MEMORANDUM DECISION

ATTORNEY FOR APPELLANTS

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IN THE
COURT OF APPEALS OF INDIANA

Joseph A. Pazanin,
Janice L. Pazanin,
Robin R. Cheshier, now Gillenwater, and
Jay B. Cheshier,

Appellants-Plaintiffs,

v.

Susan Pattee, LaGrange County, Indiana, and Any Person, Their Heirs, Successors, and Devisees, Claiming an Interest in Property Described as a 20 foot Private Roadway Lying Between 1520 S 485 E, Lagrange, IN, and 1510 S, 485 E, LaGrange, IN, to the

February 3, 2022

Court of Appeals Case No. 21A-PL-1448

Appeal from the LaGrange Circuit Court

The Honorable William R. Walz, IV, Judge

Trial Court Cause No. 44C01-1905-PL-13

West and 4975 E 160 S,
LaGrange, IN to the East,

Appellees-Defendants,

Robb, Judge.

Case Summary and Issue

[1] Robin R. Cheshier (now Gillenwater), Jay B. Cheshier, Joseph A. Pazanin, and Janice L. Pazanin (collectively "Appellants") appeal the trial court's determination that a parcel of land ("Roadway Parcel") running in between the Appellants' and Susan Pattee's properties is a public road. Appellants raise multiple issues for our review, which we consolidate and restate as whether the trial court erred by finding there had been a common law dedication of the Roadway Parcel. Concluding the trial court did not err, we affirm.

Facts and Procedural History

[2] In 1934, Cecil and Lydia Cook purchased a plot of land in LaGrange, Indiana. In the 1940s, the Cooks parceled off portions of their land and sold plots to the Appellants' predecessors-in-title. To reach the public highway from the parceled plots one would have to traverse land that the Cooks maintained after the sales.

Therefore, the Cooks granted the Appellants' predecessors-in-title easements giving them the right of "ingress and egress" to and from their plots. *See* Exhibits, Volume IV at 7-8.

[3] In 1965, in preparation for the sale of a larger plot of land to Pattee's predecessor-in-title, the Cooks employed a surveyor to plat the land to be sold. The survey describes a 1.225-acre parcel of land ("Pattee Parcel") intended to be sold. The survey also shows the two plots of land previously conveyed to Appellants' predecessors-in-title as well as the Roadway Parcel which is situated in between the two plots and the Pattee Parcel. The survey designates the Roadway Parcel as a "20' Pvt. Roadway[.]" Appellants' Appendix, Volume II at 65. Rex Pranger, a surveyor in LaGrange County, testified that the Roadway Parcel's designation as a "20' Pvt. Roadway" meant that it was a "privately maintained roadway"; in other words, it was a "public roadway, not maintained by the county." Transcript of Evidence, Volume II at 168, 189-90.

[4] In 1976, the Pazanins purchased one of the Cooks' previously sold plots of land.[1] The warranty deed stipulated that the Pazanins maintained the "right of ingress and egress to and from [the plot] and the public highway." Appellants' App., Vol. II at 49. In 2014, Pattee purchased the Pattee Parcel "[s]ubject to easements, restrictions, and rights of way of record[.]" *Id.* at 60.

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[1] This plot of land was transferred multiple times prior to the Pazanins' purchase. It is unclear from the record when the Cheshiers purchased their plot; however, the property is in their name by December 14, 2004. *See* Appellants' App., Vol. II at 56.

[5] After purchasing the property, Pattee began having a house built. Pattee testified that approximately sixteen to twenty construction workers that worked on her house accessed the Roadway Parcel and used it to park. During the construction a sewage line was damaged and needed to be repaired. Adam Sams, general manager at LaGrange County Regional Utility District, testified that the utility district used the Roadway Parcel to repair the sewage line on Pattee's property. However, he stated that the utility district had easements to access both Pattee's and the Appellants' property.

[6] On May 22, 2019, Appellants filed a Verified Complaint to Quiet Title against Pattee and LaGrange County, seeking to quiet title to the Roadway Parcel.[2] At the bench trial, Pattee testified that she has driven on the Roadway Parcel in her mini-van, that her partner has mowed the Roadway Parcel, and that her children and grandchildren have all accessed the Roadway Parcel, including her son who has driven on it in his pickup truck.

