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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**BURTON B. BARNES et al., as  
Trustees, etc.,**

**Plaintiffs, Cross-defendants  
and Appellants,**

**v.**

**PRITCHETT PEAKS, LLC,**

**Defendant, Cross-Complainant  
and Respondent.**

**A135552**

**(Sonoma County  
Super. Ct. No. SCV-248671)**

The owners of a ranch filed a lawsuit seeking to compel their neighbor to remove two gates on a private access road leading to their property. The court denied the injunctive relief sought, concluding the ranch owners did not possess or had waived any right to unobstructed access to their property, though it ordered the neighbor to install automatic gates with costs to be shared by both sides. We affirm, concluding the “abutter’s rights” the ranch owners acquired when the access road was still a public road does not include the right to insist on removal of the gates.

**FACTUAL AND PROCEDURAL HISTORY**

Plaintiffs and cross-defendants Burton B. and Patricia A. Barnes, as Trustees of the Barnes Revocable Trust dated October 21, 2008 (collectively, plaintiffs), purchased the Falcon Highlands Ranch in Sonoma County in 1983. The primary access to the

property is Old Rockpile Road, which traverses other parcels of property before reaching plaintiffs' ranch. There are five gates along the road on the way to the ranch, referred to by the parties and in this opinion as Gates 1 through 5.

When plaintiffs purchased their ranch in 1983, Old Rockpile Road was owned and maintained by the County of Sonoma (the County). In 1991, plaintiff Burt Barnes contacted the owners of the other properties abutting the road suggesting they ask the County to abandon it, the consensus being they would have more control and would be better able to keep out poachers and other trespassers if it were private. Barnes drafted a petition to this effect, which was signed by all the abutting landowners. In 1994, the County granted the request and vacated its interest in the road.

The property adjacent to plaintiffs' ranch on its northwesterly side was purchased in 2008 by defendant and cross-complainant Pritchett Peak, LLC (defendant), whose members are Robert, Blake and Cam Mauritson. Wine grapes are cultivated on the property by defendant and by Thomas Mauritson, who leases a portion of that land and also owns land adjacent to the southwesterly side of plaintiffs' ranch.

Deer are a significant problem for grape growers, because they will eat leaves and grapes off the vine and can tear the vines out of the ground, potentially destroying the crop. To address the deer problem on defendant's property, defendant and Thomas Mauritson replaced Gates 4 and 5, located on that property, with higher gates designed to keep deer out. Plaintiffs objected to the new deer gates because they were difficult to open and Gate 4 had a cattle guard, which had to be crossed to open the gate. As an accommodation, defendant installed two walk-in gates on either side so Gate 4 could be opened without crossing the cattle guard. The gates have never prevented plaintiffs from traveling to and from their property.

On November 22, 2010, plaintiffs filed this action against defendant, seeking injunctive relief and damages. The complaint alleged plaintiffs owned an easement over Old Rockpile Road and defendant had unreasonably interfered with this easement by erecting two gates across the road. Defendant filed a cross-complaint with causes of action for quiet title and trespass.

The case proceeded to a bench trial, at which plaintiffs took the position they were entitled to unobstructed access to their ranch as part of the “abutter’s rights” enjoyed by property owners along public roads. (See, generally, *Regency Outdoor Advertising, Inc. v. City of Los Angeles* (2006) 39 Cal.4th 507, 517 (*Regency*).) Defendant argued Old Rockpile Road was no longer a public road, and the concept of abutter’s rights did not apply, the only question being whether the gates unreasonably interfered with plaintiffs’ right of access. Defendant also suggested plaintiffs had waived whatever rights they had to unobstructed access because gates had existed along Old Rockpile Road when the County vacated and it became a private road. The parties stipulated plaintiffs had a legal right to access their property by means of Old Rockpile Road, and that since the County vacated in 1994, the portion of Old Rockpile Road at issue is no longer a public road.

At trial, Thomas Mauritson testified about the history of the gates. Gate 1 was installed at the entry to Old Rockpile Road in 1983, near the time plaintiffs bought their property, and has been closed and locked since its installation. Gates 2 and 3 (the latter being only a cable rather than true gate) were installed in the mid-to-late 1970’s and remained locked until the installation of Gate 1, when they were opened due to the proximity of Gate 1. Gate 4 was a livestock gate installed at the same time as Gates 2 and 3 and was kept locked until the 1990’s, after which it was sometimes locked and frequently closed. Gate 5, another livestock gate, was installed in the late 1980’s or 1990, and was kept locked and closed until about 2000, and closed until about 2005 to 2007, while cattle were still being run on the property. Thomas Mauritson recalled that when the landowners petitioned the County to vacate Old Rockpile Road, one reason for doing so was to prevent the County from removing the gates, as they protected the property and the landowners’ privacy.

Plaintiff Burt Barnes testified that Gate 1, the entry gate, had always been locked. He recalled that Gates 2 and 3 were closed and locked when he first purchased his land, but the owner of the land on which they were located removed the locks and opened the gates sometime in the 1980’s. Barnes sometimes closed Gate 4 himself to prevent his livestock from getting out, and Tom Mauritson would sometimes close Gate 5 to protect

his property. Barnes testified that when he led the effort to have the County vacate Old Rockpile Road, he was not concerned with keeping the gates other than Gate 1, the locked and closed entry gate to the road. It did not occur to him to ask the County to remove the other gates prior to vacation.

