and other repair service personnel;

D. for utility company personnel to read [the Pobudas'] utility meters and service their utility equipment in [the Pobudas'] home; and

E. for the garbageman to pick-up [the Pobudas'] garbage."

In addition, the Pobudas allege that, during the period of December 1986 to the present, their family, friends, invited guests, and visitors traveled over the Nationwide strip. The Pobudas themselves used the Nationwide strip by traveling over it by car, truck, on foot, and on bicycle.

¶ 12 The Pobudas also claim that their predecessor in title, Mayworm, used the Nationwide strip. The record on appeal includes an affidavit by Mayworm in which she attests that she lived at 281 Donlea Road from 1971 through 1986, when she sold it to the Pobudas. She attested that, during the time she lived at the Pobuda property, she, her family, and their visitors used the Nationwide strip; and her husband maintained the Nationwide strip by plowing snow and performing other maintenance work. She further attested:

"8. During the entire 15 years that I resided at the 281 Donlea Property, I never asked the owners of the 275 Donlea Property, or anyone else, to buy, lease or for permission to use or travel over the [Nationwide strip].

9. During the entire 15 years that I resided at the 281 Donlea Property, I was never advised by anyone that permission or an oral or written lease was necessary to use or travel over the [Nationwide strip];

10. When I purchased the 281 Donlea Property in June 1971, I was never informed by the former owners, Jess Nicks and Barbara M. Nicks, that permission or an oral or written lease was

necessary to use or travel over the [Nationwide strip];

\* \* \*

16. From June, 1971 through December, 1986, myself and my family continually used, maintained and traveled over the [Nationwide strip] to reach our 281 Donlea Property from Donlea Road; my travel across the [Nationwide strip] was frequently observed by the Burtons, the owners of the 275 Donlea Property, during this period; during this entire period of time both myself and my family claimed that it was our right to travel over the [Nationwide strip] to reach our gravel access road easement leading to Donlea Road;

17. During the period of June, 1971 through December, 1986, the owners of the 275 Donlea Property never objected or otherwise questioned my claim of right and my open and continuous use of the [Nationwide strip]."

¶ 13 In May 2009, Nationwide demanded the Pobudas cease using the Nationwide strip or pay a rental fee for the continued use of the Nationwide strip. The Pobudas refused to do so. Eventually, Nationwide filed a complaint for declaratory judgment against the Pobudas, asking the court to determine that the Pobudas' use of the strip was a wrongful trespass. The Pobudas then filed counterclaims for declaratory judgment of a prescriptive easement, interference with a prescriptive easement, interference with an express easement, and declaratory judgment

regarding certain development modifications in order to prevent flooding of the Pobuda property.

¶ 14 In response, Nationwide moved to dismiss counts I and II of the counterclaims, which dealt with the allegations of a prescriptive easement, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). In this motion to dismiss, Nationwide asserted that the allegations regarding prescriptive easement should be dismissed because the Pobudas had failed to allege the requisite exclusive use of the Nationwide strip. The trial court dismissed the prescriptive easement counterclaims without prejudice, finding that, pursuant to *Chicago Steel Rule Die & Fabricators Co. v. Malan Construction Company*, 200 Ill. App. 3d 701, 707 (1990), the Pobudas failed state a claim for prescriptive easement because they failed to allege Nationwide or its predecessors in title were altogether deprived of use or possession of the Nationwide strip.

¶ 15 The Pobudas filed amended counterclaims in which they still did not allege exclusive use of the Nationwide strip. Nationwide again filed a motion to dismiss pursuant to section 2-615 of the Code, arguing that the claims should be dismissed because the Pobudas failed to allege both exclusive use and adverse use of the Nationwide strip. In their response to the motion to dismiss, the Pobudas argued, in part, that there is no requirement that they must plead that Nationwide was altogether deprived of possession in order to state a cause of action for prescriptive easement. The trial court denied the motion.

¶ 16 Many more motions were filed during the ensuing months. During this time, plaintiff Michael Pobuda, who is also an Illinois attorney, filed a grievance with the Attorney Registration and Disciplinary Committee (ARDC) against one of the Nationwide attorneys. The cause was

stayed until such time as a resolution regarding the grievance could be reached. Eventually, the ARDC determined that it would proceed no further against the Nationwide attorney, and the matter was reinstated in September 2011. At some point in 2011, the Pobudas presented a motion for leave to file second amended counterclaims against new defendants. Following the court's grant of the motion, apparently the Pobudas revealed they had already filed, but not provided notice to Nationwide nor the trial judge, a motion for substitution of judges for cause. The trial judge recused himself, noting in the transfer order:

"The Pobudas—having previously filed (but not mentioned to the Court) a motion for substitution for cause—presented motions today seeking substantive orders. This litigation is murky enough already."

