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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

WILLIAM HOBI et al.,

Plaintiffs and Appellants,

v.

INGRID TORNGREN-SMITH et al.,

Defendants and Respondents.

A129798

(San Francisco City & County
Super. Ct. No. RG07318603)

In this case, one couple has sued their next door neighbors, claiming an easement to use the neighbors' adjacent driveway to facilitate ingress and egress. William and Soojung Hobi sued Dr. George C. Smith, now deceased, and Ingrid Torngren-Smith to obtain, essentially, the right to exit down a sloped driveway "head first" instead of by backing out into a neighborhood thoroughfare. The trial court rejected the Hobis' easement claims. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

For over 10 years, the Smiths and Hobis have owned homes on adjoining properties. The Smiths purchased 114 Crocker Avenue in Piedmont, California (the "Smith property") in 1988 and have lived there for more than 24 years. The Hobis purchased 118 Crocker Avenue (the "Hobi property") in 2000 from the Allans, who had lived there since 1993.

At one time, the Hobis and Smiths were friendly neighbors. Mr. Hobi thought Dr. Smith was "a really wonderful guy" and "was very fond of him." Dr. Smith helped Mr. Hobi out when Mr. Hobi had difficulties following an operation. The Hobis' "kids

would often play with [the Smiths'] dog and be over at their house.” Mr. Hobi, in turn, took the Smiths' son to his first 49er's football game.

The properties are accessed by adjoining, 10-foot-wide driveways that run at a right angle for 130 feet straight from the street, up a slope, to side-by-side garages, one for each residence. Each driveway allows for one-way passage and while no wall divides the two driveways each is bounded on its outer edge by a concrete retaining wall. Thus, one wall runs along the Smith property, the other, along the Hobi property. Together, the driveways are wide enough for two cars, traveling in opposite directions, to pass each other.

When the Hobis purchased their property, a disclosure statement stated the driveway was “shared.” Their real estate agent also told them the driveway was “shared,” but said nothing more about what this meant. The Hobis did not ask their agent for clarification, nor did they discuss what “shared” meant with the neighboring Smiths.

Mr. Hobi thought “shared” meant “both parties would have to use the driveway to get up and—to go in and to go out.” He claimed he relied on the driveway being “shared,” but admittedly did not base that reliance on any statement by the Smiths. If a fence had divided the dual driveway area—indicating the Hobis would be forced to back down the driveway, rather than drive out head first—that “probably would have been a deal breaker” and he would not have purchased the home.

Ms. Hobi had a conversation with Mrs. Allan near the time of the purchase. The gist of the conversation was “there was a preexisting routine or protocol [¶] . . . [¶] [t]o leave the space in front of the garages where we turned around free of obstacles [¶] . . . [¶] [a]nd that we would share that to turn around.” While Mrs. Allan explained how things had been done up to that point, she did not explain or guarantee future rights.

Shortly after moving in, Mr. Hobi had a conversation with Mrs. Smith about use of the driveway area: “[She] told me that we keep this area in front of the garages—we keep this open so people can turn around. And it was sort of—it was just kind of a statement. It was like she was just informing me of the way it was. And I said, you know, I was thinking, okay, that jived with what my understanding was also. And so I

said, okay, fine. You know, and that was in keeping with—even during that short time what our experience had been. That, you know, there were not cars left in front of the garages and so I agreed with her. I said, okay.”

Mrs. Smith had a somewhat different recollection. She said she never gave “permission” to the Allans to use the driveway as a turnaround, nor did she “[v]erbally” give permission to the Hobis to do so. However, she had no problem with such occasional use.

During the time the Allans lived at the Hobi property, both the Allans and Smiths used the top area of the driveway in front of the garages as a “turnaround.” They would back out of the garage on their portion of the driveway, swing the back of their cars in front of the other garage, and then drive forward down the center of the driveway and on to the public street. Accordingly, their custom was to keep the so-called turnaround area in front of the garages clear of obstructions so all could use it this way. During the 1990’s, the Allans repaved the double driveway, and the Smiths shared the costs.

In 2006, the Hobis reconfigured a drainage system involving piping near the garages that transmitted water down the driveway. Mr. Hobi told Dr. Smith he planned to do the work, which Mr. Hobi viewed as necessary as a result of a landscaping project on the Hobis’ property which, otherwise, posed some erosion risks.