[7] On February 24, 2021, the trial court issued its Order with Findings of Fact and Conclusions of Law and found that:

Conclusions of Law

[2] Appellants' Verified Complaint to Quiet Tile also named as defendants "any person, their heirs, successors, and devisees, claiming an interest in [the Roadway Parcel.]" Appellants' App., Vol. II at 43. The Appellants later filed a Motion for Default Judgment which was granted by the trial court regarding any such persons. *Id.* at 84-88.

* * *

> 6. The manner in which the Roadway Parcel was created by the selling off of other surrounding parcels on each side of it and to the north of it is evidence of the intention of the prior owner to dedicate the Roadway Parcel to the public.
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> 7. The [Cooks] ceasing to pay property taxes, never selling the Roadway Parcel and the design of the Roadway Parcel are all indications of the intent of the prior owner to dedicate the Roadway Parcel to the public.
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> 8. []Pattee and [Appellants] are members of the public, and their use of the Roadway Parcel demonstrates acceptance by the public of the Roadway Parcel as public land.
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> 9. The utility companies, including LaGrange County Regional Utility District and its employees' use of the Roadway Parcel demonstrates acceptance by the public of the Roadway Parcel as public land.
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> 10. Rex Pranger testified that in his expert opinion the Roadway Parcel is a public roadway not maintained by LaGrange County.

Appealed Order at 8. The trial court concluded that the Roadway Parcel was property of LaGrange County because it had been dedicated to the public by means of common law dedication. Appellants now appeal.

Discussion and Decision

I. Standard of Review

[8] When the trial court makes findings of fact and conclusions of law pursuant to Indiana Trial Rule 52, we apply a two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. *Jackson v. Bd. of Comm'rs of Cnty. of Monroe*, 916 N.E.2d 696, 702 (Ind. Ct. App. 2009), *trans. denied.*

[9] The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* We neither reweigh the evidence nor assess the credibility of witnesses but consider only the evidence most favorable to the judgment. *Id.* We review conclusions of law de novo. *Id.*

II. Common Law Dedication

[10] There are two elements of a common-law dedication: (1) the intent of the owner to dedicate; and (2) the acceptance by the public of the dedication. *McAllister v. Sanders*, 937 N.E.2d 378, 383 (Ind. Ct. App. 2010). Dedication may be express or implied, which arises by the acts of the owner. *Id.* "The intention must clearly appear, and the acts and declarations of the owner relied on to establish it must be clear, convincing, and unequivocal." *Sagarin v. City of Bloomington,* 932 N.E.2d 739, 747 (Ind. Ct. App. 2010) (citation omitted), *trans. denied*, *cert. denied*, 132 S.Ct. 117 (2001). In determining the owner's intent, we

look to his open acts, not his secret intent. *Jackson*, 916 N.E.2d at 704. The burden of proof is on the party asserting a dedication. *Id.*

A. Intent to Dedicate to the Public

[11] Appellants argue that the Cooks did not clearly and convincingly intend to dedicate the Roadway Parcel to the public. *See* Brief of Appellant at 9. Appellants contend that the Roadway Parcel's designation as a private road in the survey is indicative of the Cooks' intent to make the Roadway Parcel private. However, Rex Pranger, a surveyor in LaGrange County, testified that the Roadway Parcel's designation on a survey as a "20' Pvt. Roadway[,]" meant that it was a "privately maintained roadway" or a "public roadway, not maintained by the county."[3] Tr., Vol. II at 168, 189-90. Further, we have stated that evidence of a dedication includes "evidence of the owner selling lots on opposite sides of a strip suitable for a street and the public using the strip as

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[3] Appellants argue that the trial court incorrectly qualified Pranger as an expert witness. However, Pranger affirmed that he is a registered land surveyor and was the elected surveyor of LaGrange County for thirty-four years. *See Meyer v. Marine Builders, Inc.*, 797 N.E.2d 760, 768 (Ind. Ct. App. 2003) (finding that a registered land surveyor who routinely performs surveys of real property qualified as an expert). Indiana Evidence Rule 702 governs expert testimony and provides that:

> (a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

As an expert witness, Pranger was able to testify in the form of an opinion. *See In re Estate of Lee*, 954 N.E.2d 1042, 1047 (Ind. Ct. App. 2011) (providing that "although experts may not testify as to conclusions of law, such as the existence of a duty, expert witnesses are permitted to testify to the standard of practice within a given field"), *trans. denied*.

such[.]"[4] *North Snow Bay, Inc. v. Hamilton*, 657 N.E.2d 420, 423 (Ind. Ct. App. 1995). As shown in the 1965 survey, the Cooks had previously sold the parcels of land to the west of the Roadway Parcel to the Appellants' predecessors-in-title and the sale of the Pattee Parcel would relieve the Cooks of any interest in land surrounding the Roadway Parcel. *See* Appellants' App., Vol. II at 65.

