[Cite as *1643 Limited, L.L.C. v. Shades of Nantucket Unit Owners Assn.*, 2026-Ohio-4515.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

1643 LIMITED, LLC	COURT OF APPEALS NO. {22}E-25-054
APPELLEE	TRIAL COURT NO. 2020 CV 0270
V.	
SHADES OF NANTUCKET UNIT OWNERS ASSOCIATION, ET AL.	
APPELLANT	

DECISION AND JUDGMENT

Decided: November 13, 2026

* * * * *

John A. Coppeler, for appellee.

Kevin E. Humphreys and Stephen B. Doucette,
for appellants.

* * * * *

MAYLE, J.

{¶ 1} Appellants, Shades of Nantucket Unit Owners Association; Jack Beatley, individually and as trustee; Joyce and Thomas Byington; Ronald Goldstein, trustee; Home Port Developers, Inc.; Kathryn Myers, trustee; Elizabeth Poggiali; Point View Condo LLC; and Monica Powers, trustee (collectively, "homeowners"), appeal the March 4, 2024, January 31, 2025, and August 25, 2025 judgments of the Erie County Court of

Common Pleas granting summary judgment to appellee, 1643 Ltd., on its declaratory judgment and quiet title claims, finding in favor of 1643 on its ejectment claim, and granting an injunction in 1643's favor. For the following reasons, we affirm in part and reverse in part.

I. Background and Facts

{¶ 2} This case involves a dispute over the ownership and usage rights for a parcel of land abutting Sandusky Bay in Lake Erie in Sandusky, Ohio. The disputed land is north of the northeastern corner of property owned by 1643. Part of the disputed land is a small beach area adjacent to 1643's existing property. The other part is a finger of land that abuts the beach and runs along the western edge of a manmade peninsula known as Nantucket Drive, which is part of three manmade peninsulas that make up Snug Harbor. Most of the appellees are owners of lots on Nantucket Drive. Shades of Nantucket is a property owners' association made up of the owners of lots on Nantucket Drive.

{¶ 3} To understand the current dispute, some history of the properties involved is necessary. In 1947, the United States War Department issued a permit to a man from East Canton to construct a yacht basin in Sandusky Bay. The permit authorized the holder to "construct a yacht basin, consisting of bulkheads, boathouses, and dredging . . . ." The permit specifically notes that it "does not give any property rights either in real estate or material . . . . IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION." The yacht basin constructed under the permit eventually became known as Snug Harbor. It consists of three manmade peninsulas, the westernmost of

which is Nantucket Drive. Snug Harbor was platted in 1948. The western lots, including those on Nantucket Drive, were replatted in 1956. There are currently condominiums built on Nantucket Drive. The Nantucket Drive peninsula has riprap[1] along its western side. Several of the individual appellants have built decks, docks, or concrete pads on top of the riprap.

{¶ 4} In 2017, 1643 purchased vacant industrial property at 1643 First Street in Sandusky. In its current iteration, the property is made up of two parcels, one that is about 10 acres and one that is about 5 acres. The disputed beach area is adjacent to the 5-acre parcel. The deed that 1643 received from the property's seller indicated a 71.1-foot line along its northeastern edge that excluded the beach area from 1643's property.

{¶ 5} In 2019, 1643 had its property resurveyed in conjunction with an application it was filing with the Ohio Environmental Protection Agency. As a result of that survey, the beach area and the disputed portion of the Nantucket peninsula were included in the boundaries of 1643's property. 1643 conveyed a deed to itself in 2019 that included a new property description that encompassed the beach area and peninsula property.

{¶ 6} Following the 2019 survey and update to the property description, several decks and a concrete walkway along Nantucket Drive encroached on 1643's property. 1643, through counsel, sent the encroaching owners letters in March 2020 alerting them

[1] Riprap is "a foundation or sustaining wall of stones or chunks of concrete thrown together without order (as in deep water) *also* **:** a layer of this or similar material on an embankment slope to prevent erosion[.]" *Merriam-Webster Online*, https://www.merriam-webster.com/dictionary/riprap (accessed Nov. 10, 2026).

to the encroachments. The parties were not able to work out a solution, and 1643 filed this lawsuit.

