2011 IL App (5th) 100258–U

NO. 5–10–0258

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

STEVEN W. ASBURY and E. JILL ASBURY,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Randolph County.
	)	
v.	)	No. 07–CH–94
	)	
CHARLES E. SCHUPBACH,	)	Honorable
	)	Richard A. Brown,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Chapman and Justice Spomer concurred in the judgment.

O R D E R

¶ 1 *Held*: In an action to enforce driveway easement rights, the circuit court erred in granting a summary judgment in favor of the plaintiffs on the defendant's affirmative defense that the plaintiffs' predecessors-in-title abandoned the driveway easement. The circuit court's finding that the defendant failed to prove extinguishment of the easement by adverse possession was not against the manifest weight of the evidence.

¶ 2 The plaintiffs, Steven W. Asbury and E. Jill Asbury, filed a complaint against the defendant, Charles E. Schupbach, alleging that the defendant's carport interfered with their driveway easement over the defendant's property. The circuit court found against the defendant on his affirmative defenses of abandonment and adverse possession of the easement. The defendant appeals the judgment of the circuit court that enjoins him from interfering with the plaintiffs' use of the easement, requires him to remove or alter the carport so that it does not interfere with the easement, and enjoins him from allowing anyone to park any vehicles in the area of the easement. For the reasons that follow, we reverse and remand.

¶ 3 BACKGROUND

¶ 4 This property dispute involves two lots of real estate that are located adjacent to each other along Market Street in Sparta, Illinois. The defendant's lot (the southern lot) is located at the northwestern corner of Market Street and Main Street and is commonly known as 101 North Market Street. Market Street runs north and south through Sparta, and Main Street runs east and west. The plaintiffs' lot (the northern lot) is located immediately north of the defendant's lot on Market Street and is commonly known as 104 North Market Street. The northern lot contains a single family residence, and the southern lot contains a two-story brick building that is divided into two commercial rental spaces and apartments.

¶ 5 The lots at issue were formerly owned by Dr. P. J. Stevenson and his wife, Nora. On February 25, 1952, the Stevensons conveyed the southern lot to Dr. Willard W. Fullerton. The deed that conveyed the southern lot to Dr. Fullerton contained the following reservation to the Stevensons: "reserving to the Grantors the right to use the driveway on said premises." This reservation created the driveway easement that is at issue in the present case. The record does not establish what driveway existed on the southern lot in 1952.

¶ 6 Dr. Stevenson passed away in 1952, and his widow, Nora, continued living in the residence on the northern lot. On July 18, 1969, Nora conveyed the northern lot to Larry and Lynn Partington. The warranty deed from Nora to the Partingtons included a conveyance of "all rights of the Grantor to the use of the driveway running South to Main Street across the South 59 feet 7 inches of said Lot 48."

¶ 7 Lynn testified that when she and her husband bought the house on the northern lot in 1969, the driveway to their house entered the northern lot off Market Street, extended around the north side of their house, traveled around the back side of the house, and exited south onto Main Street over the southern lot. It was an L-shaped driveway that ran completely around their house and through the southern lot on the west side of Dr. Fullerton's medical

office building. Presumably, the driveway exiting the southern lot onto Main Street described by Lynn is the driveway referred to in the reservation contained in Dr. Fullerton's 1952 deed to the southern lot from the Stevensons.

¶ 8 Lynn testified that, until 1973, she and her husband regularly drove their vehicles on this driveway, through the southern lot, in order to enter their property from Main Street or exit their property onto Main Street. In 1973, however, she and her husband built an addition onto the west end of their house. This addition extended over the driveway on their property so that the driveway no longer made a complete "L" turn around their house. After 1973, the Partingtons accessed their property by vehicle by using the driveway that entered their property directly off Market Street on the north side of their house. Sometimes they parked both of their vehicles in the driveway on the north side of their house. Other times they parked one vehicle in the driveway and parked another vehicle in a parking lot that was adjacent to the north side of their property. After 1973, they no longer accessed their property by vehicle off Main Street over the driveway through the southern lot.

¶ 9 Lynn testified that from 1975 until 2004, her husband, Larry, was employed with Lynn Furniture, which was located on Market Street, a block and a half south of their home. She testified that Larry walked south down the driveway easement over the southern lot to go to and return from work at the furniture store on a daily basis. In addition, she testified that she and her children also walked to and from their property over the southern lot, along the driveway, on a regular basis.

