No. 21-0010

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ROBERT GOODWIN and ROBIN GOODWIN

Defendants below, Petitioners,

v.

JAMES R. SHAFFER and IRIS M. SHAFFER

Plaintiffs below, Respondents.

From the Circuit Court of
Preston County, West Virginia
Civil Action No. 18-C-7

RESPONDENT'S BRIEF

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I. COUNTER STATEMENT OF THE CASE

Plaintiffs James and Iris Shaffer ("Shaffers") are the owners of real property located at 203 Tunnelton Street, Kingwood, West Virginia ("Shaffer Property"). The Shaffers have owned and occupied the Shaffer Property since 1973. Defendants Robert and Robin Goodwin ("Goodwins") are the owners of real property located at 207 Tunnelton Street, Kingwood, West Virginia ("Goodwin Property"). The Goodwins moved into the Goodwin Property in 1999, twenty-six years after the Shaffers acquired the Shaffer Property. The Shaffer Property adjoins the Goodwin Property.

In 1973, when the Shaffers moved into their home, they immediately began using the alley to access the back of their property. (J.A. 51-52). The alley at issue in this civil action is accessible from Tunnelton Street and lies directly between the Shaffer and Goodwin Properties. (J.A. 53-65). On a daily basis, the Shaffers would drive on the alley to park their vehicles beside their house. (J.A. 51-52). This is evidenced by an August 2013 GoogleMaps photograph of the Shaffer Property, which depicts the Shaffers' Chevrolet Cavalier parked in the alley. (J.A. 66). The Shaffers did not request nor obtain permission from any person to use the alley. (J.A. 51-52). Rather, the Shaffers had used the alley as if it were their own since 1973. (J.A. 51-52).

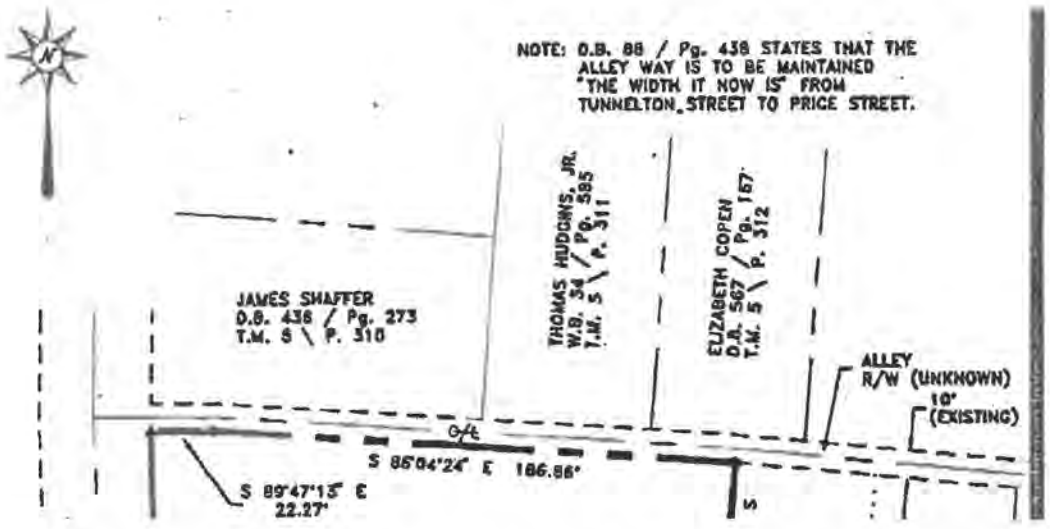
The Goodwins became the Shaffers' neighbors in 1999, and the Goodwins admit they did not have any property interest in the alley prior to 1999. (J.A. 69). It is uncontroverted that the Shaffers continuously used the alley, without interruption, from 1973 to 1999 (twenty-six years) without seeking permission from any person to use the alley. (J.A. 51-52). There is simply no evidence to refute this fact.