[12] Appellants argue that the Roadway Parcel was not suitable as a public street, and therefore could not have been intended as such. Appellants contend that the parcel is not suitable as a roadway because it runs "only to the north boundary of [the Cooks' original] property with no connection to another road and show[s] no way of turning around[.]" Br. of Appellant at 12. However, we have held that "a road can be a public road even if the road is only open at one end and only provides access to one landowner." *McAllister*, 937 N.E.2d at 384 (citation omitted). Thus, the Roadway Parcel being a dead end does not preclude it from being intended as a public street.

[13] Appellants also argue that the parcel "served no purpose except to delineate the right of ingress and egress that [the Cooks] had previously granted to the predecessors in title[.]" Br. of Appellant at 9. However, we find this unpersuasive as Pattee purchased the Pattee Parcel "subject to easements,

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[4] Appellants argue that the Roadway Parcel is not suitable for use as a public road because it does not comply with Indiana Code section 8-20-1-15 which states that a county highway right-of-way may not be laid out that is less than twenty feet on each side of the centerline. In *McAllister,* 937 N.E.2d at 381-84, although we stated that the strip at issue must be "suitable for a street[,]" we affirmed that there was a common law dedication of the strip even though it did not comply with Indiana Code section 8-20-1-15. Therefore, we conclude that the term "suitable" does not mean compliant with the width requirements of Indiana Code section 8-20-1-15.

restrictions, and rights of way of record[,]" Appellants' App., Vol. II at 60; thus the Cooks did not need to carve out the Roadway Parcel from the Pattee Parcel to ensure the Appellants' right to ingress and egress. Further, after establishing the Roadway Parcel in the 1965 survey, the Cooks did not pay taxes on the property which we believe indicates an intent to dedicate the Roadway Parcel as a public road.

[14] We conclude that the Cooks intended to dedicate the Roadway Parcel to the public.

B. Public Acceptance of Dedication

[15] Appellants argue that there was no acceptance by the public of the Roadway Parcel. Generally, public use "for a long time" is sufficient to demonstrate acceptance by the public. *Cook v. Rosebank Dev. Corp.,* 176 Ind. App. 664, 671, 376 N.E.2d 1196, 1201 (1978). However, we have stated that "the frequency and number of users of a street is not significant, so long as the street remained free to those members of the public who had occasion to use it." *McAllister*, 937 N.E.2d 384 (quoting *Chaja v. Smith*, 755 N.E. 2d 611, 615 (Ind. Ct. App. 2001)); *see also Jackson*, 916 N.E.2d at 705 (holding that a "road remains public even if it is rarely used").

[16] It is true that a road does not become a public road simply because the owner selectively permits a few members of the public to use it. *Jackson*, 916 N.E.2d at 703; *see also* Ind. Code § 9-13-2-49 (defining "private road" as "a way or place in private ownership that is used for vehicular travel by the owner and those

having express or implied permission from the owner but not by other persons"). However, there are sufficient examples of public persons who did not have express or implied permission from Appellants using the Roadway Parcel.[5] Pattee testified that the Roadway Parcel was used by multiple construction crews as well as multiple members of her family. Further, even if use was infrequent, it "remained free to those members of the public who had occasion to use it." *McAllister*, 937 N.E.2d 384. Therefore, we conclude that the Roadway Parcel was accepted by the public.

Conclusion

[17] We conclude that the trial court did not err by determining there had been a common law dedication of the Roadway Parcel. Accordingly, we affirm the trial court's judgment that the Roadway Parcel is the property of LaGrange County.

[18] Affirmed.

Riley, J., and Molter, J., concur.

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[5] Appellants argue that the trial court erred in determining that the Pazanins and Cheshiers were members of the public, because they had easements allowing their ingress and egress from their property to the public highway. *See* Br. of Appellant at 13. Appellants also contend that the LaGrange County Regional Utility District's use of the Roadway Parcel similarly did not demonstrate acceptance of the public because Sams testified that the utility district had an easement allowing them to enter the property. *See id.* Because we conclude that there was sufficient public use of the Roadway Parcel even excluding the use by the Appellants and utility district, we need not address these arguments.