{¶ 7} In its complaint, 1643 alleged that it owned property as described in the 2019 deed, and the defendants, including homeowners, were either owners of property along Nantucket Drive or were property owners' associations comprised of members who owned property along Nantucket Drive.[2] It also alleged that some individual defendants and Shades of Nantucket, on behalf of its members, claimed that they had the right to use the beach area through adverse possession or a prescriptive easement, and denied that the individual defendants or the association had met the requirements for either adverse possession or a prescriptive easement. 1643 further alleged that the beach came into being through accretion, so it owned the beach as the upland owner of the property where the accreted land had formed. 1643 went on to claim that some of the defendants had placed structures across the western property line of Snug Harbor, which resulted in them encroaching on 1643's land. 1643 sought a declaratory judgment that it owned the beach, a finding of trespass,[3] ejectment of the defendants from the beach and of the encroaching structures, and to quiet title to the property described in the 2019 deed.

{¶ 8} In their answer, homeowners denied that 1643 owned all of the property described in the 2019 deed, denied that the beach was transferred to 1643 when it purchased the property in 2017, claimed that they met the requirements for adverse

[2] Many of the 51 defendants were dismissed from the litigation before final judgment. Only the named appellants remained in the lawsuit at its conclusion.

[3] 1643 later dismissed the trespass claim.

possession of the beach, denied that they were not entitled to a prescriptive easement over the beach, claimed that they made the same use of the beach as an owner would, denied that 1643 had any property interest in the beach or the Nantucket Drive peninsula, denied for lack of knowledge that the beach was accreted land, claimed that they had maintained the beach and dumped "many tons" of sand in the beach area, admitted that some of the property owners on Nantucket Drive had constructed structures, denied that any of the structures encroached on 1643's property, and claimed that the owners met the requirements of adverse possession for the areas where the structures were located. Homeowners asserted numerous defenses, including adverse possession, prescriptive easement, defects in the 2019 deed, abandonment, acquiescence, estoppel by deed, laches, equitable estoppel, and unclean hands.

{¶ 9} 1643 moved for summary judgment. In its motion for summary judgment, 1643 made three arguments: (1) none of the defendants actually owned the lots on Nantucket Drive because the permit to build Snug Harbor expressly stated that it did not give any property rights, and their lots were built on top of fill placed in Lake Erie, which remains part of the state trust established over lands submerged in Lake Erie; (2) the defendants could not establish all of the elements of either adverse possession or a prescriptive easement because their activities on the beach were insufficient to put 1643 on notice that another had claimed 1643's land, there was not a defined path of travel, as required to show a prescriptive easement, and they had not shown use for the required 21-year period; and (3) the defendants are not upland owners, so they cannot claim rights to the beach through accretion.

{¶ 10} In their response, homeowners argued that (1) the land in dispute was not submerged land that is subject to the public trust over lands in Lake Erie; (2) 1643 did not have legal title to the disputed land because the land was excluded from 1643's 2017 deed and the 2019 deed that 1643 granted itself was ineffective; and (3) Shades of Nantucket and the individual defendants had gained an interest in the disputed land through adverse possession, prescriptive easement, acquiescence, estoppel, or some combination of those.

{¶ 11} Regarding its adverse possession claim, homeowners asserted that Shades of Nantucket "by through [sic] its members that stand in privity with their respective predecessor members . . ." used the beach area in numerous ways, including seasonal recreational activities such as swimming and boating, events such as weddings and family gatherings, maintenance and seasonal cleanup including maintaining trees and adding sand, adding improvements like fire pits and picnic areas, and storage of recreational equipment. Homeowners also claimed that the individual defendants used the disputed land on the peninsula in numerous ways, including seasonal recreational activities such as congregating and social activities, events such as weddings and family gatherings, maintenance and seasonal cleanup including maintaining trees and adding rocks and concrete to the riprap, adding improvements like decks and concrete pads, and installation of utility services. They argued that these uses were open, notorious, exclusive, adverse, and continuous for more than 27 years.

{¶ 12} Alternatively, homeowners argued that they had gained an easement by prescription over the disputed land because their uses of the property had been open,

notorious, adverse, and continuous for more than 27 years. They also argued in the alternative that they had gained an easement by estoppel or acquiescence.