From 1999 to 2016 (seventeen years), the Goodwins were aware of the Shaffers' use of the alley in order to access their home. (J.A. 51-52). Then, in 2016, the Goodwins put up a gate

preventing the Shaffers from using the alley to access the back portion of the Shaffer property. (J.A. 51-52; 69). The Goodwins later erected a building on the alley that similarly prevents the Shaffers from using the alley. (J.A. 69).

The Goodwins assert that they own the alley. (J.A. 69). For purposes of the Shaffers' Motion for Summary Judgment, this assertion was accepted as true. Stated otherwise, for purposes of establishing a prescriptive easement in the Motion for Summary Judgment, the Shaffers agree that the Goodwins own the alley in question, as did the Goodwins' predecessors-in-interest. The Goodwins' purported ownership of the alley does not alter the ultimate conclusion that the Shaffers had established a prescriptive easement to the alley prior to the Goodwins moving next door in 1999.

Notably, however, the Goodwins' deed to their property includes a plat that clearly discloses the right of way between the Goodwins' property and the Shaffers' property, as shown below:



(J.A. 115-19). The alley in question is clearly marked on the Goodwins' deed, and it shows that the alley is directly beside the Shaffers' property. In fact, the Goodwins' deed even makes a

notation "that the alley way is to be maintained 'the width it now is' from Tunnelton Street to Prince Street." (J.A. 119).

In summary, the Shaffers continuously used the alley for more than forty-three years (1973 to 2016), and the Goodwins admit that they did not have a property interest in the alley for this initial twenty-six years (1973 to 1999) that the Shaffers utilized the alley to continuously park their vehicles. **There is simply no evidence to refute the fact that the Shaffers continuously used the alley for twenty-six years prior to the Goodwins moving next door.** Further, there is no evidence to refute the fact that the Shaffers never requested nor obtained permission from any person or entity to use the alley. The Shaffers simply used the alley for decades in an open and obvious fashion, on a daily basis, as if the alley were their own.

The Shaffers brought this action against the Goodwins to conclusively establish their prescriptive easement to the alley. Further, the Shaffers sought an injunction that requires the Goodwins to remove any and all obstructions interfering with the Shaffers' lawful use of the alley. Finally, the Shaffers seek to hold the Goodwins liable for trespass, private nuisance, and civil conspiracy. Notably, however, the Shaffers only sought summary judgment with respect to their claim that they have established a prescriptive easement to the alley.

On or about October 20, 2020, the Circuit Court of Preston County, West Virginia entered an order entitled *"Order Granting the Plaintiff's Motion for Summary Judgment in Part and Denying in Part."* (J.A. 473 – 93). Then, after the Goodwins' counsel represented that they would be appealing this summary judgment order, the Court entered an "*Amended Order Granting the Plaintiff's Motion for Summary Judgment in Part and Denying in Part"* stating that it was a Final Order (hereinafter "Summary Judgment Order"). (J.A. 539 – 59).

The Court's Summary Judgment Order partially granted the Shaffers' motion by finding that the Shaffers acquired a right of way by adverse prescription to use the disputed alleyway *prior to* 1999, before the Goodwins moved next door. (J.A. 540). However, the Court also partially denied the Shaffers' motion by finding that there was a factual dispute regarding whether the Shaffers continued to possess a right of way by adverse prescription *after* 1999. *Id.* The Goodwins have appealed the portion of the Court's ruling that granted partial summary judgment to the Shaffers.

II. SUMMARY OF ARGUMENT

The Goodwins' assignments of error fall into four categories: (1) that the Circuit Court erred in applying a presumption of adverse use; (2) that the Circuit Court erred in granting summary judgment to the Shaffers without evidence of repudiation; (3) that the Circuit Court erred in finding that the Shaffers' alleged use of the disputed way was continuous; and (4) that the Circuit Court erred in failing to find a genuine issue of material facts and invaded the province of the jury. Each category is addressed in turn:

(1) The Circuit Court did not err in applying a presumption of adverse use; rather, the Circuit Court found adverse use by clear and convincing evidence.

(2) The Circuit Court correctly granted partial summary judgment because the Shaffers' use of the alley had always been adverse, thereby alleviating the need for repudiation.

