

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0610**

In the Matter of the Petition of:

Herman M. Bacchus and Chandra D. Bacchus
for an Easement by Necessity,
Certificate No. 133675 - Hilden, Certificate No. 86334 - Bacchus.

**Filed March 6, 2023
Affirmed
Gaïtas, Judge**

Anoka County District Court
File No. 02-CV-18-5778

James A. Reichert, James A. Reichert, LLC, Minneapolis, Minnesota (for appellants
Herman M. Bacchus and Chandra D. Bacchus)

Jessica Hilden, Coon Rapids, Minnesota (self-represented respondent)

Considered and decided by Segal, Chief Judge; Gaïtas, Judge; and Halbrooks,
Judge.*

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellants Herman M. Bacchus and Chandra D. Bacchus appeal the district court's grant of summary judgment in favor of respondent Jessica Hilden and the dismissal of their petition for an easement by necessity. They argue that the district court erred in its application of the law governing implied easements and in granting summary judgment

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

notwithstanding multiple factual issues. Because we discern no error in the district court's application of the law, and the undisputed evidence supports the district court's determination that the doctrine of laches bars the Bacchuses' easement claim as a matter of law, we affirm.

FACTS

The Bacchuses petitioned the district court for an easement by necessity to be memorialized on the certificate of title for tract A, a parcel of land owned by Hilden. They claimed that an easement was necessary for them to access their landlocked parcel, tract B. Hilden moved for summary judgment, and the district court granted the motion and dismissed the Bacchuses' petition. The relevant facts, presented in the light most favorable to the Bacchuses, are as follows. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (stating that, on appeal from summary judgment, the appellate court views "the evidence in the light most favorable to the party against whom summary judgment was granted").

In August 1997, the Bacchuses received permission from the City of Coon Rapids to split land they owned into two parcels, now known as tract A and tract B. Tract B is not accessible by any public or private road. It is surrounded by private, residential properties and a city lot.

About one year later, in October 1998, the Bacchuses sold tract A. Edina Realty Title, Inc., represented the Bacchuses in the sale. In connection with the sale, Edina Realty Title was to ensure that a roadway and utility easement across tract A was recorded to

preserve the Bacchuses' access to tract B. But for reasons that are not in the record, no easement was recorded on the certificate of title for tract A for the benefit of tract B.

Following the sale of tract A, the Bacchuses moved out of state. In 2002, when they attempted to sell tract B, they discovered that no easement existed.

Tract A was sold again in June 2003. Again, no easement for the benefit of tract B was recorded on the certificate of title during the sale.

In September 2016, tract A was sold for a third time—to Hilden. When Hilden purchased tract A, she had no actual or constructive knowledge of the purported easement.¹

Since the 1998 sale of tract A, tract B has been vacant and undeveloped. In October 2018, the Bacchuses petitioned the district court for an easement by necessity. Hilden's answer asserted the affirmative defenses of laches and unclean hands.

The district court determined that there was no record evidence that the purported easement on tract A was ever used as a private roadway,² that an easement was "marked or physically identified in any way," or that any utilities were installed for the benefit of tract B. But because tract B is landlocked, the district court determined that "the easement

¹ Hilden has since sold tract A to Lacey Jolene Mack. The sale took place after the district court granted summary judgment in favor of Hilden, but before the Bacchuses filed their notice of appeal. Following the sale of tract A, Hilden's appellate attorney withdrew from representing Hilden in the appeal, and Hilden did not file a responsive brief. Mack, the new owner of tract A, then moved to substitute as the respondent on appeal. We denied the substitution motion and directed Mack to formally intervene in the action in order to participate in the appeal. Mack did not formally intervene and is not a party to this appeal. The only brief submitted in the appeal was submitted by counsel for the Bacchuses. Thus, the appeal is submitted for decision under Minnesota Rule of Civil Appellate Procedure 142.03 and is "determined on the merits."

² The Bacchuses dispute this finding on appeal and allege that there is a fact issue as to whether the purported easement was ever used.

is necessary to the beneficial enjoyment of tract B.” The district court then considered Hilden’s affirmative defenses. It concluded that the equitable doctrines of laches and unclean hands applied, and that “equity favors the denial of [the Bacchuses’] claim for an easement by necessity.” The district court granted Hilden’s motion for summary judgment and dismissed the Bacchuses’ petition with prejudice. The Bacchuses now challenge the district court’s decision.

DECISION

A party is entitled to summary judgment if “there is no genuine issue as to any material fact” and the party is “entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. The Bacchuses argue that the district court erroneously granted Hilden’s motion for summary judgment because the district court misapplied the law governing implied easements and incorrectly determined there were no factual issues as to the existence of an easement or Hilden’s affirmative defenses.