By February 2007, the Hobis were in the midst of their landscaping project.¹ Frustrated with the construction mess and following “a real heated exchange,” the Smiths installed a construction fence on the property line near the garages, bisecting the turnaround area at the top of the driveway. The fence shielded the Smiths’ view of the

¹ The Hobis’ landscaping project replaced some of the pavement in the turnaround area on their property with a planter and walkway. Mr. Hobi testified if he had known the Smiths were going to erect a fence preventing the Hobis from using the turnaround area on the Smiths’ property, he would have abandoned the project or attempted to change plans to assure turnaround space on his own property. However, Mr. Hobi acknowledged the extra asphalt previously on his property would not have permitted him to complete a reasonable turnaround maneuver on his side alone. Mr. Hobi never discussed how the project might affect the parties’ ability to turn around with the Smiths.

construction, but it interfered with the Hobis' use of the Smiths' property as a turnaround. The Hobis now had to back down and out of their driveway, instead of turning around at the top and driving forward to the street. At one point, the Smiths told the Hobis the fence was temporary and would come down when the landscaping project was completed.

However, relations deteriorated, and on April 2, 2007, the Hobis sued. They sought a declaration that they had equitable and prescriptive easements across the Smiths' driveway and asked for injunctive relief and findings that the Smiths were liable for trespass and nuisance.

More than two years later, on December 11, 2009, the Hobis moved to amend their complaint to add claims for an easement by executed oral agreement and an easement by equitable estoppel. The trial court denied their motion on the ground they had failed to justify their delay in making the new claims. Nevertheless, at a pretrial hearing, the Hobis raised the claims again, telling the court the new claims were embraced within the allegations of their original complaint and their proposed amended complaint merely spelled the theories out in greater detail. Although skeptical, the trial court stated it would allow evidence, at least on the oral agreement theory, and sort out any legal issues afterwards. With the consent of the parties, the trial court also bifurcated the case for trial, with the equitable claims to be tried first by the court, followed by a jury trial on the legal claims.

A four-day bench trial began on March 16, 2010. When the Hobis finished presenting their evidence, the Smiths made an oral motion for nonsuit on the ground the Hobis had not carried their burden of proof on their equitable claims. The court heard argument on the equitable easement claim pleaded in the complaint, but cut off argument on the new theories of an executed oral agreement and an easement by equitable estoppel. After argument, the trial court granted nonsuit from the bench, providing a detailed statement of reasons. It did not address the merits of the Hobis' new theories, nor did it explicitly refuse to consider them.

Immediately after the nonsuit ruling, the Smiths asked the court to dispense with the anticipated jury trial on the prescriptive easement claim. Citing admissions made by the Hobis and the Allans during their testimony in the bench trial, the trial court agreed a prescriptive easement claim was foreclosed, and cancelled the jury trial.

On June 22, 2010, the trial court issued its statement of decision, which largely tracked its earlier rulings from the bench on the Smiths' nonsuit motion and request to dispense with jury trial. Judgment was entered on August 6, 2010. The Hobis filed a timely notice of appeal on September 21, 2010.²

II. DISCUSSION

“ ‘An easement is an interest in the land of another, which entitles the owner of the easement to a limited use or enjoyment of the other’s land. [Citations.] [¶] An easement creates a nonpossessory right to enter and use land in another’s possession and obligates the possessor not to interfere with the uses authorized by the easement. [Citation.]’ [Citation.]” (*Main Street Plaza v. Cartwright & Main, LLC* (2011) 194 Cal.App.4th 1044, 1053; see also *Kazi v. State Farm Fire & Casualty Co.* (2001) 24 Cal.4th 871, 880 [discussing the nature of easements].) Equitable easements are born of a court’s desire to “promote justice, acting through its conscience and good faith” and typically result when a claimant innocently uses another’s property. (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 769.) Prescriptive easements reward and protect long-standing use of another’s property when that use is open and hostile. (*Id.* at pp. 769-770.)

Though easements can arise by equity or prescription, the law imposes a significant burden to establish such potentially hard-to-categorize and amorphous rights. (See, e.g., *Grant v. Ratliff* (2008) 164 Cal.App.4th 1304, 1310 [the “clear and convincing evidence” burden “demonstrates there is no policy favoring the establishment of prescriptive easements”]; *Thorstrom v. Thorstrom* (2011) 196 Cal.App.4th 1406, 1420

² After the trial court issued its statement of decision, Mrs. Smith made it clear she wanted to build a permanent curb or fence along her driveway. The trial court granted the Hobis’ application to stay enforcement of the judgment and to enjoin Mrs. Smith’s planned construction, pending appeal.

[“ ‘ “The law does not favor the implication of easements.” ’ ”]; *Christensen v. Tucker* (1952) 114 Cal.App.2d 554, 562 [“doubtful cases” of equitable easements “should be decided in favor of the [party opposing the easement]” because the theory is premised on the easement seeker being a “wrongdoer,” even if an innocent one]; *cf. Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 260-261 [“public policy may be adversely affected by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits”].)

The Hobis contend they are entitled to an easement over their neighbor’s property under a number of theories. We disagree and affirm the trial court’s judgment.

Standard of Review

“After a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment. . . .” (Code Civ. Proc., § 631.8.) “ ‘ “The purpose of Code of Civil Procedure section 631.8 is to enable a trial court which, after weighing the evidence at the close of the plaintiff’s case, is persuaded that the plaintiff has failed to sustain his burden of proof, to dispense with the need for the defendant to produce evidence. [Citations.]” [Citation.]’ ” (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 549.)