(3) The Circuit Court correctly found that the Shaffers' use of the alley was continuous and uninterrupted from 1973 to 1999.

(4) The Circuit Court correctly found that there was not a genuine issue of material fact that prevented partial summary judgment in favor of the Shaffers with respect to the prescriptive easement that was established prior to 1999.

III. STATEMENT REGARDING ORAL ARGUMENT

The Shaffers submit that oral argument is not necessary and this matter should be resolved via memorandum opinion. The Circuit Court's Summary Judgment Order contains detailed findings and analysis and the Goodwins have not identified any evidence in the Appendix Record or pertinent legal authority to support their contention that the Circuit Court erred in granting partial summary judgment to the Shaffers with respect to the prescriptive easement.

IV. ARGUMENT

1. Standard of review of a Circuit Court's entry of summary judgment.

"A circuit court's entry of summary judgment is reviewed *de novo*." Syl. Pt. 1, *Painter v. Peavy*, 451 S.E.2d 755 (W. Va. 1994). Under Rule 56(c) of the West Virginia Rules of Civil Procedure, summary judgment is proper where the moving party has shown that there is no genuine issue as to any material fact and that it is entitled to summary judgment as a matter of law. W. Va. R. Civ. P. 56(c); *Painter*, 451 S.E.2d at 758. "The [Court's] function at the summary judgment stage is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" *Painter*, 451 S.E.2d at 758. Consequently, the Court "must draw any permissible inference from the underlying facts in the most favorable light to the party opposing the motion." *Id.*

"Nevertheless, the party opposing summary judgment must satisfy the burden of proof by offering more than a mere 'scintilla of evidence,' and must produce evidence sufficient for a reasonable jury to find in a nonmoving party's favor." *Id.* at 758-59. "Summary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." *Id.* at 759. "Therefore, while the

underlying facts and all inferences are viewed in the light most favorable to the nonmoving party, the nonmoving party must nonetheless offer some concrete evidence from which a reasonable finder of fact could return a verdict in its favor or other significant probative evidence tending to support the complaint." *Id.* (edited for clarity and conciseness).

2. The Circuit Court did not err in applying a presumption of adverse use; rather, the Circuit Court found adverse use by clear and convincing evidence.

The Goodwins' Brief curiously focuses heavily on an argument that the Circuit Court applied a presumption of adverse use for the alley in question. Petitioners' Brief at Assignment of Error No. 1. In reality, however, the Circuit Court did not *presume* anything. In fact, the words "presumption" or "presume" cannot be found anywhere in the Circuit Court's twenty-one page Summary Judgment Order. (J.A. 539 - 59).

Rather, the Circuit Court correctly examined the elements for a prescriptive easement claim, and it correctly found, by clear and convincing evidence, that the Shaffers established a prescriptive easement prior to Goodwins moving next door in 1999.

The Goodwins' Brief argues that the Circuit Court "applied a presumption of adverse use" by relying on Mr. Shaffer's testimony that he did not seek permission from anyone with regards to use of the alley. Petitioners' Brief at p. 11. In reality, however, the Court did not *presume* adverse use. Rather, the Court found that there was not a genuine issue of material fact as to the Shaffers' use of the property from 1973 to 1999, before the Goodwins moved in, because the Goodwins were unable to put forth credible evidence to refute the testimony of Mr. Shaffer and his witnesses.

In reaching this conclusion, the Court first recognized that "adverse use in the context of prescriptive easements generally means that the wrongful use of the property without the permission of the owners." (J.A. 555). Then, the Court found that the Shaffers "*presented clear and convincing evidence* through their witnesses for this Court to find that between 1973 and 1999

the [Shaffers] acquired a right of way over a portion of the disputed alley" for parking their vehicles and accessing the rear of their property. (J.A. 555 - 56) (emphasis added). Specifically, the Court reasoned that:

> Mr. Shaffer testified that he did not ask or seek permission for the use of the alley, which satisfies the element of "adverse use of another's land." The testimony of the [Shaffers'] witnesses demonstrate that the [Shaffers'] use of a portion of the alley was adverse use that continuous and uninterrupted from 1973 to 1999, a period in excess of ten years. (J.A. 557).