¶ 10 When the Partingtons purchased the northern lot, Dr. Fullerton still owned the southern lot and he had a medical office in the commercial building, and he and his family lived upstairs in the building. She testified that Dr. Fullerton built a carport over the driveway at some point and that there were cars usually parked under the carport since that time. The carport is made out of four heavy steel corner posts with an aluminum flat top

roof, and an air-conditioning unit is mounted on the top of the carport next to the building. When she walked down the driveway, she walked between and around the cars parked under the carport and in the driveway on the southern lot to access Main Street from her property. She did not remember when Dr. Fullerton built the carport but guessed that he built it sometime "in the early to mid seventies." She testified that it was built about the same time as the addition onto their house. Later she testified that it was possible that the carport was in place before she and her husband purchased the northern lot in 1969.

¶ 11 Lynn testified that her husband, Larry, picked up trash under the carport from time to time and that their guests sometimes accessed the northern lot over the driveway from Main Street. On occasion, appliances or furniture were delivered to the Partingtons' house by utilizing the driveway area from Main Street over the southern lot.

¶ 12 Lynn testified that she was unaware of any driveway easement over the southern lot. Larry took care of household business affairs, and he never told her about the easement. She did not know if Dr. Fullerton asked her husband for permission to build the carport. She did testify, however, that neither she nor her husband complained about the carport or were upset about it. She lived in the house with her husband until he passed away in 2005. She continued to live in the house until she sold it to the plaintiffs in 2007.

¶ 13 After Dr. Fullerton passed away, Clark Linders purchased the southern lot in 1978 from Dr. Fullerton's estate. Clark divided the building into two commercial rental units and four residential apartments. Lynn testified that the residents of the apartments used the carport to park their vehicles, and she never complained about the tenants' vehicles parked under the carport.

¶ 14 Clark testified that when he acquired the southern lot, he converted the first floor into a dentist's office and office space that was rented by the State of Illinois. He converted the second floor into apartments. He testified that the carport was already in place when he

purchased the building, along with an air-conditioning unit that is mounted on top of the carport. He did not know who had constructed the carport.

¶ 15 Clark owned the southern lot until 1988, when he sold it to his brother Blake Linders. During the time Clark owned the building, the carport was used for parking by the tenants of the building, primarily the dentist's office. He did not remember the Partingtons ever using the carport area for any purpose, and he was not aware of any easement. He did not have any conversations with the Partingtons about the easement. The only change that Clark made with respect to the carport was to paint it sometime after he purchased the lot.

¶ 16 At some point, a retaining wall was constructed that extended partially across the back of the carport. Clark testified that he used the area immediately in front of this retaining wall and underneath the carport for the placement of a large trash bin. The retaining wall was in place when Clark purchased the property, and he always used that area underneath the carport for the placement of trash bins.

¶ 17 Blake Linders testified that he owned the southern lot until 1993, when he sold it to his sister, Tamara. When he owned the building, he used the carport for parking for residential tenants in the building. He lived in one of the upstairs apartments for a period of time when he owned the building, and he parked his car under the carport. His wife parked her car behind his in the driveway. In addition, he kept a trash dumpster against the retaining wall under the carport.

¶ 18 While Blake owned the building, a video store opened in one of the commercial spaces in the building, and the store's manager also parked a vehicle in the driveway, not under the carport, but closer to the street. Deborah Sykes owned and operated the video store. She testified that the video store customers parked their vehicles across Main Street in a bank parking lot.

¶ 19 Blake testified that he did not make any changes to the carport when he owned the

building but once arranged for repairs to the air-conditioner unit that was mounted on top of the carport. He did not know who constructed the carport and was not aware of any easement over the southern lot's driveway to and from the northern lot.

¶ 20 Blake testified that he never had any conversations with the Partingtons about an easement or the carport. He testified that the Partingtons never complained to him about any vehicles that were parked under the carport, and Blake testified that there were cars parked under it every day. He did not recall the Partingtons ever driving or parking under the carport. He remembered that they parked on the opposite side of their house in their driveway off Market Street. In addition, they parked in an insurance office's parking lot that was located on the north side of their house. He remembered that Larry Partington walked through the carport to and from the furniture store every workday.