{¶ 13} In its reply, 1643 argued that it owned the beach area because the beach was included in the current legal description of 1643's property. It also argued that it was the upland owner, so it was entitled to any property created by accretion, including the beach. Regarding homeowners' adverse possession, prescriptive easement, and estoppel claims, 1643 pointed out that homeowners relied on a single affidavit from one resident to try to establish a claim on behalf of all residents. It also claimed that the affidavit that homeowners relied on did not meet the elements of adverse possession or prescriptive easement. Finally, it argued that acquiescence did not apply.

{¶ 14} The trial court granted 1643 summary judgment on its claims for declaratory judgment and to quiet title but found that issues of fact remained on its claim for ejectment. The court found that the affidavit and deposition testimony of surveyor John Hancock established that the beach was created by accretion, which was not contradicted by homeowners' evidence. Because an owner of littoral property along the shores of Lake Erie is entitled to any lands extending the shoreline that formed gradually and imperceptibly through the action of the waters of the lake, 1643 was entitled to the beach property.

{¶ 15} The court went on to find that 1643 was entitled to summary judgment on homeowners' counterclaims for adverse possession, prescriptive easement, and estoppel or acquiescence. It determined that these claims failed for three reasons. First, these claims were not available to homeowners because they "directly negate and interfere with

[1643's] property rights as a littoral owner." Because 1643, as the littoral owner, was entitled to accreted lands, allowing homeowners to claim the land by adverse possession would "nullify" 1643's property rights. Second, "the elements of proof for an adverse possession claim do not perform their necessary functions when the land at issue is untitled, accreted land." That is, when the beach area was untitled, open and notorious use of the land could not substitute for actual notice to the titleholder. Finally, homeowners were asking that the conduct of the individual condominium owners be used to show that the property owners' association had gained title to the beach area. The court found no support for that theory.

{¶ 16} The trial court concluded that 1643 owned the accreted area referred to as the beach. Although the court did not address the disputed land on the peninsula in its decision, it determined that the legal description in the 2019 deed from 1643 to itself described the land that 1643 owned, and it quieted title to that land in 1643. Based on the limited evidence related to ejectment, the trial court could not conclude that 1643 was entitled to judgment as a matter of law, so it denied summary judgment on that count.

{¶ 17} Following its decision on summary judgment, the trial court held a court trial on the issue of ejectment. After hearing the evidence, the court found in favor of 1643. In its judgment entry, the court focused on whether the structures on the Nantucket peninsula encroached on 1643's property, but it granted judgment on both parts of 1643's claim, i.e., it ejected homeowners from both the peninsula and the beach.

{¶ 18} After issuing its ejectment decision, the trial court held a hearing on 1643's request for a permanent injunction. The evidence at the hearing focused solely on the

structures encroaching on 1643's property on the peninsula; no evidence was presented regarding the beach. After hearing the evidence, the trial court granted an injunction preventing homeowners from entering the beach or any other part of 1643's property, which included the strip on the peninsula where several structures were built.

{¶ 19} Homeowners now appeal, raising six assignments of error:

> I. The trial court lacked jurisdiction to enter summary judgment in favor of Limited as to its claims of accretion with respect to the navigable and territorial waters of Lake Erie within the state of Ohio, and Erred by Granting Title to Submerged Lands to Limited.
>
> II. The trial court erred in granting summary judgment in favor of Limited when the trial court disregarded the legal effect of the United States Permit which authorized the construction of Snug Harbor.
>
> III. The trial court erred in granting summary judgment relief in favor of Limited in excess of the relief requested in its motion for summary judgment.
>
> IV. The trial court erred in granting summary judgment which rejected the Homeowners' claims for adverse possession, easement by prescription, and their defenses of estoppel and acquiescence which in turn led to the dismissal of their other counterclaims without consideration upon the merits.
>
> V. The trial court erred in rendering its judgment for ejectment. (in the alternative to Assignments of Error 1 through 4, above)
>
> VI. The trial court erred in rendering its injunction order. (in the alternative to Assignments of Error 1 through 5, above)

II. Law and Analysis

A. Summary judgment standard

{¶ 20} We review summary judgment de novo, using the same standard as the trial court. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996); *Lorain Natl. Bank v.*

Saratoga Apts., 61 Ohio App.3d 127, 129 (9th Dist. 1989). The court can grant a motion for summary judgment only when the moving party demonstrates:

> (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.

Harless v. Willis Day Warehousing Co., 54 Ohio St.2d 64, 66 (1978); Civ.R. 56(C).