The Circuit Court's reasoning in this regard is directly on-point with the leading case for establishing prescriptive easements: *O'Dell v. Stegall*, 703 S.E.2d 561 (W. Va. 2010). A prescriptive easement arises if a person uses the property of another for a certain amount of time without permission, and the owner fails to prevent such use. *O'Dell*, 703 S.E.2d at 576. Stated otherwise, a "prescriptive easement arises through the adverse use of another person's land." *Id.*

The Shaffers' use of the alley was adverse to the rights of the true owner. The *O'Dell* Court clarified the phrase "adverse use" in two syllabus points:

> Syllabus Point 4. In the context of prescriptive easements, the term "adverse use" does not imply that the person claiming a prescriptive easement has animosity, personal hostility, or ill will toward the landowner; the uncommunicated mental state of the person is irrelevant. **Instead, adverse use is measured by the observable actions and statements of the person claiming a prescriptive easement and the owner of the land.**
>
> Syllabus Point 5. In the context of prescriptive easements, **an "adverse use" of land is a wrongful use, made without the express or implied permission of the owner of the land.** An "adverse use" is one that creates a cause of action by the owner against the person claiming the prescriptive easement; no prescriptive easement may be created unless the person claiming the easement proves that the owner could have prevented the wrongful use by resorting to the law. *O'Dell* at Syl. Pts. 4 and 5 (emphasis added).

Here, from 1973 to 1999, the Shaffers did not have any express or implied permission from any person or entity to use the alley. The Goodwins did not move into their house until 1999, and they have not presented any evidence to rebut the Shaffers' adverse use of the alley from 1973 to

1999. As a result, the Court was correct to grant summary judgment to the Shaffers regarding their adverse use of the alley from 1973 to 1999.

The Goodwins also argue that the use of a private way is permissive, based on the holding in *MacCorkle v. Charleston*, 142 S.E. 841 (W. Va. 1928). The Circuit Court correctly found that the situation in *MacCorkle* is distinguishable from the present case, however. (J.A. 557-58).

In *MacCorkle*, the City of Charleston sought to have a private alley declared a public road by arguing that public use of the alley rendered it a public road by adverse prescription. The Supreme Court of Appeals of West Virginia found that to become a public road, the alley must have been dedicated by the landowner to public use, which was not proven in that case, and affirmatively rebutted by deed dedicating the alley to private use. *MacCorkle*, 142 S.E. at 842. Further, with respect to the adverse possession argument, the *MacCorkle* Court noted that the individuals adversely using the alley were not identified. *Id.* at 843. As a result, the Court found that "vital elements" such as "adverse use by the public" were lacking. *Id.* Stated otherwise, there were not any allegations that the use of the alley was adverse or without permission, which prevented the finding of a prescriptive easement.

In the present case, however, the Circuit Court found that "the alley is clearly private property not belonging" to the Shaffers. (J.A. 557). Further, based on the evidence presented, the Circuit Court found that the Shaffers satisfied the element of "adverse use of another's land" because Mr. Shaffer did not ask or seek permission for the use of the alley. (J.A. 557). Rather, Mr. Shaffer simply used the alley as if it were his own, which satisfies the element of adverse use. Finally, the Circuit Court recognized that the Shaffers "presented clear and convincing evidence through their witnesses" with respect to the Shaffers acquiring a right of way over the alley. (J.A. 555).

The Goodwins also assert that the Circuit Court failed to recognize that a neighborly accommodation could have established permissive use of the alley. Petitioners' Brief at p. 9. However, the Goodwins did not present any evidence of a neighborly accommodation that existed prior to 1999. Indeed, the Goodwins were unable to present any evidence rebutting the Shaffers' evidence on how the Shaffers adversely used the alley prior to 1999, when the Goodwins purchased the property next door.