¶ 21 Tamara Linders bought the southern lot from her brother, Blake, in 1993. She testified that she lived in an apartment in the building for a couple of years during the time one of her brothers owned the building. During that time, she and other tenants used the carport to park their vehicles. When she owned the property, she also allowed tenants of the building to park under the carport. She did not make any changes or modifications to the carport, and she continued to store a large trash bin under the carport. She testified that the Partingtons never asked her or her renters to move their vehicles from under the carport. They never complained about the carport or its use.

¶ 22 Tamara testified that the Partingtons used the carport only to walk under it to access Main Street. The Partingtons never told Tamara that they had an easement right to either drive or walk across the carport area. She remembered that there were bushes along the walk leading up to the Partingtons' house that extended from the carport and that they were removed in 2004 or 2005.

¶ 23 The defendant purchased the southern lot from Tamara on August 17, 2005. At the

time of the purchase, he did not have knowledge of any easement over the property. There is no reference to the easement in his deed, and he never spoke with Lynn Partington about the easement before or after he purchased the southern lot, although he had seen her walking her dog over his property on a few occasions.

¶ 24 The plaintiff, Steven Asbury, testified that before he purchased the northern lot from Lynn Partington, he looked at the Partingtons' deed so he could determine the dimensions of the property. He testified that his decision to purchase the property was based on the existence of the driveway easement over the southern lot. He stated that he had two vehicles and needed both driveways. However, he did not discuss the use of the driveway prior to purchasing the property. After they purchased the northern lot, the plaintiffs tried to access their property from the easement over the southern lot off Main Street several times, but they were unsuccessful because the easement was blocked by cars parked under the carport. When he purchased the northern lot, he was aware of the existence of the carport on the southern lot and that the carport looked pretty much the same as it had for nearly 40 years.

¶ 25 The plaintiffs filed their complaint on November 29, 2007, seeking injunctive relief against the defendant to enjoin him from obstructing and interfering with the driveway easement. In addition, the plaintiffs requested the court to order the defendant to remove the carport or, alternatively, alter the height of the carport and/or remove the concrete retaining wall so that they are not impeded from using the driveway easement. The defendant's answer to the complaint included two affirmative defenses, abandonment and adverse possession.

¶ 26 On June 17, 2008, the plaintiffs filed a motion for a summary judgment. The motion for a summary judgment included the deposition testimony of the plaintiffs, the defendant, and Lynn Partington.

¶ 27 On November 10, 2008, the circuit court entered an order granting the motion for a summary judgment in part. The court found that the plaintiffs owned the northern lot, that

the defendant owned the southern lot, and that the plaintiffs' deed included a driveway easement over the southern lot. In addition, the court found that the plaintiffs had not abandoned the easement. The court concluded that the only remaining issue was whether the plaintiffs' easement was terminated by adverse possession.

¶ 28 In its reasoning, the court noted that the easement expressly reserved the right to use the driveway which passes over the southern lot. The court noted that the Partingtons had constructed the addition onto their home over part of the driveway on their land but that was insufficient to show their intent to abandon the easement. The court reasoned that the nonuse of the easement did not amount to an abandonment.

¶ 29 The circuit court conducted a bench trial on the remaining issue of adverse possession on March 26, 2010. On May 6, 2010, the circuit court entered a judgment in favor of the plaintiffs. In ruling against the defendant on the issue of adverse possession, the circuit court reasoned that the evidence showed that the plaintiffs and their predecessors-in-title regularly used the driveway and that there was no evidence to show that the defendant and his predecessors-in-title prohibited the plaintiffs' use of their easement. The court stated that the use of the easement by pedestrian travel showed that the defendant and his predecessors-in-title did not have exclusive possession of the easement.

¶ 30 The court enjoined the defendant from obstructing and interfering with the plaintiffs' use of the easement. The court ordered the defendant to "remove the concrete barrier on his property so as not to interfere, obstruct or hinder the use of the easement." The court also ordered the defendant to remove or alter the carport over the driveway "at any time that it interferes with plaintiffs' use of the easement." The court prohibited the defendant from parking vehicles in the area of the easement and ordered the defendant to erect a sign "where the easement is located notifying members of the public at large that the interference and obstruction of the driveway is prohibited and violator's vehicles will be towed at owner's

expense."