{¶ 21} The party seeking summary judgment must specifically delineate the basis upon which the motion is brought and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996); *Mitseff v. Wheeler*, 38 Ohio St.3d 112 (1988), syllabus. When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleadings but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery*, 11 Ohio St.3d 75, 79 (1984). The opposing party must do so using "pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact . . . ." Civ.R. 56(C). A "material" fact is one that would affect the outcome of the suit under the applicable substantive law. *Russell v. Interim Personnel, Inc.*, 135 Ohio App.3d 301, 304 (6th Dist. 1999); *Needham v. Provident Bank*, 110 Ohio App.3d 817, 827 (8th Dist. 1996), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

B. The trial court had jurisdiction over the underlying controversy.

{¶ 22} In their first assignment of error, homeowners argue that the trial court lacked jurisdiction to issue its summary judgment decision regarding accretion because the disputed land encompasses submerged lands of Lake Erie, which implicates the state's interest as trustee of lands under Lake Erie. They contend that 1643 failed to join a necessary party by failing to join the state in its lawsuit, and, because the state is the real party in interest as it relates to the submerged lands, there is no justiciable controversy between them and 1643; instead, any controversy is between 1643 and the state. 1643 responds that, by its very nature, a claim of accretion involves land that is not submerged, so the state does not have an interest in the land. It also argues that there is "unquestionably" a controversy about ownership of the beach property. Because of both facts, the trial court had jurisdiction to issue its summary judgment decision.

{¶ 23} The state of Ohio holds the waters of Lake Erie and the lands submerged under the lake in trust for the people of Ohio. R.C. 1506.10. The state has an interest in what happens to the lands that it holds in trust. *See State v. Cleveland & Pittsburgh R.R. Co.*, 94 Ohio St. 61 (1916), syllabus ("The ownership of the waters of Lake Erie, and of the land under them within the state is a matter of public concern.").

{¶ 24} "Accretion" is "the increase of real estate by the gradual deposit by water of solid material, whether mud, sand, or sediment, so as to cause that to become dry land which was before covered by water." *Baumhart v. McClure*, 21 Ohio App. 491, 493 (6th Dist. 1926). Thus, by its very definition, accreted land is not submerged land. There is

no legal authority that gives the state an interest in land that accretes on privately-owned property.

{¶ 25} The evidence in this case includes deposition testimony from Hancock, a registered surveyor, that he included land along the peninsula in his 2019 survey and updated property description "[b]ased on the current shoreline at the time." He used the existence of the riprap along the edge of the Nantucket peninsula as evidence of the shoreline; he did not recall seeing anything other than the riprap (i.e., he did not see land) that bordered the water. The only exhibit submitted on summary judgment that showed the 2019 property line overlaid with an aerial photo was an EPA application.[4] The overlaid photo indicates that it is an aerial photo of the property from 2017. Shorelines are constantly changing. *Faulkner v. Bay Village*, 2002-Ohio-16, *6 (8th Dist.), citing 1993 Ohio Atty.Gen.Ops. No. 93-025. Whether the shoreline was identical in 2019—when Hancock surveyed the area and determined the current shoreline—is impossible to say based on the evidence before us. Homeowners did not present any evidence contradicting Hancock's shoreline determination, so we have no evidence to support a finding that the property description from the 2019 deed did not follow the shoreline as it existed at that time. Because that is the case, we find that 1643 was not attempting to

[4] When reviewing a decision on summary judgment, the appellate court "restricts its consideration to the same evidentiary materials that were properly before the trial court at the time it ruled on the summary judgment motion." (Internal quotations omitted.) *Guernsey Bank v. Milano Sports Ents. LLC*, 2008-Ohio-2420, ¶ 30 (10th Dist.). Thus, we cannot consider any exhibits submitted at the trial of the ejectment claim—like the encroachment survey homeowners cite to—in reviewing the trial court's summary-judgment decision.

assert claims to submerged lands that would require the state's participation in this litigation. As a result, homeowners' jurisdictional arguments are without merit, and their first assignment of error is not well-taken.

C. The trial court did not disregard the War Department permit.

{¶ 26} In their second assignment of error, homeowners argue that the trial court erred in granting summary judgment to 1643 because the court disregarded the legal effect of the War Department permit that authorized the construction of Snug Harbor. They contend that they have an ownership interest in the Nantucket peninsula because of the permit, and there is "no basis to ignore" the property lines described in the 2017 deed. In response, 1643 argues that homeowners overstate the effect of the permit, which merely allowed the harbor to be built but did not convey any type of property interest to the permit holder or his successors in interest.