“A trial court ruling on a motion for judgment under Code of Civil Procedure section 631.8 weighs the evidence as the trier of facts and, if the motion is granted, adjudicates the merits of the dispute. [Citation.] The standard of review of a judgment entered after the granting of a motion for judgment is the same as that of a judgment entered after a completed trial. We review the court’s factual findings under the substantial evidence standard and independently review questions of law. (*Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1269)

“Substantial evidence is evidence that a rational trier of fact could find to be reasonable, credible, and of solid value. Under the substantial evidence standard of review, we view the evidence in the light most favorable to the judgment and accept as

true all evidence tending to support the judgment, including all facts that reasonably can be deduced from the evidence, and must affirm the judgment if an examination of the entire record viewed in this light discloses substantial evidence to support the judgment.” (*Mealy v. B-Mobile, Inc.* (2011) 195 Cal.App.4th 1218, 1222-1223.)

While we review the trial court’s findings for substantial evidence, “[w]hen reviewing a trial court’s exercise of its equity powers to fashion an equitable easement,” as when reviewing other kinds of equitable decrees, “we will overturn the decision only if we find that the court abused its discretion.” (*Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1008; see generally *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256 [“The trial court exercised its equitable powers in approving the proposed physical solution and entering the judgment, and the Court of Appeal properly reviewed the judgment under the abuse of discretion standard of review.”]; *Wm. R. Clarke Corp. v. Safeco Ins. Co. of Am.* (2000) 78 Cal.App.4th 355, 358-359 [“the only issue before us on . . . appeal is whether [the trial court’s] discretion was so abused that it resulted in a manifest miscarriage of justice”].)

Equity Easement Theories

The Hobis contend they established their entitlement to an easement over the Smiths’ driveway under three equitable theories: (1) equitable easement; (2) executed oral agreement; and (3) easement by estoppel.

Equitable Easement

“In appropriate cases in which the requirements for traditional easements are not present, California courts have exercised their equity powers to fashion protective interests in land belonging to another, sometimes referring to such an interest as an ‘equitable easement.’ [Citations.]” (*Tashakori v. Lakis, supra*, 196 Cal.App.4th at p. 1008.) To create an equitable easement, three factors must be present: First, the easement seeker must use and improve property innocently—“ [t]hat is, his or her encroachment must not be willful or negligent.” ” (*Id.* at p. 1009.) A court “ ‘should consider the parties’ conduct to determine who is responsible for the dispute.’ ” (*Ibid.*) Second, the easement opponent will not suffer irreparable harm by its creation. Third,

the hardship of denying the easement “ ‘ “must be greatly disproportionate to the hardship” ’ ” of allowing it. (*Ibid.*; *Christensen v. Tucker, supra*, 114 Cal.App.2d at pp. 562-563 [stating factors for obtaining an equitable easement in defense to an injunction claim³]; see generally 6 Miller & Starr, Cal. Real Estate (3d ed. 2002) § 15:46, p. 15-161.)

The trial court found, as set forth in its statement of decision, that the Hobis met none of these factors and therefore denied their claim for an equitable easement. We conclude the court’s underlying findings are supported by substantial evidence and therefore the court did not abuse its discretion in declining to award the Hobis an interest in their neighbor’s property under any equitable theory.

First, the record readily permits the conclusion that neither the Hobis, nor the Allans, used and improved the Smith’s property innocently believing it was theirs to improve.⁴ To begin with, ample evidence supports the trial court’s finding that the

³ *Christensen v. Tucker, supra*, 114 Cal.App.2d at pages 562-563, is viewed as establishing the factors pertaining to equitable easements (see *Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 265; *Hirshfield v. Schwartz, supra*, 91 Cal.App.4th at p. 758 [noting Witkin calls *Christensen* the “ ‘definitive opinion’ ”]) and sets forth the three factors as we have recited them, although couched somewhat differently because *Christensen* involved an equitable easement *defense*. The trial court articulated the second factor differently—that an equitable easement should issue only if the party *seeking* it would suffer irreparable harm without it. This same expression of the second factor also appears in Miller and Starr. (6 Miller & Starr, *supra*, § 15:46, p. 15-161.) It is the third factor identified in *Christensen*, however, which addresses harm to the easement *seeker*, which must be “greatly disproportionate” to the harm to the easement opponent. (See *Hirshfield v. Schwartz, supra*, at pp. 759-762 [discussing the third factor, the meaning of “ ‘greatly disproportionate’ ” hardship harm to the easement seeker, and that concept’s relationship to “irreparable injury”].) Perhaps the defensive procedural posture of *Christensen* has caused the confusion over the second factor. However, as we explain, regardless of how the second factor is articulated, the Hobis did not establish entitlement to an equitable easement.