¶ 17 In March 2012, the Pobudas filed a motion for summary judgment on their amended complaint. In their motion, they asserted there were no material facts in dispute concerning whether their admitted "travel over, and maintenance of" the Nationwide strip is wrongful. They argued that "reasonable individuals could not differ in concluding that [the Pobudas'] use, travel-over and maintenance of [the Nationwide strip] is not wrongful" and that the evidence established as a matter of law that such use of the Nationwide strip was not wrongful because they have a prescriptive easement.

¶ 18 In May 2012, Nationwide filed a combined response to the Pobudas' summary judgment motion and a cross-motion for partial summary judgment as to liability on its amended complaint, which motion is at issue in the instant appeal. In its motion, Nationwide asserted that



the Pobudas did not have a prescriptive easement because they had failed to establish exclusive use over the Nationwide strip. Nationwide asserted: "As a matter of law, [the Pobudas] cannot allege a prescriptive easement over the Subject Disputed Property, and therefore their admitted travel over and upon Plaintiff's Property constitutes wrongful trespass." They argued that a then-recent appellate case, *Catholic Bishop of Chicago v. Chicago Title and trust Co.*, 2011 IL App (1st) 102389, was dispositive of the exclusivity requirement for a prescriptive easement issue. Pursuant to *Catholic Bishop*, they argued, because the Pobudas failed to establish that Nationwide had been altogether deprived of possession of the Nationwide strip, the Pobudas' admitted use of the Nationwide strip was wrongful as a matter of law.

¶ 19 In July 2012, the trial court granted Nationwide's cross-motion for partial summary judgment and denied the Pobudas' motion for summary judgment. In its ruling, the court noted that, pursuant to *Catholic Bishop*, it "must find that the element of exclusivity requires a party claiming a prescriptive easement to establish that during the relevant time period, the true owner was dispossessed use of the subject property." Because the Pobudas did not show that Nationwide or its predecessor in title were altogether dispossessed of use of the Nationwide strip, nor "even allege that they have been using the property without the permission of Nationwide's predecessor in interest," the court found that the Pobudas failed to show exclusive use of the Nationwide strip and, accordingly, failed to state a claim for prescriptive easement.

¶ 20 The Pobudas appeal.

¶ 21 II. ANALYSIS

¶ 22 i. *Prescriptive Easement*

¶ 23 On appeal, the Pobudas first contend that the trial court erred in awarding summary judgment to Nationwide regarding the prescriptive easement. The Pobudas assert that they effectively pled all elements required for a prescriptive easement, and that the trial court erred in its interpretation of the "exclusivity" requirement. For the following reasons, we disagree.

¶ 24 Summary judgment is proper when the pleadings, affidavits, depositions and admissions of record, construed strictly against the moving party, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001); 735 ILCS 5/2-1005 (West 2010). This relief is an appropriate tool to employ in the expeditious disposition of a lawsuit in which " 'the right of the moving party is clear and free from doubt.' " *Morris*, 197 Ill. 2d at 35, quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). In ruling on a motion for summary judgment, the circuit court is to determine whether a genuine issue of material fact exists, not try a question of fact. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A party opposing a motion for summary judgment "must present a factual bias which would arguably entitle him to a judgment." *Allegro Services, Ltd. v. Metropolitan Pier & Exposition Authority*, 172 Ill. 2d 243, 256 (1996). When determining whether a genuine issue of material fact exists, courts construe the pleadings liberally in favor of the nonmoving party. *Williams*, 228 Ill. 2d at 417. "Summary judgment is to be encouraged in the interest of prompt disposition of lawsuits, but as a drastic measure it should be allowed only when a moving party's right to it is clear and free from doubt." *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989). "If the plaintiff fails to establish any element of the cause of action asserted, summary judgment for the defendant is proper." *Governmental Interinsurance*

*Exchange v. Judge*, 221 Ill. 2d 195, 215 (2006). We review summary judgment rulings *de novo* (*Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995)) and we will only disturb the decision of the trial court where we find that a genuine issue of material fact exists. *Addison v. Whittenberg*, 124 Ill. 2d 287, 294 (1988).