{¶ 27} The permit issued by the United States War Department in 1947 for the construction of Snug Harbor includes a disclaimer at the top that explains that it "does not give any property rights either in real estate or material . . . . IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION." A plain reading of that permit indicates that it did not give any ownership rights to the holder or his successors in interest. The permit merely allowed for the construction of Snug Harbor. Based on that fact, we cannot find that the trial court ignored the permit when it granted 1643 summary judgment. Homeowners' second assignment of error is not well-taken.

D. The trial court erred by awarding 1643 the peninsula property.

{¶ 28} In their third assignment of error, homeowners argue that the trial court erred by granting summary judgment relief beyond that requested by 1643 in its motion. They contend that 1643 disclaimed any interest in the peninsula in its summary-judgment motion, its summary-judgment reply, and at a hearing, which the trial court acknowledged. Despite that, the trial court adopted the 2019 property description, which included property on the peninsula, thus giving 1643 title to property that it did not request in its motion. 1643 responds that the issue in this case was who has rights to the beach, which is what the trial court decided. It correctly found that the beach was created by accretion and belonged to 1643 as the upland owner. It also correctly determined that homeowners did not meet the requirements to claim the beach by adverse possession or prescriptive easement.

{¶ 29} After considering the evidence before the trial court, we agree with homeowners that the court incorrectly awarded 1643 land on the peninsula.

{¶ 30} A judgment may include whatever relief the prevailing party is entitled to, regardless of the party's demand for relief, and should be based on the facts of the particular case. *Raimonde v. Van Vlerah*, 42 Ohio St.2d 21, 26-27 (1975), citing Civ.R. 54(C). But where, as here, a party limits its request for relief, the trial court should not grant relief that exceeds the limited request. *Eckman v. Ramunno*, 2010-Ohio-4316, ¶ 56 (7th Dist.) (trial court erred by awarding plaintiff land under garage and sidewalk when plaintiff only sought summary judgment related to land under garage). Although 1643 asked for relief related to the peninsula in its complaint, in its summary-judgment motion, 14.

it specifically said that it "makes no claims as to any rights to or ownership of any portion of that peninsula, only that defendants' have no rights to the use or occupancy of plaintiff's property lying west of the western peninsula." Similarly, in its reply in support of its motion for summary judgment, 1643 said that it "seeks no relief regarding the so-called west peninsula or removal of defendants' rip rap." Because 1643 limited its request for relief in its motion for summary judgment, the trial court should have limited its award when it granted summary judgment.

{¶ 31} Because the record shows that 1643 limited its request for relief to exclude the peninsula, the trial court erred by awarding any part of the peninsula to 1643 as its property. Therefore, homeowners' third assignment of error is well-taken in part.

E. Homeowners failed to establish adverse possession, prescriptive easement, acquiescence, or estoppel.

{¶ 32} In their fourth assignment of error, homeowners argue that the trial court erred by finding that they failed to establish that Shades of Nantucket owned the beach through adverse possession or was entitled to use the beach through prescriptive easement, acquiescence, or estoppel. They contend that the court erroneously concluded that allowing homeowners to adversely possess the beach would interfere with 1643's littoral rights, the absence of a titled owner to the beach did not affect the application of adverse possession, the court construed homeowners' evidence of use against them instead of in their favor, the court incorrectly determined that Shades of Nantucket and its predecessor unincorporated owners' association were two different entities, and the court should have considered homeowners' alternative claims and defenses. In response, 1643

argues that the trial court properly awarded it summary judgment as a matter of law because the affidavit homeowners used to support their adverse possession claim showed individual, personal uses of the beach—not associational uses, like homeowners claim. It also argues that homeowners cannot meet the elements of adverse possession or prescriptive easement and acquiescence does not apply under the facts of this case.