⁴ The Hobis briefly contend this finding, and other similar findings—such as the trial court’s finding that the Hobis failed to prove they suffered the greater hardship—are actually conclusions of law subject to *de novo* review. However, the trial court was weighing the evidence and finding facts to further the exercise of its discretionary

Hobis' belief in an easement was "wishful thinking" based on their failure to sufficiently investigate access issues, including what the Allans and Smiths meant by a "shared driveway." As to improvements, the Allans worked out a cost-sharing plan with the Smiths to repave the entire driveway, implicitly acknowledging that each owned half of it. As for the Hobis, they reconfigured a drainage system involving piping near both their garage and the Smith's garage that transmitted water down the driveway. Even if this could be viewed as an improvement to the Smiths' portion of the driveway, it was made because of landscaping the Hobis were doing on their own property. They also knew they were working on the Smith's property as evidenced by the fact Mr. Hobi told Dr. Smith he planned to do the work. There was no innocent mistaken belief in ownership rights.

Accordingly, the instant case is distinguishable from both *Tashakori v. Lakis*, *supra*, 196 Cal.App.4th at page 1006, in which the easement seekers were reasonably misled into believing they already had a recorded easement for use of a neighbor's driveway, and *Miller v. Johnston* (1969) 270 Cal.App.2d 289, 292-293, in which easement seekers acquired property with a paved driveway that happened to encroach slightly onto a neighbor's property beyond the bounds of a recorded easement. Neither case undercuts the trial court's findings here or precluded the court from declining to award the Hobis an easement on equitable grounds.

The trial court's findings as to the relative hardships to the parties are also supported by substantial evidence. Without an easement, the Hobis can still leave their property by backing out of the driveway, as they (and the Smiths) have done for the five plus years this lawsuit has been pending. (Compare *Tashakori v. Lakis*, *supra*, 196 Cal.App.4th at p. 1007 [“ ‘Lot 18 would be inaccessible,’ ” unduly harming the easement seeker]; *Miller v. Johnston*, *supra*, 270 Cal.App.2d at pp. 303, 307 [if plaintiffs are denied the right to continue the use of the defendants' property they would have access to their property only by “extreme hardship”].) While without an easement, the

equitable powers. Accordingly, these are factual findings we review under the substantial evidence standard.

Hobis may be unable to make a two-point turnaround and drive frontwards down the center of the double driveway—and might therefore face some generic safety risks⁵—the trial court could find these hardships did not outweigh the Smith’s (and any successor in interest’s) complete loss of the right to use the driveway in front of their garage as they might choose to do so, including parking a car there. The Hobis are in reality asking “us to reweigh the evidence and substitute our discretion for that of the trial court . . . these are not legitimate functions of the Court of Appeal.” (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 897.)⁶

Accordingly, the Hobis cannot show either that the trial court’s underlying findings are not supported by substantial evidence or that the court abused its discretion in refusing to grant them an “equitable easement.”

Remaining Equity Easement Theories

Leave to Amend

As we have recited, the Hobis did not include claims of an easement by executed oral agreement or by estoppel in their April 2007 complaint, and the trial court denied their December 2009 motion for leave to amend their complaint to add these claims. Despite the trial court’s denial of leave to amend, it did allow the Hobis to present evidence in support of these claims, although it ultimately cut off closing argument on them. Further, while the trial court’s statement of decision, as the Hobis pointed out in their objections to the proposed version, says nothing about the executed oral agreement

⁵ The Hobis’ expert traffic engineer opined it would be safer to exit the driveway frontwards and “more towards the middle because you’re shying away from the wall on each side.” He further opined backing out of one side of the double driveway if a fence bisected its entire length would create an “awkward situation.” Following this testimony, the parties agreed on the record a front-facing, down-the-center exit would be safest. However, this does not compel the conclusion backing out of the driveway and into the street would be so hazardous as to entitle the Hopis to a property interest in the Smith’s driveway, particularly given the fact the Hopis had been backing down the driveway and into the street without incident for five years.

⁶ Because the trial court had ample basis to deny an equitable easement for the reasons we have discussed, we need not, and do not, address the question of whether the easement opponent, the Smiths, would have suffered irreparable harm by its creation.

or easement by estoppel claims, the trial court’s judgment found against the Hobis on “all of their equitable claims.”

To the extent the Hobis contend denial of their motion for leave to amend (a ruling the trial court never vacated) was error, we disagree. “ [T]he trial court has wide discretion in allowing the amendment of any pleading [citations], [and] as a matter of policy the ruling of the trial court in such matters will be upheld unless a manifest or gross abuse of discretion is shown. [Citations.]’ [Citation.]” (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486.) “ [E]ven if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial.’ [Citation.]” (*Ibid.*) Thus, the court in *Record* denied leave to amend based on “new” discovery when the plaintiff “had knowledge of the circumstances on which he based the amended complaint on the day he was injured, almost three years before he sought leave to amend.” (*Id.* at pp. 486-487; cf. *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746 [leave denied based, in part, on unexplained delay].)

