STATE OF MICHIGAN

COURT OF APPEALS

THOMAS W. H. BARLOW and SUSAN BARLOW,

Plaintiffs-Appellees,

v

JOHN BOROTA,

Defendant-Appellant.

UNPUBLISHED

August 16, 1996

No. 175157
LC No. 93-302302

Before: Taylor, P.J., and Murphy and E.J. Grant,* JJ.

PER CURIAM.

In this property dispute, defendant appeals as of right the trial court's order granting summary disposition to plaintiffs. We reverse and remand.

Plaintiffs and defendant are adjoining landowners of commercial property located in the City of Inkster. An alley runs North-South behind the subject properties. Prior to 1958, the alley was considered a "public alley." On July 22, 1958, the Council for the Village of Inkster passed a resolution vacating the alley and converted it into a public easement. In 1990, defendant erected a fence across the alley which blocked access to plaintiff's property from West River Park Drive. After plaintiffs filed a complaint against defendant, both parties moved for summary disposition. The trial court entered an order declaring the alley a public easement "for access and use by members of the public" and a private easement "for access and use by Plaintiffs, their successors and assigns." Pursuant to the order, defendant was required to remove the fence at his own cost.

Defendant first argues that the trial court lacked subject-matter jurisdiction over this case because plaintiffs failed to exhaust their administrative remedies prior to filing suit. Although defendant did not assert this issue below, questions of subject-matter jurisdiction may be raised at any time. *Ass'n of Businesses Advocating Tariff Equity v Public Service Comm*, 192 Mich App 19, 24; 480 NW2d 585 (1991).

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* Circuit judge, sitting on the Court of Appeals by assignment.

A plaintiff is required to exhaust administrative remedies only where the administrative agency or board is capable of providing the relief requested. *Trever v Sterling Heights*, 37 Mich App 594, 596-598; 195 NW2d 91 (1972). Defendant did not identify an agency capable of providing plaintiffs the relief which they sought in their complaint. The Inkster Board of Zoning Appeals is authorized to make decisions regarding enforcement and interpretation of the Zoning Code. City of Inkster Zoning Code, § 155.185. The Code does not address issues such as title and property ownership, nor does the Code authorize the Board of Zoning Appeals to declare an easement. The fact that Const. 1963, art 7, § 29 grants control of public alleys to townships and cities in no way deprives the circuit court of jurisdiction to enforce a public easement, nor does that section prohibit a court from determining whether an easement by prescription or implication exits through an alley which was previously vacated by the city. Accordingly, the trial court did not lack subject-matter jurisdiction to declare the alley a public and private easement.

Next, defendant argues that the trial court erred in declaring the alley a public easement because the 1958 resolution on which that ruling was based did not state a specific purpose and was therefore, void for indefiniteness. However, this issue was not preserved for appeal because it was neither raised before, nor addressed by, the trial court. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). Moreover, defendant's argument is without merit. Resolution 58-484 explicitly states that the easement was reserved to "protect the existing equipment of the Utility Companies."

Although the 1958 resolution is not void for indefiniteness, the trial court nevertheless erred in declaring the alley a public easement "for access and use by members of the public." By its terms, the resolution limits use of the easement to public utilities. An easement must be used strictly for the purposes for which it was granted or received. *Crew's Die Casting Corp v Davidow*, 369 Mich 541, 546; 120 NW2d 238 (1963). In light of the plain language of the resolution, reasonable minds could not differ regarding the purpose for which the easement was intended. Accordingly, we reverse that portion of the trial court's order declaring the alley to be a public easement.

We also find that the trial court erred in determining, as a matter of law, that the alley was a private easement. The trial court based its ruling on the doctrines of easement by prescription, acquiescence, and necessity. The doctrine of easement by acquiescence relates to boundary disputes and, thus, is inapplicable here. See e.g. *McQueen v Black*, 168 Mich App 641, 644; 425 NW2d 203 (1988).

With regard to the doctrine of easement by prescription, there is no documentary evidence in the record indicating that plaintiffs have had use of the alley for fifteen years, *Goodall v Whitefish Hunt Club*, 208 Mich App 642, 645; 528 NW2d 221 (1995), nor have plaintiffs established that they have met the requirements for tacking. See 1 Cameron, Jr., Michigan Real Property Law (2d ed), § 6.16, p 208, citing *Siegel v Renkiewicz*, 373 Mich 421; 129 NW2d 876 (1964) (periods of adverse use may be tacked only where each party in the chain enjoyed privity of estate and the claim property was referenced in the instruments of conveyance or by parol references at the time of conveyance). Thus, a genuine issue of fact exists with regard to whether plaintiffs acquired an easement by prescription.

We also find that issues of fact exist regarding the doctrine of easement by necessity. Plaintiffs failed to allege or establish, by affidavit or otherwise, that the alleged necessity arose upon the severance of a single parcel of land. See *Goodman v Brenner*, 219 Mich 55, 59; 188 NW 377 (1922); *Birch Forest Club v Rose*, 23 Mich App 492, 495; 179 NW2d 39 (1970). Moreover, strict necessity rather than "mere inconvenience" is required in order for an easement by necessity to arise. *Waubun Beach Ass'n v Wilson*, 274 Mich 598, 609-612; 265 NW 474 (1936). There is nothing in the record indicating that plaintiffs have actually been prevented by the New Economy Market from using the alley and parking lot, and the lack of on-site parking does not rise to the level of strict necessity. *Cf. Zemon v Netzorg*, 247 Mich 563, 563-566; 226 NW 242 (1929). Plaintiffs' reliance on *Koller v Jorgensen*, 76 Mich App 623; 257 NW2d 192 (1977), is misplaced. In *Koller*, we held that an easement by necessity existed by virtue of the fact that the plaintiffs' property would not be suitable for the purposes for which it was purchased without such an easement. *Id.* at 628-629. Here, the record is silent regarding plaintiffs' intended use of the property. Thus, because there was a disputed issue of fact, the trial court erred in determining that plaintiff was entitled to judgment as a matter of law on the issue of easement by necessity.

Reversed and remanded. We do not retain jurisdiction.

/s/ Clifford W. Taylor
/s/ William B. Murphy
/s/ Edward J. Grant