1. Adverse possession

{¶ 33} "To acquire title by adverse possession, a party must prove, by clear and convincing evidence, exclusive possession and open, notorious, continuous, and adverse use for a period of twenty-one years." *Grace v. Koch*, 81 Ohio St.3d 577 (1998), syllabus. Failure to prove any of the elements is fatal to an adverse-possession claim. *Id.* at 579, citing *Pennsylvania RR. Co. v. Donovan*, 111 Ohio St. 341, 349-350 (1924). Each adverse-possession claim must be decided upon its particular facts. *Oeltjen v. Akron Associated Invest. Co.*, 106 Ohio App. 128, 130 (9th Dist. 1958). The Ohio Supreme Court has emphasized that adverse possession is disfavored and that "the elements of adverse possession are stringent." *Grace* at 580.

{¶ 34} To establish adverse possession, homeowners need not have intended to take the disputed parcels, but they must have intended to occupy and treat them as their own. *NC Ents., LLC v. Norfolk & W. Ry. Co.*, 2026-Ohio-1429, ¶ 13. The use homeowners made of the land must be the same as the true owner would make of it. *Fulton v. Rapp*, 98 N.E.2d 430, 431 (2d Dist. 1950).

{¶ 35} Here, we need not consider each of the elements of adverse possession because homeowners have failed to demonstrate the most basic element: possession. In

the affidavit of Joyce Byington—the primary evidence that homeowners presented in support of their adverse-possession claim—Byington claims that Shades of Nantucket "through its various members" engaged in possessive activities that meet the elements of adverse possession. However, every activity that Byington lists is an individual activity that was engaged in by individuals, not by Shades of Nantucket as an association. As the trial court found, Shades of Nantucket is not an association that is in the business of operating a beach or providing a beach for its members. There is no evidence in the record that the association—as opposed to its individual members acting on their own—had possession of the beach, so the association's claim of adverse possession fails.

{¶ 36} Homeowners cannot show that individual owners of lots on Nantucket Drive are entitled to adverse possession of the beach, either. Byington's affidavit does not identify any individual lot owners who engaged in activities on the beach or otherwise show that any person had possession of the beach. Byington does not even say that she, personally, engaged in any activities on the beach. Without some evidence that individual owners could have a possessory interest in the beach, we cannot find that the trial court erred by determining that homeowners failed to establish their claim of adverse possession.

2. Prescriptive easement

{¶ 37} A landowner obtains an easement by prescription for a specific use of the property of another when he uses that property openly, notoriously, adversely to the other's property rights, and continuously for at least 21 years. *Attewell v. Eagle-Beach Wildwood Assn., Inc.*, 2000 WL 543068, * 2 (6th Dist. May 5, 2000). The party claiming

the prescriptive easement has the burden of proving each element by clear and convincing evidence. *Id.*

{¶ 38} Homeowners' prescriptive easement claim suffers from the same defect as their adverse possession claim. That is, they cannot show that Shades of Nantucket, as an association, used the beach property, or that any individual Nantucket Drive owners used the beach. Because they cannot do so, they are not entitled to an easement by prescription over the beach property.

3. Acquiescence

{¶ 39} Acquiescence "'is applied in instances where adjoining land owners occupy their respective properties up to a certain line and mutually recognize and treat that line as if it were the boundary separating their properties.'" *Thomas v. Wise*, 2007-Ohio-3467, ¶ 16 (6th Dist.), quoting *Ballard v. Tibboles*, 1991 WL 251957 (6th Dist. Nov. 8, 1991). For acquiescence to apply, adjoining landowners must mutually respect and treat a specific line as the boundary of their properties for 21 years (the statutory time period required for adverse possession). *Id.* The proponent of the line must show acquiescence by clear and convincing evidence. *Id.* at ¶ 17.

{¶ 40} Here, homeowners did not make any arguments specific to acquiescence either in their motion for summary judgment or in their brief to this court. "[I]t is not the role of an appellate court to cobble together an argument for an appellant." *State v. Clark*, 2025-Ohio-4410. Because homeowners did not argue acquiescence, we find that they failed to prove this theory by clear and convincing evidence.

4. Estoppel

{¶ 41} An easement by estoppel arises when "an owner of property misleads or causes another in any way to change the other's position to his or her prejudice." *Kienzle v. Myers*, 2006-Ohio-2765, ¶ 20 (6th Dist.), citing *Monroe Bowling Lanes v. Woodsfield Livestock Sales*, 17 Ohio App.2d 146, 149 (7th Dist. 1969). "Where an owner of land, without objection, permits another to expend money *in reliance upon a supposed easement*, when in justice and equity the former ought to have disclaimed his conflicting rights, he is estopped to deny the easement." (Emphasis added.) *Id.*

{¶ 42} Here, there is no evidence that 1643 or its predecessors misled homeowners or that homeowners thought that they had an easement to use the beach. Without that evidence, homeowners cannot meet the elements of an easement by estoppel.