The Hobis’ two-and-a-half-year delay in seeking leave to amend to add the two new equitable easement claims was unwarranted. The Hobis’ new claims both alleged and hinged upon the existence of an oral promise of an easement. The Hobis necessarily “had knowledge of” this alleged promise or agreement “on the day” it was made, well before the start of litigation, and should have pleaded it, and the causes of actions flowing from it, in their original complaint. (See *Record v. Reason*, *supra*, 73 Cal.App.4th at pp. 486-487.) Under these circumstances, the trial court acted within its discretion in denying leave to amend.

Easement by Executed Oral Agreement

Since the Hobis were allowed to present all their evidence, we may also look to the trial court’s factual findings to determine whether they necessarily preclude the Hobis’ unpleaded equitable claims. (See *Brandes v. Rucker-Fuller Desk Co.* (1929) 102 Cal.App. 221, 228; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 434, pp. 488-489.) This examination confirms the Hobis could not have succeeded on these claims even if leave to amend had been granted.

The Hobis cite a nineteenth century Supreme Court case, *Blankenship v. Whaley* (1899) 124 Cal. 300, in support of their executed oral agreement theory. In *Blankenship*, the plaintiff claimed “he ‘constructed a certain irrigating ditch’ upon lands which were at the time the lands of one R. G. Rogers, under an agreement with Rogers that he, plaintiff, was to have the perpetual right to the use of the ditch for the purpose of conducting water to his lands, together with the right at all times to enter upon the premises of Rogers to repair the ditch and keep it in proper condition.” (*Id.* at pp. 301-302.) The Supreme Court held the “execution of the parol agreement . . . would entitle the plaintiff to a specific performance of the agreement, and to a conveyance of the interest which he claims.” (*Id.* at p. 304.)

Blankenship has no application here. It concerned an oral agreement to convey easement rights. The Hobis’ own testimony, however, confirms there was no such oral agreement here. For example, Mr. Hobi agreed his discussion with Mrs. Smith, in which she presented her view that the top of the driveway should be kept clear to allow turnarounds, was not “any sort of agreement,” but just “her way of clarifying what I already understood to be the case of a shared driveway.” He further testified “I had not ever asked for permission, as you say, or sat down and concluded an agreement.” Similarly, Ms. Hobi admitted that while Mrs. Allan, the previous owner of the Hobis’ property, told her about the “preexisting routine or protocol” for driveway use, Allan never said there was an agreement in place and never represented the protocol created a perpetual right to use the driveway in that manner.

The trial court’s express finding that the Hobis’ “purported belief in the existence of the easement was a matter of wishful thinking,” necessarily means it found no “agreement” by the Smiths to convey a property interest in their driveway to the Hobis—as indeed, the Hobis admitted in their testimony. Ultimately, the only evidence the Hobis point to in support of their executed oral agreement claim is testimony of the Smiths’ acquiescence in a protocol for shared use of the driveways, a far cry from evidence of an agreement conveying a permanent property interest, as was the case in *Blankenship*. Thus, even assuming a claim of an easement by executed oral agreement was before the

trial court, the Hobis cannot show that the court abused its discretion in refusing to grant them an easement under that theory.

Easement by Estoppel

“An estoppel may occur where the owner of the dominant parcel relies on the conduct or representations of the servient owner such that equity establishes an easement in order to prevent an injustice.” (See *Christian v. Flora* (2008) 164 Cal.App.4th 539, 549; 6 Miller & Starr, Cal. Real Estate, *supra*, § 15:45, p. 15-159.) Ignorance of the true facts and detrimental reliance are essential elements of an easement by estoppel. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1317 [“ignorance of the true facts” and “detrimental reliance on the conduct of the person claimed to be estopped” are “two of the essential elements of equitable estoppel”]; *Christian v. Flora, supra*, 164 Cal.App.4th at pp. 549-550; *Honeywell v. Workers’ Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 38 [detrimental reliance].) Moreover, the detrimental reliance must be reasonable. (*Phillippe v. Shapell Indus.* (1987) 43 Cal.3d 1247, 1262 [“To give rise to equitable estoppel, the promisee’s reliance must be reasonable.”].)

Fleshing out the requirements of estoppel more fully: “ ‘The essence of an estoppel is that one has, by false statements or conduct, led another to do that which he would not otherwise have done and as a result the other has suffered injury. [Citation.] The elements of an estoppel claim are: “(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.” . . . ‘Moreover, simple reliance on a false statement or conduct is not enough. In order to invoke the doctrine of equitable estoppel, the reliance must be reasonable. (*Morrison v. Cal. Horse Racing Bd.* (1988) 205 Cal.App.3d 211, 218)’” (*Brown v. Chiang* (2011) 198 Cal.App.4th 1203, 1227.)