Quite obviously, the Court relied on "clear and convincing evidence"—not a *presumption*—when it granted summary judgment to the Shaffers with respect to the prescriptive easement that was created over the alley prior to 1999. Because the Goodwins were unable to create a material question of fact with respect to this issue, the Circuit Court appropriately granted partial summary judgment to the Shaffers.

3. The Circuit Court correctly granted partial summary judgment because the Shaffers' use of the alley had always been adverse, thereby alleviating the need for repudiation.

The Goodwins incorrectly argue that the Shaffers had permission to start using the alley in 1973. Petitioners' Brief at p. 14 ("Since [the Shaffers'] use began as permissive use as a matter of law, the [Shaffers] must show repudiation of the permission to use the disputed private way to establish a prescriptive easement under West Virginia law."). In reality, however, the Shaffers' use of the alley was always adverse, as explained above. It is axiomatic that evidence of repudiation is only necessary if permission was given in the first place. *O'Dell,* 703 S.E.2d at 584 ("A use that began as permissive will not become adverse unless the license (created by the granting of permission) is repudiated.").

As stated above, prior to 1999, there is no evidence to suggest that the Shaffers *ever* had permission to use the private alley. The Goodwins did not move into their home until 1999, and

they have not presented any evidence to show that the prior owner of the home gave the Shaffers permission to use the alley.

There is simply no evidence to refute the fact that the Shaffers never requested nor obtained permission from any person or entity to use the alley for the twenty-six years (1973 – 1999) prior to the Goodwins moving next door. The Goodwins are unable to show that the Shaffers had permission to use the alley during this time period.

The Circuit Court, therefore, appropriately granted partial summary judgment to the Shaffers with respect to their establishment of a prescriptive easement prior to 1999. The evidence presented to the Court shows that the Shaffers' use of the alley has always been adverse, and the Shaffers never sought (nor obtained) permission to use the alley.

4. The Circuit Court correctly found that the Shaffers' use of the alley was continuous and uninterrupted from 1973 to 1999.

Once again, the Goodwins mistakenly believe that the Shaffers need to show evidence of repudiation to establish the prescriptive easement prior to 1999. Petitioners' Brief at p. 17 ("it was necessary that the [Shaffers] show ten (10) years of continuous adverse use of the private way ***after*** repudiation of the permissive use implied by law.") (emphasis in original). As explained above, however, the Goodwins have not presented any evidence to show that the Shaffers' use of the alley was permissive in the first place, thereby alleviating the need for evidence of repudiation prior to 1999.

The Goodwins argue that the Shaffers' adverse use of the alley was not continuous because Mr. Shaffer would occasionally move his vehicle to allow neighbors to pass through the alley. Petitioners' Brief at p. 17. Such activities do not constitute an "interruption" in the continuous nature of the Shaffers exercising their prescriptive easement, nor do such activities constitute the Shaffers' abandonment of the prescriptive easement.

To prevail on a claim for a prescriptive easement, the second element requires a showing that the adverse use was continuous and uninterrupted for at least ten years. *O'Dell,* 703 S.E.2d at 586. The *O'Dell* Court clarified the phrases "continuous" and "uninterrupted" in two syllabus points:

> Syllabus Point 8. For an adverse use to be "continuous," the person claiming a prescriptive easement must show that there was no abandonment of the adverse use during the ten-year prescriptive period, or recognition by the person that he or she was using the land with the owner's permission. Additionally, the adverse use need not have been regular, constant or daily to be "continuous," but it must have been more than occasional or sporadic. All that is necessary is that the person prove that the land was used as often as required by the nature of the easement sought, and with enough regularity to give the owner notice that the person was a wrongdoer asserting an easement.
>
> Syllabus Point 9. For an adverse use to be "uninterrupted," the person claiming a prescriptive easement must show that the owner of the land did not overtly assert ownership of the land during the ten-year prescriptive period. Mere unheeded requests, protests, objections, or threats of prosecution or litigation by the landowner that the person stop are insufficient to interrupt an adverse usage. If any act by the landowner succeeded in causing the person to discontinue the adverse use, no matter how brief the discontinuance, then the adverse use was interrupted. *O'Dell* at Syl. Pts. 8 and 9.