¶ 31 The defendant filed a timely notice of appeal from the circuit court's judgment.

¶ 32 ANALYSIS

¶ 33 The first issue the defendant raises on appeal is that the circuit court erred in granting the plaintiffs' motion for a summary judgment on the issue of abandonment. We agree.

¶ 34 A summary judgment is appropriate if the pleadings, depositions, and admissions on file show there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010). A summary judgment is a drastic measure and should be allowed only when the right of the moving party is clear and free from doubt. *Mydlach v. DaimlerChrysler Corp.*, 226 Ill. 2d 307, 311 (2007). The court must construe the evidence strictly against the movant and liberally in favor of the opponent. *Gatlin v. Ruder*, 137 Ill. 2d 284, 293, 560 N.E.2d 586, 590 (1990). Even if the facts are undisputed, if rational persons could draw different inferences from those facts, a summary judgment is inappropriate. *Stephen v. Swiatkowski*, 263 Ill. App. 3d 694, 697 (1994). We review *de novo* a trial court order granting a summary judgment. *Mydlach*, 226 Ill. 2d at 311.

¶ 35 In order to analyze the facts relevant to the issue of abandonment, we must first determine the scope of the easement at issue. The rules for determining the scope of an easement are well established. *Duresa v. Commonwealth Edison Co.*, 348 Ill. App. 3d 90, 101 (2004). The scope of an easement created by an express grant or reservation depends on its terms. *Duresa*, 348 Ill. App. 3d at 101.

¶ 36 In *River's Edge Homeowners' Ass'n v. City of Naperville*, 353 Ill. App. 3d 874, 882 (2004), the court held that the scope of a walkway easement did not include the construction of a bike path. The court gave the term "walkway" its plain and ordinary meaning and concluded that the term did not include bicycle traffic. *River's Edge Homeowners' Ass'n*, 353 Ill. App. 3d at 880. In its reasoning, the court cited with approval *Dolske v. Gormley*, 58 Cal.

2d 513, 375 P.2d 174 (1962), where the California supreme court held that an easement granting the "right to use as a driveway" did not allow for pedestrian access. The Illinois appellate court also cited *Dolske* with approval in *Delgado v. Wilson*, 178 Ill. App. 3d 634, 640 (1989).

¶ 37 Likewise, in the present case, the original reservation that created the easement reserved "the right to use the driveway on [the southern lot]." Under the *River's Edge Homeowners' Ass'n* and *Dolske* courts' reasoning, the use of the term "driveway" limits the scope of the easement to vehicular traffic.

¶ 38 We next turn to the issue of abandonment and analyze the facts in light of the limited scope of the driveway easement at issue.

¶ 39 The rights to an easement created by an express grant can be extinguished by an abandonment or adverse possession. *Egidi v. Town of Libertyville*, 251 Ill. App. 3d 224, 235 (1993). The circuit court correctly stated in its order granting the plaintiffs' motion for a summary judgment that the nonuse of an easement does not constitute an abandonment. *Flowers v. Valentine*, 135 Ill. App. 3d 1034, 1039 (1985). "To constitute an abandonment of [an easement created by an express grant], there must be, in addition to the non-use, circumstances showing that it was the intention of the dominant owner to abandon the use of the easement." *Flowers*, 135 Ill. App. 3d at 1039.

¶ 40 The intent to abandon an easement may be proven by an infinite variety of acts and is a question of fact to be determined from all of the circumstances of the case. 25 Am. Jur. 2d *Easements and Licenses* § 98 (1996). "An owner's nonuse, coupled with acquiescence of building on the easement, may result in abandonment." 25 Am. Jur. 2d *Easements and Licenses* § 98 (1996) (citing *Bolduc v. Watson*, 639 A.2d 629 (Me. 1994); see also *Clokey v. Wabash Ry. Co.*, 353 Ill. 349, 370 (1933) (when "nonuser is supplemented by proof that the owner of the premises charged with the easement has done things inconsistent with, and

antagonistic to, the existence of such easement, the extinguishment thereof is presumed"). Temporary obstructions, however, do not destroy or extinguish an easement. *Chicago Title & Trust Co. v. Wabash-Randolph Corp.*, 384 Ill. 78, 93 (1943).