The Hobis’ easement by estoppel claim was based on their frequent use of the Smiths’ driveway without opposition, Mrs. Smith’s statement that there was an

understanding the area by the garages would be kept clear, and the Hobis’ “improve[ment of] the entire driveway” by reconfiguring a drainage system.

However, as we have discussed, the trial court expressly found the Hobis’ “purported belief in the existence of the easement was a matter of wishful thinking” and was not reasonable. Indeed, all the Hobis testified to was a neighborly “protocol,” and they conceded there was no agreement with the Smiths giving them any legal right in or entitlement to use the Smiths’ property. Nor did the Hobis explain how Mrs. Smith’s reference to a neighborly protocol caused them to install the new drainage system. Rather, Mr. Hobi testified he approached Dr. Smith and explained he was improving the drainage around the driveway because of the new landscaping work on the Hobis’ property. In any case, the trial court found there was no action by the Smiths, or anyone else, that gave rise to any reasonable belief by the Hobis that they had a permanent property interest in the Smiths’ driveway, and that finding is supported by substantial evidence. (Compare *Christian v. Flora*, *supra*, 164 Cal.App.4th at p. 549 [reliance based on clear representation of right to easement].) Thus, even assuming a claim of an easement by estoppel was before the trial court, the Hobis cannot show that the court abused its discretion in refusing to grant them an easement under that theory.

Prescriptive Easement

With the consent of the parties, the trial court severed the Hobis’ equitable easement claims for a bench trial, to be followed by a jury trial on their prescriptive easement claim. No jury trial took place, however, because the court found the Hobis’ testimony during the bench trial foreclosed any claim of a prescriptive easement. The Hobis contend the trial court improperly invoked the doctrine of judicial admissions and erroneously deprived them of their right to a jury. We conclude the trial court properly determined the Hobis are bound by their testimony during the bench trial and that that testimony precluded any claim of a prescriptive easement.

Judicial Admission

“A judicial admission is a party’s unequivocal concession of the truth of a matter, and removes the matter as an issue in the case.” (*Gelfo v. Lockheed Martin Corp.* (2006)

140 Cal.App.4th 34, 48.) In *Gelfo*, a discrimination case, the “trial court properly precluded [Gelfo] from claiming he had a qualifying actual physical disability, based on his ‘clear, unequivocal, uncontroverted testimony . . . that he does not have a disability.’ Gelfo’s testimony has the conclusive effect of a judicial admission that his physical condition did not render difficult the achievement of any major life activity,” an element of his claim. (*Id.* at pp. 46-48.) Thus, the trial court properly kept this issue from the jury. (*Id.* at pp. 47-48.) An admission may arise from trial testimony, as in *Gelfo*, or from other sources, such as a verified pleading. (See, generally, 1 Witkin, Cal. Evidence (4th ed. 2000) Hearsay, § 97, pp. 799-800.)

The doctrine of judicial admissions is similar to the doctrine of judicial estoppel and the rule that a party cannot contradict itself to create a triable issue of fact to avoid summary judgment. (See, e.g., *Jogani v. Jogani* (2006) 141 Cal.App.4th 158, 169 [“ ‘ ‘Judicial estoppel, sometimes referred to as the doctrine of preclusion of inconsistent positions, prevents a party from ‘asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding. . . . ’ ” ’ ”]; *Villanueva v. City of Colton* (2008) 160 Cal.App.4th 1188, 1196 [“ ‘The trial court saw that flip-flop for what it was, and properly excluded it, based on well-settled case law that a plaintiff cannot create a triable issue of fact and thereby escape summary judgment by contradicting his own prior testimony.’ ”].)

The purpose of these doctrines is to protect the integrity of the judicial process. (*Jogani v. Jogani, supra*, 141 Cal.App.4th at p. 169.) They are “ ‘ ‘aimed at preventing fraud on the courts’ ” and are “ ‘ ‘ ‘ ‘invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process ‘The policies underlying preclusion of inconsistent positions are “general consideration[s] of the orderly administration of justice and regard for the dignity of judicial proceedings.” ’ . . . Judicial estoppel is ‘intended to protect against a litigant playing “fast and loose with the courts.” ’ ” ’ . . . ‘It seems patently wrong to allow a person to abuse the judicial process by first [advocating] one position, and later, if it becomes beneficial, to assert the opposite.’ ” ’

[Citation.]” (*Id.* at pp. 169-170.) These doctrines also “ “ “ ‘protect parties from opponents’ unfair strategies’ ” ’ [citation] and ‘target[] . . . unfairness between individual parties.’ [Citation.] Even so, the doctrine is primarily concerned with the connection between a party and the judicial system, not the relationship between the parties.” (*Id.* at p. 170.)