The *O'Dell* Court also recognized that "existence of gaps in time between the claimant's use of another's land will not necessarily destroy the continuity of use." *Id.* at 587. The Court recognized that an easement may be acquired in a "seasonal or periodical" fashion, such as a person "traveling a roadway in the haying season, or by making seasonal use of a path." *Id.* Stated otherwise, "the adverse use need not have been regular, constant or daily to be 'continuous,' but it must have been more than occasional or sporadic." *Id.* at 589.

Here, the Shaffers did not abandon their adverse use of the alley during the ten-year prescriptive period simply because Mr. Shaffer would occasionally move his vehicle to let neighbors pass. Indeed, Mr. Shaffer has "proved that the land [i.e., alley] was used as often as required by the nature of the easement sought." *O'Dell* at Syl. Pt. 8. Specifically, Mr. Shaffer

testified that he used the alley to park his vehicles (specifically two personal vehicles, as well as a vehicle for his flower shop) on a daily basis, especially in the evening when the cars would be parked for the night. (J.A. 286 - 88). Mr. Shaffer also testified that he used the alley in the wintertime to get coal into the basement. (J.A. 287). Mr. Shaffer testified that his use of the alley in this regard was consistent for the 1970s, 1980s and 1990s. (J.A. 286 – 94). The Circuit Court also found the testimony of "three independent witnesses compelling" on this topic, noting that one of the witnesses offered "compelling testimony" that the "Shaffers regularly used to park their vehicles in the alley from the 1970s through the 1990s, as well as [testifying] that the sidewalk immediately in front of the alley is designed to facilitate parking." (J.A. 556).

The Goodwins failed to present any evidence to rebut this testimony. Specifically, the Goodwins are unable to refute that the Shaffers' adverse use of the alley was continuous and uninterrupted for at least twenty-six years, prior to the Goodwins moving next door in 1999. The fact that Mr. Shaffer would occasionally move his vehicles to let neighbors pass does not constitute an abandonment of the prescriptive easement. As a result, the Circuit Court correctly found that the Shaffers' use of the alley was continuous and uninterrupted for the ten-year prescriptive period.

5. The Circuit Court correctly found that there was not a genuine issue of material fact that prevented partial summary judgment in favor of the Shaffers with respect to the prescriptive easement that was established prior to 1999.

The Goodwins seem to argue that the Shaffers failed to meet their burden for summary judgment simply because the Court found it necessary to conduct two evidentiary hearings. Petitioners Brief at p. 19. Such an idea is unfounded, and the Goodwins failed to provide any legal support for this notion.

The Goodwins also take issue with the fact that the Circuit Court made credibility determinations to "discount[] and ignore[] testimony of Robin Goodwin and James Lobb" that

created a genuine issue of material fact. Petitioners' Brief at p. 20. The Goodwins' Brief, however, fails to identify the specific testimony upon which the Circuit Court should have relied in finding a question of fact. The Goodwins' Brief similarly fails to explain how this unidentified testimony could create a question of fact on the Shaffers' claim for a prescriptive easement.

Although a nonmoving party is entitled to have all facts viewed in a most favorable light, the nonmoving party cannot rely on "self-serving assertions without factual support in the record" to defeat summary judgment. *Williams v. Precision Coil*, 459 S.E.2d 329, 338 n. 14 (W. Va. 1995) (citing *McCullough Oil, Inc. v. Rezek*, 346 S.E.2d 788 (W. Va. 1986)). Rather, summary judgment "requires a nonmoving party to produce specific facts that cast doubt on a moving party's claims or raise significant issues of credibility. The nonmoving party is required to make this showing because he is the only one entitled to the benefit of all *reasonable* or *justifiable* inferences when confronted with a motion for summary judgment." *Williams*, 459 S.E.2d at n. 14 (emphasis in original). Stated otherwise, "a nonmoving party cannot avoid summary judgment merely by asserting that the moving party is lying." *Id.* Similarly, this Court has recognized that a genuine issue of material fact does not arise "unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Jividen v. Law*, 461 S.E.2d 451, 459 (W. Va. 1995) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). Here, the Circuit Court found that there was not sufficient evidence that could create a genuine issue of material fact with respect to the Shaffers' use of the alley prior to the Goodwins moving next door in 1999.