¶ 25 " ' An easement is a right or privilege in the real estate of another.' " *Chicago Title Land Trust Co. v. JS II, LLC*, 2012 IL App (1st) 063420, ¶ 32, quoting *McMahon v. Hines*, 298 Ill. App. 3d 231, 235 (1998). "If 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.*, 2012 IL App (1st) 063420, ¶ 32. An easement may be created by grant, prescription, or implication. *Friedman v. Gingiss*, 182 Ill. App. 3d 293, 295 (1989).

¶ 26 To establish an easement by prescription, a party must show that its use of the property in question has "been hostile or adverse, uninterrupted, exclusive, continuous and under a claim or title inconsistent with that of the true owner. These elements must have shared a concurrent existence for a period of 20 years." *Chicago Steel*, 200 Ill. App. 3d at 705-06 (citation omitted). The party asserting the easement has the burden to prove each of these elements by clear and distinct evidence. *Bogner v. Villiger*, 343 Ill. App. 3d 264, 269 (2003). "With respect to the element of adversity, [a] claimant must show that the use of the property was with the knowledge and acquiescence of the owner but without his permission." *Sparling v. Fon Du Lac Twp.*, 319 Ill. App. 3d 560, 563 (2001). "[M]ere permissive use can never ripen into prescriptive right whatever length of time such permissive use is enjoyed." *Monroe v. Shrake*, 376 Ill. 253, 257 (1941). "To establish exclusivity, it is unnecessary to show that only the claimant has made use

of the way, because exclusive use means that the claimant's right to use the lane does not depend upon a like right in others. However, exclusivity does require that the rightful owner be altogether deprived of possession. 'A joint possession by two, even though the claim of each is adverse to the other, will not be a disseizin \* \* \* unless the rightful owner is altogether deprived of possession.' " *Chicago Steel*, 200 Ill. App. 3d at 707 (citations omitted) (quoting *Towle v. Quante*, 246 Ill. 568, 576 (1910)).

¶ 27 We are of the opinion that the outcome of this case is determined by *Catholic Bishop of Chicago v. Chicago Title and Trust Company*, 2011 IL App (1st) 102389. In *Catholic Bishop of Chicago*, the alleged servient estate owner, brought an action against a restaurant known as 1492 Tapas, the alleged dominant estate owner, for declaratory judgment that the restaurant's claim of prescriptive easement over a narrow walkway dividing the two properties was invalid. *Id.* Catholic Bishop was the owner of the walkway, and the restaurant was using it for removing trash, receiving deliveries, and as an employee entrance. *Id.* The restaurant claimed it had a prescriptive easement allowing it to use the walkway. *Id.* Catholic Bishop commenced an action seeking, in pertinent part, a declaratory judgment that the restaurant's prescriptive easement claim was invalid. *Id.* Catholic Bishop moved for summary judgment, contending that the restaurant failed to show its use of the walkway was exclusive because it failed to establish that Catholic Bishop was deprived of use of the walkway during the relevant time period. *Id.* The restaurant asserted that Catholic Bishop's use of the walkway during the relevant time period did not defeat its claim for prescriptive easement. *Id.* The trial court entered summary judgment in favor of Catholic Bishop, and the restaurant appealed. *Id.*

¶ 28 On appeal, this court defined the issue raised as: "whether 'exclusivity' is a necessary element to establish an easement by prescription." *Id.* We held that exclusivity is a necessary element for a prescriptive easement, and we affirmed the grant of summary judgment in Catholic Bishop's favor. *Id.* In so finding, we considered the history of prescriptive easements as well as adverse possession, noting that "[u]nder Illinois law, an easement obtained by prescription is based on the same principles as title obtained by adverse possession." *Id.* (citing *Chicago Steel*, 200 Ill. App. 3d 701, 705 (1990) (citing *Rita Sales Corp. v. Bartlett*, 129 Ill. App. 2d 45, 51-52 (1970))).