The trial evidence showed the parties made some attempts to resolve their dispute about Gates 4 and 5. Plaintiffs proposed paying for the materials necessary for defendant to fence in the portions of its vineyards that were protected by the gates. Defendant declined, due to aesthetic reasons and potential safety issues if the road were narrowed by virtue of a fence. Plaintiffs also offered to pay for the installation of a deer guard in the roadway (similar to a cattle guard, but longer), but defendant presented expert testimony suggesting deer guards would not be as effective as the existing deer gates. Defendant offered to split the cost of installing automatic gates, but plaintiffs were concerned such gates could fail, leaving a person stranded.

The trial court entered judgment denying plaintiffs' request for injunctive relief, but directing defendant to install automatic gates at a cost to be shared equally between plaintiffs and defendant. The judgment also declared plaintiffs "have no other rights" over defendant's property, and "are enjoined from making any further claim to said property adverse to [defendant], by legal action or otherwise, on the basis of any fact or facts which were proved, or which might have been proved in this action." In its written statement of decision, the court concluded plaintiffs "did not have abutters' right to access their real property without obstruction" and had further "waived any private right to abutters' rights to access to their property without obstruction." Plaintiffs appeal.

#### DISCUSSION

The owner of land abutting a public street has a property right in the nature of a private easement for ingress and egress. (*Regency, supra*, 39 Cal.4th at p. 517; *Bacich v. Board of Control* (1943) 23 Cal.2d 343, 349-350 (*Bacich*); *Rose v. State of California* (1942) 19 Cal.2d 713, 727.) The easement continues even after the governmental entity vacates the street and terminates the right of public access to the street. (Sts. & Hy. Code, § 8353, subd. (a); *Harman v. City and County of San Francisco* (1972) 7 Cal.3d

150, 167.) Plaintiffs argue that these principles give them the right to unobstructed access to their property via Old Rockpile Road. We disagree.

Preliminarily, we note the parties' disagreement about the correct standard of appellate review in evaluating the scope of plaintiffs' abutter's rights. Plaintiffs argue we should independently review the trial court's judgment, while defendant argues the judgment must be upheld if supported by substantial evidence. The definition of abutter's rights is an issue that typically arises in the context of an inverse condemnation claim (see *Regency, supra*, 39 Cal.4th at p. 517; *Beals v. City of Los Angeles* (1943) 23 Cal.2d 381, 387; *Bacich, supra*, 23 Cal.2d at pp. 345, 349-350), and we treat it, like an inverse condemnation claim, as one presenting a mixed question of fact and law (*Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1554). This requires us to "defer to the express or implied factual findings of the trial court and determine the applicable legal principles de novo." (*Ibid.*) In this case the application of the law to the facts is predominantly a legal question, and our review is de novo. (*Ibid.*)

Plaintiffs had a private easement giving them a right to ingress and egress over Old Rockpile Road when it was a public road, and this right did not dissipate when the County vacated in 1994. It does not follow, however, that plaintiffs' right to access their property included the right to require the removal of the gates along the road. "It is well-established . . . that abutter's rights are qualified, rather than absolute . . . ." (*Regency, supra*, 39 Cal.4th at p. 517.) "While certain general rules have been set forth in the various decisions which have considered the nature and scope of this right, each case must be considered upon its own facts. The right of access has been defined as extending to a use of the road for purposes of ingress and egress to [the owner's] property by such modes of conveyance and travel as are appropriate to the highway and in such manner as is customary or reasonable. [Citation.]" (*People v. Russell* (1957) 48 Cal.2d 189, 195 (*Russell*).

In this case, it was uncontested that gates had been in use at the locations at issue for a number of years, dating back to when Old Rockpile Road was a public road. Plaintiffs themselves sometimes closed at least one of the gates to protect their own

livestock. Though they argue “no gates should have been erected across Old Rockpile Road, a public road,” gates were not absolutely prohibited by statute and the County allowed them to remain. (See Sts. & Hy. Code, §§ 1486, 966.) “If a highway exists by dedication or abandonment to the public [citation] the [county] supervisors are vested with power to permit gates or order their removal. [Citation.] If the right of the public is one derived from user alone . . . the right is no broader than the use. Such use over a road with gates would not authorize the removal of the gates.” (*Cordano v. Wright* (1911) 159 Cal. 610, 622.)

Given the historical presence of the gates, both before and after Old Rockpile Road was vacated, the maintenance of the gates was “customary and reasonable.” (*Russell, supra*, 48 Cal.2d at p. 195.) Plaintiffs’ rights as abutters to a public road did not in this case include the right to unobstructed access, and they were not entitled to have the gates removed.

Moreover, an easement that survives the vacation of a public street “is subject to extinguishment under the laws governing abandonment, adverse possession, waiver, and estoppel.” (Sts. & Hy. Code, § 8352, subd. (b).) A waiver is the relinquishment of a known right, and may be either “an intentional relinquishment” or “the result of an act which, according to its natural import, is so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished.” (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 583.) “Whether a waiver occurred is a question of fact, which we review under the substantial evidence standard.” (*Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 110.) Substantial evidence supports the trial court’s factual determination plaintiffs waived any right they might have otherwise had to insist on a removal of the gates.

Plaintiffs used Old Rockpile Road for many years without attempting to have Gates 4 and 5 removed. When the property owners petitioned the County to vacate the road, they did not seek removal of the gates; to the contrary, the evidence, viewed in the light most favorable to the judgment, showed they wanted the gates to remain standing as protection against trespassers. Plaintiffs’ failure to seek removal of the gates during the

1994 proceedings to vacate the property, and for more than 15 years thereafter, amounted to a waiver of any right to unobstructed ingress and egress.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondent.

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NEEDHAM, J.

We concur.

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SIMONS, Acting P.J.

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BRUNIERS, J.