¶ 41 In the present case, we believe that the evidence before the circuit court showed that the plaintiffs' predecessors-in-title not only discontinued using the driveway easement for vehicular traffic in the early 1970s but also acquiesced to permanent improvements on the easement area and to the use of the driveway by the owners of the subservient estate that prevented vehicular traffic over the driveway easement since that time. These facts indicate that the plaintiffs' predecessors-in-title intended to abandon the driveway easement.

¶ 42 The two lots in question were originally owned by Dr. P. J. Stevenson and his wife, Nora Stevenson. They transferred the southern lot to Dr. Fullerton in 1952, and the deed included the following reservation for the Stevensons:

"Reserving to the Grantors, the right to use the driveway on said premises."

¶ 43 There was no evidence to establish what driveway was on the premises in 1952. The plaintiffs presented evidence that, in 1969, the Partingtons purchased the northern lot from Dr. Stevenson's widow, Nora, and that at the time of the purchase, the lot was improved with a two-story home. The Partingtons' deed included "all rights of the Grantor to the use of the driveway running South to Main Street across the South 59 feet 7 inches of said Lot 48." Lynn Partington testified that the driveway to her home at the time of the purchase was an L-shaped driveway that traveled west from Market Street, turned south, and went completely around the back of her home, exiting on Main Street over the southern lot. In other words, in 1969, the Partingtons' driveway traversed north and south over the southern lot off Main Street to their property. Presumably, this driveway path described by Lynn Partington is the "driveway" referred to in the reservation contained in Dr. Fullerton's 1952 deed from the Stevensons.

¶ 44 When the Partingtons moved into the house on the northern lot, they used the driveway over the southern lot, entering and exiting the northern lot, to and from Main Street, with their vehicles. However, in 1973, the Partingtons built an addition onto their house which cut off the L-shaped driveway so that vehicles could no longer travel completely around the house on the driveway. After 1973, the Partingtons no longer used the driveway over the southern lot to enter or exit their property with their vehicles. Instead, they used the opposite portion of their driveway that ran east and west to enter and exit their property, by vehicle, off Market Street. Although they frequently walked to and from their property over the southern lot driveway and they received deliveries on occasion over the driveway, they no longer used the easement for vehicular traffic.

¶ 45 The testimony established that not only did the Partingtons discontinue using the driveway easement for vehicle traffic in the early 1970s but Dr. Fullerton also erected a carport over the easement and began parking vehicles directly over the driveway easement. The record does not establish exactly when the carport was built over the driveway, except that it was built sometime in the late 1960s or early 1970s. Dr. Fullerton had an office in the commercial building on the southern lot and resided in the building with his family, and he used the carport to park his vehicles. Lynn Partington testified that neither she nor her husband was upset about the carport or about it being used to park vehicles, and they did not object.

¶ 46 Clark Linders purchased the southern lot in 1978; his brother, Blake, purchased the lot from him in 1988; their sister, Tamara, purchased the lot in 1993; and she sold the lot to the defendant in 2005. The carport was used for parking vehicles continuously during this time period, without complaint from the Partingtons. Since Clark purchased the southern lot in 1978, there have been no changes to the carport's construction or use. In addition, the defendant and his predecessors-in-title testified about the placement of a dumpster under the

carport. The evidence did not establish when the retaining wall was constructed or who constructed it, but it was in place at least as early as 1978 when Clark purchased the building.

¶ 47 The issue before the court with respect to the defendant's affirmative defense of abandonment is whether the plaintiffs' predecessors-in-title ever intended to relinquish a right or interest in the "right to use the driveway" on the southern lot. Under the facts of this case, we do not believe that the plaintiffs were entitled to a judgment as a matter of law on the issue of abandonment. The evidence established that the carport and retaining wall were inconsistent with, and antagonistic to, the existence of an easement for vehicular traffic to and from the northern lot over the southern lot. Testimony of plaintiff, Steven Asbury, established that the use was inconsistent with and antagonistic to the driveway easement. However, the evidence established that the carport, the retaining wall, and the practice of parking vehicles under the carport had been in place for more than 30 years without an objection or a complaint.

¶ 48 Our research of this issue did not find any Illinois cases directly on point on the issue of an abandonment of the driveway easement, but cases from other jurisdictions provide us with useful guidance.