¶ 29 We considered the case of *Chicago Steel*, another prescriptive easement case, in which this court determined that the party claiming exclusivity did not need to show he possessed the property to the exclusion of all others but that, "because exclusivity requires that the claimant possess the property independent of all others, the rightful owner must be 'altogether deprived of possession.' " *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389, ¶ 17 (quoting *Chicago Steel*, 200 Ill. App. 3d at 707). We explained: " ' "A joint possession by two, even though the claim of each is adverse to the other, will not be disseizin [a deprivation of possession] unless the rightful owner is altogether deprived of possession." ' " *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389, ¶ 17 (quoting *Chicago Steel*, 200 Ill. App. 3d at 707 (quoting *Towle*, 246 Ill. at 576))).

¶ 30 We also considered the case of *City of Des Plaines v. Redella*, 365 Ill. App. 3d 68 (2006), which followed *Chicago Steel*, finding that the "establishment of an easement by prescription requires a claimant to show its use of the land was exclusive, such that 'the true owners were

deprived of use or possession' of the land." *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389, ¶ 19 (quoting *City of Des Plaines*, 365 Ill. App. 3d at 76).

¶ 31 We specifically addressed the issue that the element of exclusivity requires an owner to be altogether deprived of use, and found that exclusivity in the context of a prescriptive easement does require that the true owner be altogether deprived of use. *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389.

¶ 32 We acknowledged a law review article, *Exclusiveness in the Law of Prescription*, which explained that, although the majority of jurisdictions favor a more lax exclusiveness requirement, the merits of a strict exclusiveness requirement include the consideration that prescriptive claims are generally disfavored because they transfer property rights without the landowner's consent:

" 'A strict exclusiveness requirement encourages a claimant to exclude the landowner who seeks to participate in the use in order to continue his prescriptive claim. If this occurs, the landowner receives clear notice that his rights are being invaded and he has an opportunity to prevent the easement from arising. Additionally, once a claimant knows that he must exclude others, he will be encouraged to bargain with the landowner for an easement by grant. In this way, both the claimant and the landowner gain something in exchange for the transfer. Moreover, if the claimant successfully uses the land exclusively for the prescriptive period, this indicates that the landowner has not kept

himself informed about his land or does not care that it is being used by another. In either case, the usual hesitancy surrounding [involuntary] land transfers is diminished.' " *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389, ¶ 30 (quoting Dena Cohen, *Exclusiveness in the Law of Prescription*, 8 Cardozo L.Rev. 611 (1987)).

¶ 33 Ultimately, we affirmed the trial court's grant of partial summary judgment in favor of Catholic Bishop because the restaurant had failed to establish the necessary element of exclusivity. *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389. We stated:

"This court's previous holdings in *Chicago Steel* and *City of Des Plaines* make clear that in Illinois, exclusivity is a necessary element to establish an easement by prescription. *Chicago Steel*, 200 Ill. App. 3d at 705; *City of Des Plaines*, 365 Ill. App. 3d at 76. Since prescriptive easements over land, being acquired in the manner of adverse possession, are disfavored in law, the burden of proving a prescriptive right, including the element of exclusivity, is on the party alleging such right. *Bogner*, 343 Ill. App. 3d at 270; *Illinois District of American Turners, Inc. v. Rieger*, 329 Ill. App. 3d 1063, 1073 (2002)." *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389, ¶ 30.

¶ 34 The Pobudas' claim that the exclusive use requirement in Illinois prescriptive easement

law does not require them to establish that the owner of the Nationwide strip was altogether deprived of possession is legally incorrect. See *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389.<sup>2</sup>

¶ 35 Here, the Pobudas fail to state a claim for prescriptive easement because they cannot show that Nationwide or its predecessor(s) in title were altogether deprived of the use or possession of the Nationwide strip. As in *Catholic Bishop*, while the Pobudas were not required to show they possessed the Nationwide strip to the exclusion of all others, because exclusivity requires that the claimant possess the property independent of a like right in others, "the rightful owner must be 'altogether deprived of possession.'" *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389 (quoting *Chicago Steel*, 200 Ill. App. 3d at 707). Here, the evidence is clear that the true owner of the Nationwide strip, Nationwide and its predecessors, used the Nationwide strip. In the Pobudas' amended counterclaim, for instance, they state that the prior owner of the property drove on the Nationwide strip:

"26. [The Pobudas'] use of the [Nationwide strip] was observed by Mary Jane Burton [Nationwide's predecessor in title] when the automobiles owned by both the 275 and 281 Donlea Property owners passed while heading in opposite directions over and upon the [Nationwide strip]."