The case of *Jones v. Tierney-Sinclair* (1945) 71 Cal.App.2d 366, though concerning an evidentiary admission against interest rather than a so-called “judicial admission,” is of particular interest in the present case. There, the defendant sought to establish a prescriptive easement. The trial court rejected this effort in part because of the defendant’s verified answer in an earlier case, wherein it had been alleged that without a claimed easement by *grant*, the defendant would have no means of accessing her land. The trial court ruled this allegation was an admission against interest and admissible to show the absence of a prescriptive easement. The appellate court upheld the trial court’s decision to admit into evidence and rely on the previous verified answer. (*Id.* at pp. 373-374.)

Here, the Hobis’ own testimony during the bench trial was that their use of the Smiths’ driveway was permissive—which is wholly inconsistent with a claim of a prescriptive easement by “adverse” use. “The elements necessary to establish a prescriptive easement are well settled. The party claiming such an easement must show use of the property which has been open, notorious, continuous and adverse for an uninterrupted period of five years.” (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570; see also *Grant v. Ratliff* (2008) 164 Cal.App.4th 1304, 1308.)

Adverse is “a term synonymous with use ‘under claim of right’ and ‘hostile’ use. (E.g., *Harrison v. Welch* (2004) 116 Cal.App.4th 1084, 1090) ‘Adverse use’ means only that the claimant’s use of the property was made without the explicit or implicit permission of the landowner. As explained in *Felgenhauer*^[7]: ‘Claim of right does not require a belief or claim that the use is legally justified. [Citation.] It simply means that

⁷ *Felgenhauer v. Suni* (2004) 121 Cal.App.4th 445, 450 (*Felgenhauer*).

the property was used without permission of the owner of the land. [Citation.] As the American Law of Property states in the context of adverse possession: “In most of the cases asserting [the requirement of a claim of right], it means no more than that possession must be hostile, which in turn means only that the owner has not expressly consented to it by lease or license or has not been led into acquiescing in it by the denial of adverse claim on the part of the possessor.” (3 Casner, American Law of Property (1952) Title by Adverse Possession, § 15.4, p. 776.)’ [Citations.]” (*Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1252.)

Further, to be adverse, “ ‘the claimant’s possession must be adverse to the record owner, “unaccompanied by any recognition, express or inferable from the circumstances of the right in the latter.” ’ [Citation.]” (*Gilardi v. Hallam* (1981) 30 Cal.3d 317, 322-323.) Put somewhat differently, if there is “ ‘ “no intention on the part of the occupant to claim as his own[] land which does not belong to him . . . the holding is not adverse.” ’ ” (*Id.* at p. 323, fn. 3.)

Thus, while a prescriptive easement may not require a belief that a “use is legally justified” (*Felgenhauer, supra*, 121 Cal.App.4th at p. 450), it does require “an intent to dispossess the owner of the disputed property.” (*Hirshfield v. Schwartz, supra*, 91 Cal.App.4th 749, 770.) Belief that use is permissive defeats a prescriptive easement.

During the bench trial, the Hobis conceded their use of the Smith’s driveway was, if not by express agreement, by an informal understanding.⁸ Indeed, Mr. Hobi, when asked if he intended “to create some sort of an adverse interest or property right” while using the Smith’s driveway as a turnaround, answered “[n]o.” He also stated his “understanding” of the use of the driveway emerged from a single conversation with Mrs. Smith shortly after the Hobis purchased their home: “[She] told me that we keep this area in front of the garages—we keep this open so people can turn around. And it was sort of—it was just kind of a statement. It was like she was just informing me of the way

⁸ The Allans, the previous owners of the Hobi property, also candidly agreed the shared use of the driveway was “a practical thing done by neighbors to commonly use their property.”

it was. And I said, you know, I was thinking, okay, that jived with what my understanding was also. And so I said, okay, fine. You know, and that was in keeping with—even during that short time what our experience had been. That, you know, there were not cars left in front of the garages and so I agreed with her. I said, okay.” This discussion, said Mr. Hobi, was Mrs. Smith’s way of “clarifying what [he] already understood to be the case of a shared driveway.”⁹ Finally, when Mr. Hobi was asked “What were the terms of your understanding of the arrangement?,” he answered “the arrangement that existed and that I was told was that it was a shared driveway and that that area was kept clear from vehicles so that people could turn around.”

Similarly, when Ms. Hobi was asked if her use of the Smith’s driveway was an attempt to acquire “any interest in their property,” answered “I don’t believe so.” She also testified about a conversation with Mrs. Allan about use of the driveway, the gist of which was “there was a preexisting routine or protocol [¶] . . . [¶] [t]o leave the space in front of the garages where we turned around free of obstacles [¶] . . . [¶] [a]nd that we would share that to turn around.” Ms. Hobi admitted Mrs. Allan was not guaranteeing any future rights.