In considering the Goodwin's argument, it is important to remember that the Court only granted partial summary judgment as to the existence of a prescriptive easement prior to 1999. The Goodwins called two witnesses to rebut the testimony from multiple witnesses that the Shaffers

regularly parked their vehicles in the alley between 1973 and 1999: James Lobb and Robin Goodwin. (J.A. 556).

The Court found that Mr. Lobb's testimony did not rebut the testimony from the Shaffers' witnesses, because he did not recall the Shaffers' use of the property when he was a child (i.e., the period of time before 1999). (J.A. 556). Again, the Goodwins' Brief fails to identify how Mr. Lobb's testimony created a question of fact with respect to the Shaffers' claim for a prescriptive easement prior to 1999.

The Court also found Ms. Goodwin's "testimony regarding her recollection of the Shaffers (non) use of the alley in years prior to the Goodwins' purchase of their home not credible." (J.A. 556). In making this determination, the Court reasoned as follows:

> While Ms. Goodwin testified that she had clear recollections of the Shaffers not using the alley, it would be unusual for an individual as a child and young person to have such a clear recollection regarding a situation in which one has no stake or close affiliation at that time. Ms. Goodwin's credibility is also diminished by a glaring discrepancy between two statements she made during her testimony. These statements were that Ms. Goodwin recalled that (1) the alley way was "completely grown over" and (2) the only property owners of Brown Avenue utilized the alley. These statements cannot both be true at the same time. Because Ms. Goodwin's testimony is not credible on its face, the [Goodwins] have not presented sufficient evidence to show a genuine issue of material fact regarding whether the [Shaffers] acquired a right of way over a portion of the disputed alley for the parking of vehicles and accessing the rear of the [Shaffers'] property. (J.A. 556 - 57).

The Circuit Court was well within its rights to make this credibility determination before granting partial summary judgment to the Shaffers. Ms. Goodwin testified that she had specifically recalled an incident where she hid from the police after jumping a fence by hiding in the bushes that were in the disputed alley close to the Shaffer Property. (J.A. 363). Ms. Goodwin testified that this incident would have occurred in 1978 or 1979 because she was fourteen or fifteen years old at the time. (J.A. 365). She also testified that, prior to 1999, the Shaffers parked their vehicles on

the street, and she denied ever seeing anyone parked in the alley beside the Shaffers' house. (J.A. 365).

The Circuit Court correctly recognized that Ms. Goodwin's testimony in this regard was in direct contradiction to numerous other witnesses that credibly testified that the Shaffers regularly parked vehicles on the alley for a period of twenty-six years (1973 to 1999). The Circuit Court also recognized that it would be unusual for a child and young person to recall such vivid details about an otherwise unremarkable alley or where a certain homeowner parked. (J.A. 556 - 57). After all, why would Ms. Goodwin recall where the Shaffers parked their vehicles in the 1970s or 1980s, when she did not move into the next door property in 1999? The Court properly considered the extremely unusual nature of this testimony, coupled with the fact that it was in direct contradiction of other testimony offered by witnesses, to determine that there was not a material question of fact with respect to the Shaffers' use of the property from 1973 to 1999.

IV. CONCLUSION

For the reasons detailed above, the Shaffers submit that the Circuit Court appropriately granted partial summary judgment with respect to their claim for a prescriptive easement that existed prior to 1999. The Shaffers therefore request that this Court affirm the Summary Judgment Order of the Circuit Court, deny the relief sought by the Goodwins, and grant any further relief to the Shaffers that this Court deems just.

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CERTIFICATE OF SERVICE

I, the undersigned counsel for the Respondents, hereby certify that I served a true copy of the foregoing **Respondent's Brief** upon the following individuals, on May 27, 2021.

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