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<sup>2</sup> Additionally, we note that the Pobudas' apparent claim that the *Catholic Bishop* holding applies only to "public dependent" use and not to "private independent" use of disputed property is unpersuasive, as *Catholic Bishop* makes no such distinction.



In addition, during Mayworm's deposition, Mayworm, Nationwide's predecessor in title, testified that the Pobudas' predecessor in title, the Burtons, regularly traveled over the Nationwide strip, stating that it could have been as frequently as daily.

¶ 36 We recognize that a majority of jurisdictions do not require the element of exclusivity in claims for prescriptive easements. See *Catholic Bishop of Chicago*, 2011 IL App (1 st) 102389, ¶¶ 29-30. Illinois, however, does require the element of exclusivity, and we are not at liberty to depart from the line of previous court rulings requiring the element of exclusivity to establish and easement by prescription. See, e.g., *Catholic Bishop of Chicago*, 2011 IL App (1st) 102389, ¶ 31; *Chicago Steel*, 200 Ill. App. 3d at 705; *City of Des Plaines*, 365 Ill. App. 3d at 76.

¶ 37 Additionally, the Pobudas' assertion that *Healy v. Roberts*, 109 Ill. App. 3d 577 (1982), requires us to reverse the trial court's determination is unpersuasive. *Healy* is dispositive to the case at bar. Unlike the instant case, *Healy* went to trial and the trial court found a prescriptive easement. *Healy*, 109 Ill. App. 3d at 579. The defendants on appeal argued the evidence did not establish the use of the disputed driveway was exclusive and under claim of right for the prescriptive period. *Healy*, 109 Ill. App. 3d at 579. This court affirmed the decision of the trial court noting, in part, that there was differing testimony regarding the historical use of the disputed driveway. *Healy*, 109 Ill. App. 3d at 580. The trial court had determined that factual question in the plaintiff's favor and the appellate court did not find that determination contrary to the manifest weight of the evidence. *Healy*, 109 Ill. App. 3d at 579. In the case at bar, there is no question of fact. Rather, all parties agree that Nationwide and their predecessors in title have been using the Nationwide strip. The grant of a prescriptive easement requires an owner to be

altogether deprived of use (*Catholic Bishop of Chicago*, 2011 IL App (1st) 102389) and the Pobudas are unable to show that Nationwide was altogether deprived of use.

¶ 38 We find no error in the trial court's grant of partial summary judgment in favor of Nationwide and against the Pobudas where, because the Pobudas are unable to establish that Nationwide was deprived of possession of the Nationwide strip, the Pobudas' claim for prescriptive easement fails.

¶ 39 ii. *Allegations of Bias and Prejudice*

¶ 40 Due to our disposition here, we decline to address the remaining issue raised by the Pobudas. In particular, we find that our disposition herein renders moot the Pobudas' argument regarding bias and prejudice. The Pobudas request this court to transfer this cause to a new county due to "bias and prejudice in Cook County." They assert that the trial court "ignored an entire set of legal principles applicable to prescriptive easements, the use of easements and to adverse possession." They support this argument by asserting that they repeatedly informed the trial court that:

"A. the right to use an easement versus ownership of  
underlying property,

B. that an easement involves concurrent use not  
dispossession,

C. that use of an easement is a lesser interest than  
ownership,

D. that there is a distinction between the elements of

exclusivity in prescriptive easement claims and adverse possession claims,

E. that the doctrine of prescriptive easements has not been abolished in Illinois,

F. that applying the tighter standard of exclusivity to a prescriptive easement in effect abolishes the prescriptive easement doctrine,

G. the effect of private use versus public use on a prescriptive easement claim,

H. the Supreme Court cases involving prescriptive easements,

I. the direct application of the 1<sup>st</sup> Appellate District case of *Healy v. Roberts*,

J. the limited application of the *Chicago Steel* and *Catholic Bishop* holdings due to the involved public use, and

K. Illinois, federal court and other State's cases involving the public use doctrine."

The Pobudas essentially argue that, because the trial court did not agree with their version of the law of the case, it was biased against them and this court should transfer this case to another county. We have reviewed the case and record, and have determined that the trial court did not err in its grant of partial summary judgment, and find it unnecessary to further address this

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argument.

¶ 41

### III. CONCLUSION

¶ 42 For the aforementioned reasons, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.