The Hobis also gave “recognition, express or inferable from the circumstances” of the Smith’s property rights. (*Gilardi v. Hallam, supra*, 30 Cal.3d at pp. 322-323.) For example, Mr. Hobi notified the Smiths before working on the drainage system because he thought it might have some impact on the Smiths’ portion of the driveway.

This testimony by the Hobis is wholly incompatible with their claim of an easement by prescription, and the trial court properly invoked the doctrine of judicial admissions.

⁹ To be sure, Mr. Hobi occasionally used the word “right” in his testimony to label the benefits he received from the “understanding” with the Smiths, but his use of the word does not convert that neighborly arrangement into something more.

Jury Trial

Regardless of their testimony during the bench trial, the Hobis insist they were entitled to have a jury hear the evidence and decide their prescriptive easement claim. Not so.

“Article I, section 16 of our Constitution guarantees litigants the right to a jury trial. This right, however, is not without limitation. ‘In California, the constitutional right to jury trial in civil cases is coextensive with the right as it existed under the common law of England in 1850, when the California Constitution was adopted.’ ” (*Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, 123.) Under this rubric, there is a right to a jury when a claim is “legal” in nature, but not when a claim is “equitable.” (*Id.* at p. 124.) Here, the parties agree the prescriptive easement claim is “legal” (see *id.* at p. 126 [appellants had a “constitutional right to have a jury decide whether they had obtained a prescriptive easement”]), while the Hobis’ other easement claims are equitable.

“The order of trial, in mixed actions with equitable and legal issues, has great significance because the first fact finder may bind the second when determining factual issues common to the equitable and legal issues. [Citation.] It is well established in California jurisprudence that ‘[t]he court may decide the equitable issues first, and this decision may result in factual and legal findings that effectively dispose of the legal claims.’ (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1244 . . . , italics omitted.) This district Court of Appeal has observed that the ‘better practice’ is for ‘the trial court [to] determine the equitable issues before submitting the legal ones to the jury.’ (*Bate v. Marsteller* (1965) 232 Cal.App.2d 605, 617) The historical reason for this procedure, at least as concerns equitable defenses, is that the same order of trial was observed when there were separate law and equity courts: ‘If a defendant at law had an equitable defense, he resorted to a bill in equity to enjoin the suit at law until he could make his equitable defense effective by a hearing before the chancellor.’ (*Liberty Oil Co. v. Condon Bank* (1922) 260 U.S. 235, 243) ‘[T]he practical reason for this procedure is that the trial of the equitable issues may dispense with the legal issues and

end the case.’ (*Moss v. Bluemm* (1964) 229 Cal.App.2d 70, 73) In short, “trial of equitable issues first may promote judicial economy.’ (*Nwosu, supra*, at p. 1238.)” (*Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156-157.)

“California’s preference for the trial of equitable issues before legal issues has produced a number of cases in which bench resolution of equitable issues preceded consideration of legal claims, and curtailed or foreclosed legal issues. (*Nwosu v. Uba, supra*, 122 Cal.App.4th at pp. 1238-1240 [collecting cases].) ‘It is well established that, in a case involving both legal and equitable issues, the trial court may proceed to try the equitable issues first, without a jury . . . and that if the court’s determination of those issues is also dispositive of the legal issues, nothing further remains to be tried by a jury.’ (*Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10 Cal.3d 665, 671)” (*Hoopes v. Dolan, supra*, 168 Cal.App.4th at p. 157.)

One court has characterized a bench trial’s foreclosure of a jury trial as “quasi-collateral estoppel.” (*Nwosu v. Uba, supra*, 122 Cal.App.4th at p. 1244.) “[H]ad Nwosu’s equitable and legal claims been litigated in separate actions, the prior determination of the equitable claims would have resulted in Nwosu being collaterally estopped from asserting his legal claims. We acknowledge that the joinder of Nwosu’s claims in one action prevents application of this doctrine of collateral estoppel. The fact, however, that the parties chose to litigate their claims in a single action cannot change the impact of the court’s prior determination of certain issues in the equitable phase of the trial upon the remaining legal claims. Just as the parties are bound by collateral estoppel where issues are litigated in a prior action, so, too, do issues decided by the court in the equitable phase of the trial become “conclusive on issues actually litigated between the parties.’ [Citation.] Thus . . . a form of quasi-collateral estoppel occurred here; the prior disposition of the related claims by the court in equity estopped Nwosu from relitigating the already determined issues in his claims at law.” (*Ibid.*)

Accordingly, the trial court did not err in bifurcating the Hobis’ easement claims and trying the equitable claims first, while holding their prescriptive easement claim in reserve. As we have discussed above, the trial court also correctly ruled the Hobis’

testimony during trial on their equitable claims foreclosed recovery on their prescriptive easement claim.

III. DISPOSITION

The judgment is affirmed.

Banke, J.

We concur:

Marchiano, P. J.

Dondero, J.