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BILL



ANALYSIS

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House Bill 4747 (Substitute H-1 as passed by the House)
Sponsor: Representative Holly Hughes
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 2-16-16

CONTENT

The bill would amend Chapter 58 (Limitation of Actions) of the Revised Judicature Act to revise and expand a provision pertaining to actions involving the recovery of land by a municipality. Under the bill, a municipal corporation or political subdivision of the State would not be subject to adverse possession or similar legal concepts in an action involving the recovery or possession of land.

Chapter 58 specifies various limitations on actions, including periods of limitations in which to bring an action. The general period (or statute) of limitations on actions for the recovery or possession of land (including on adverse possession claims) is 15 years.

Currently, an action brought by any municipal corporation for the recovery of the possession of a public highway, street, alley, or any other public ground is not subject to the periods of limitations. The bill provides instead that, in an action involving the recovery or the possession of land, including a public highway, street, alley, easement, or other public ground, a municipal corporation or political subdivision of the State would not be subject to any of the following:

- The periods of limitations under the Act.
- Laches.
- A claim for adverse possession, acquiescence for the statutory period, or prescriptive easement.

("Adverse possession" refers to the method by which a person can gain legal title to another's land by possessing the property exclusively and continuously for a certain length of time, in a manner that is adverse to the interests of the owner, and under circumstances that give to the owner clear notice of the possession.

"Laches" generally refers to the inequity of allowing a right to be enforced because of neglect or delay.

"Acquiescence" refers to a person's implied consent to an act.

"Prescriptive easement" refers to an easement created from an open, adverse, and continuous use over a statutory period. It also is known as "easement by prescription" or "adverse easement".)

MCL 600.5821

BACKGROUND

In 2014, in *Waisanen Family Trust v Township of Superior* (305 Mich App 719), the Michigan Court of Appeals upheld a resident's claim against a township to quiet title to publicly owned land adjacent to the resident's property.

In 1971, Kenneth Waisanen bought a lakefront parcel on the shore of Lake Superior in Chippewa County's Superior Township. The parcel is bounded to the west by a 40-foot-wide right of way platted as First Street. A 1981 addition to Waisanen's house encroached on the right-of-way by 3.25 feet, and a break wall that was already in place when Waisanen purchased the parcel encroached onto the right-of-way by about 15 feet. These encroachments were not discovered until 2008, when Superior Township commissioned a survey of the area.

The Waisanen Family Trust filed an action seeking to quiet title to the encroached-upon area on alternative theories of adverse possession and acquiescence. Superior Township counterclaimed for possession of the same portion of First Street. The trial court found in favor of Waisanen on both theories, and Superior Township appealed. The Court of Appeals upheld the trial court's findings.

First, the Court of Appeals examined whether Section 5821(2) of the Revised Judicature Act barred a party's claim where the defendant municipality has counterclaimed for possession of the property. (That section specifies that an action brought by any municipal corporation for the recovery of the possession of public ground is not subject to the periods of limitations.) In considering that question, the Court reviewed prior decisions, including *Mason v City of Menominee*, 282 Mich App 525 (2009), in which it had considered a municipal defendant's appeal from an order quieting title to a disputed parcel in favor of the plaintiffs based on acquiescence. The *Waisanen* Court cited *Mason*, in holding that Section 5821(2) "did not bar an acquiescence claim because the action had been filed by the party seeking possession and had not been 'brought by' the municipality". It also found that "the holding in *Mason* applies equally to an adverse possession claim as to a claim for acquiescence".

Next, the Court examined the adverse possession and acquiescence claims. An adverse possession claim requires that the possession of the disputed land be actual, visible, open, notorious, exclusive, continuous, and uninterrupted for at least 15 years. Use of the property must be "hostile" (used without permission and inconsistent with the true property owner's rights). The Court upheld the trial court's ruling that the elements of adverse possession were established.

For a claim to quiet title by acquiescence for the statutory period (i.e., 15 years), the trial court noted that Superior Township never complained to anyone in the Waisanen family that it had encroached on the public right-of-way. The Court of Appeals concluded that "both plaintiff and defendant believed at least prior to 2008 that the break wall ran along the western border of the property, and that the addition to the house built in 1981 was entirely inside the property boundaries".

The Court ruled that the elements of adverse possession were established and, given Superior Township's active and passive acquiescence to Waisanen's possession of the property for a period longer than 15 years, "the trial court did not err by granting plaintiff's motion to quiet title under the alternate theory of acquiescence".

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would likely have a minimal but positive impact on local government by increasing the protections for municipalities against claims of adverse possession. The bill would have no fiscal impact on State government.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.