¶ 49 *Bolduc* (cited in 25 Am. Jur. 2d *Easements and Licenses* § 98 (1996)) involved a dispute concerning an easement that bordered adjoining lots owned by the parties. The defendant owned a deed to the portion of the easement that ran along his property, and he built a garage on that portion of the easement in 1984. The plaintiffs filed a complaint six years later for a declaratory judgment to determine their rights to the easement. In affirming the lower court's ruling that the plaintiffs had abandoned the easement, the court noted that the plaintiffs had not utilized the easement and had acquiesced for six years in the building of the garage before complaining. *Bolduc*, 639 A.2d at 630. The court stated as follows: "The history of nonuse, coupled with the intention to abandon demonstrated by the

[plaintiffs'] failure to object to the garage when it was built, are [*sic*] sufficient to establish abandonment." *Bolduc*, 639 A.2d at 630.

¶ 50 In *Hickerson v. Bender*, 500 N.W.2d 169 (Minn. Ct. App. 1993), the court affirmed a finding that an ingress-egress easement was extinguished by abandonment. The court determined that the plaintiffs' predecessors' acquiescence to permanent improvements, including a garage, patio, and a raised concrete retaining wall, over the easement was evidence of their intent to abandon. *Hickerson*, 500 N.W.2d at 171; see also *Lund v. Cox*, 281 Mass. 484, 492-93, 183 N.E. 714, 716 (1933) ("Physical obstructions on the servient tenement, rendering user of the easement impossible and sufficient in themselves to explain the nonuser, combined with the great length of time during which no objection has been made to their continuance nor effort made to remove them, are sufficient to raise the presumption that the right has been abandoned and has now ceased to exist."); *Chapman v. Vondorpp*, 256 A.D.2d 297, 298, 681 N.Y.S.2d 320, 321 (1998) ("The use of an alternate route of access while permitting the unimpeded growth of trees to obstruct the right-of-way for several decades may be indicative of an intent to abandon the easement [citation].").

¶ 51 In the present case, for more than 30 years, the plaintiffs' predecessors-in-title permitted permanent changes in the driveway area which prevented vehicular traffic, and Lynn Partington testified that she and her husband did not object to the improvements or the use of the driveway for parking or dumpster storage. This evidence supports a finding that she and her husband intended to abandon their right to vehicular travel over the driveway easement. Therefore, the circuit court's order granting the plaintiffs a summary judgment on the issue of abandonment was incorrect. The evidence supports a judgment in favor of the defendant on the issue of the abandonment of the plaintiffs' driveway easement rights. Accordingly, we reverse the circuit court's judgment and remand this matter for further proceedings consistent with this decision.

¶ 52 The defendant also takes issue with the circuit court's finding with respect to his affirmative defense of adverse possession. An easement can be extinguished by adverse possession. *Gacki v. Bartels*, 369 Ill. App. 3d 284, 292 (2006). To establish adverse possession as provided by section 13-101 of the Limitations Act (735 ILCS 5/13-101 (West 2010)), the adverse possessor must possess the land for 20 years. In addition, the 20-year possession must have been (1) continuous, (2) hostile or adverse, (3) actual, (4) open, notorious, and exclusive, and (5) under claim of title inconsistent with that of the true owner. *Gacki*, 369 Ill. App. 3d at 292. In applying these factors, the supreme court has held that adverse possession "cannot be made out by inference or implication, but must be established by evidence that is clear, positive and unequivocal, all presumptions being in favor of the true owner." *Kurz v. Blume*, 407 Ill. 383, 387-88 (1950). The determination of adverse possession is almost always a question of fact. *Davidson v. Perry*, 386 Ill. App. 3d 821, 831 (2008).

¶ 53 We do not believe that the circuit court's finding with respect to adverse possession was against the manifest weight of the evidence. While the evidence supported a finding of the abandonment of the driveway easement, the evidence presented at the trial did not support a finding of adverse possession sufficient to terminate the easement. There was no evidence presented to establish that the carport, dumpster, retaining wall, or the use of the driveway easement was hostile or adverse. Instead, the evidence supported a finding that the Partingtons allowed and acquiesced to those improvements and use, thereby abandoning the driveway easement.

¶ 54 CONCLUSION

¶ 55 For the foregoing reasons, we reverse the circuit court's judgment and remand this matter to the circuit court for further proceedings.

¶ 56 Reversed; cause remanded.