{¶ 43} In sum, homeowners have failed to show that the trial court erred by rejecting their attempts to claim rights to the beach. Because that is the case, homeowners' fourth assignment of error is not well-taken.

F. 1643 is not entitled to ejectment of homeowners from the Nantucket Drive peninsula.

{¶ 44} In their fifth assignment of error, homeowners argue that 1643 was not entitled to eject them from the peninsula property.

{¶ 45} The common law action of ejectment is codified in R.C. 5303.03, which provides:

> In an action for the recovery of real property, it is sufficient if the plaintiff states in his petition that he has a legal estate therein and is entitled to the possession thereof, describing it with such certainty as to identify the property, and that the defendant unlawfully keeps him out of the

> possession. It is not necessary to state how the plaintiff's estate or ownership is derived.

Ejectment is the proper remedy against one wrongfully in possession of real property. *Liberty Self-Stor, Ltd. v. Porter*, 2007-Ohio-1510, ¶ 20 (2d Dist.), citing *Turnbull v. City of Xenia*, 80 Ohio App. 389, 392 (2d Dist. 1946). Ejectment is available where the plaintiff has a legal title and is entitled to the possession of the real property but is unlawfully kept out of the possession by the defendant. *Id.*

{¶ 46} Because we have determined that the peninsula was not properly awarded to 1643, we agree that ejectment of homeowners from the peninsula property was error. To the extent that the trial court ejected homeowners from the beach, which the court properly determined that 1643 owns, we find no error. Homeowners were, in some capacity, in possession of the beach, as evidenced by the improvements on the beach. This possession occurred despite 1643's legal title and entitlement to possession of the beach. Thus, homeowners' fifth assignment of error is well-taken in part.

G. 1643 is not entitled to an injunction.

{¶ 47} In their sixth assignment of error, homeowners argue that 1643 was not entitled to an injunction preventing them from using the beach and requiring them to remove structures on the peninsula.

{¶ 48} To be entitled to a permanent injunction, the plaintiff must show by clear and convincing evidence that (1) they have prevailed on the merits, (2) they will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the

injunction. *Gimex Props. Corp., Inc. v. Reed*, 2022-Ohio-4771, ¶ 61-62 (6th Dist.). Whether to grant or deny an injunction is within the trial court's discretion, so we will not reverse that decision absent an abuse of discretion. *Youngstown City School Dist. Bd. of Edn. v. State*, 2018-Ohio-2532, ¶ 9 (10th Dist.). Abuse of discretion means that the trial court's decision was unreasonable, arbitrary, or unconscionable. *State ex rel. Askew v. Goldhart*, 75 Ohio St.3d 608, 610 (1996).

{¶ 49} Because we have reversed the trial court's decision on the merits as it relates to the peninsula, 1643 is not entitled to a permanent injunction ordering homeowners to remove structures from the peninsula.

{¶ 50} Regarding the beach, there was no evidence presented at the injunction hearing about the use of the beach. Without some evidence relating to the beach, the trial court could not have properly determined that 1643 was entitled to a permanent injunction to prevent homeowners from using the beach. Thus, we find that the trial court abused its discretion by granting an injunction related to the beach.

{¶ 51} Homeowners' sixth assignment of error is well-taken.

III. Conclusion

{¶ 52} Based on the foregoing, the March 4, 2024, January 31, 2025, and August 25, 2025 judgments of the Erie County Court of Common Pleas are affirmed in part and reversed in part. The trial court's decision granting summary judgment to 1643 is modified to eliminate any award of property on the Nantucket Drive peninsula. 1643 shall obtain a new property description within 90 days that includes only the beach property to effectuate this decision. The trial court's ejectment decision as it relates to

the peninsula and injunction decision are vacated. The stay of execution granted by this court on April 10, 2026, is terminated. The parties are ordered to divide the costs of this appeal equally under App.R. 24.

Judgment affirmed, in part,
and reversed, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Christine E. Mayle, J. _____
JUDGE

Myron C. Duhart, J. _____
JUDGE

Charles E. Sulek, J. _____
CONCUR.
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.