Appellate courts review a district court’s decision to grant summary judgment de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010); *see also Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). “In doing so, [appellate courts] determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran*, 790 N.W.2d at 170.

In considering whether there are genuine issues of material fact, the appellate court views the evidence in the light most favorable to the nonmoving party, against whom summary judgment was granted. *STAR Ctrs., Inc.*, 644 N.W.2d at 76-77. “A material fact

is one of such a nature as will affect the result or outcome of the case depending on its resolution,” *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976), and inferences and doubts about material facts are resolved in favor of the nonmoving party, *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017). If reasonable persons can draw different conclusions based on the evidence presented, then a motion for summary judgment should not be granted. *Warren v. Dinter*, 926 N.W.2d 370, 375 (Minn. 2019).

This case involves claims for equitable relief. Both the easement sought by the Bacchuses and Hilden’s affirmative defenses are based on equitable doctrines. *See Magnuson v. Cossette*, 707 N.W.2d 738, 746 (Minn. App. 2006) (stating the doctrine of implied easements, including easements by necessity, is an equitable doctrine); *Hebert v. City of Fifty Lakes*, 784 N.W.2d 848, 856 (Minn. App. 2010) (“[L]aches is an equitable doctrine.” (quotation omitted)). The Minnesota Supreme Court has addressed the standard of review where, as here, a party has appealed from the grant of summary judgment “involving claims for equitable relief.” *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 837-38 (Minn. 2012), *superseded by statute on other grounds*, Minn. Stat. § 181.13(a) (2020), *as recognized in Hall v. Plainview*, 954 N.W.2d 254 (Minn. 2021). In such cases, “when the relevant facts are undisputed the standard of review is de novo.” *Id.* at 838. But, according to the supreme court, “a more deferential abuse of discretion standard of review might be applicable where the district court, after balancing the equities, determines not to award equitable relief.” *Id.*; *cf. Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 822 (Minn. 2016) (concluding that a deferential standard of review was not

required when the facts were undisputed and the district court decided, without weighing the equities, that as a matter of law equitable relief was not available).³

I. The district court did not err in its application of the law of easements by necessity.

The Bacchuses first argue that the district court erred as a matter of law when it concluded that there was no easement by necessity because the Bacchuses failed to show that the purported easement was continuously used before the separation of tracts A and B. We disagree with the Bacchuses' characterization of the district court's order. The district court correctly identified the applicable law and determined that the law *avored* an easement by necessity.

An easement by necessity is a type of implied easement. *Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 465 (Minn. App. 1998), *rev. denied* (Minn. June 17, 1998). To establish a claim for an easement by necessity, a petitioner must show: “(1) a separation of title; (2) the use which gives rise to the easement shall have been so long continued and apparent as to show that it was intended to be permanent; and (3) that the easement is necessary to the beneficial enjoyment of the land granted.” *Id.* (quoting *Romanchuk v. Plotkin*, 9 N.W.2d 421, 424 (Minn. 1943)). Whether

³ We note that it is an open question as to what standard of review applies when a district court, after determining the facts are undisputed *and* weighing the equities, grants summary judgment. See *Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 277 n.2 (Minn. 2010); *Melrose Gates*, 875 N.W.2d at 820-21 (declining to extend *Citizens State Bank*); see also *Nadeau v. County of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979) (“Granting equitable relief is within the sound discretion of the trial court. Only a clear abuse of that discretion will result in reversal.”). Because we conclude the doctrine of laches applied as a matter of law, we do not resolve this question today.

an easement by necessity exists is determined “at the time of severance.” *Clark v. Galaxy Apartments*, 427 N.W.2d 723, 726 (Minn. App. 1988).

The three factors—separation of title, use, and necessity—should not be given equal weight. *See Magnuson*, 707 N.W.2d at 745 (“Except for the necessity requirement, these factors are only aids in determining whether an implied easement existed.”). A district court should consider all three factors as “indicia of the parties’ intent to create an easement,” but may rely on the necessity factor alone to find the existence of an easement by necessity. *Lake George Park*, 576 N.W.2d at 465; *see also Olson v. Mullen*, 68 N.W.2d 640, 647 (Minn. 1955) (“It is not always necessary that the existence of all these essentials be present.”); *Romanchuk*, 9 N.W.2d at 426 (“[The factors] are neither ironclad nor inflexible and yield to manifestation of contrary intention.”).

Here, the district court determined that the record evidence satisfies factors one and three—separation of title and necessity. But as noted by the Bacchuses, the district court determined that the evidence does not establish the second factor—use. The district court stated, “[T]here is no evidence that [the Bacchuses] used the Purported Easement at the time of separation and there is no evidence of use that has been so long continued and apparent as to show that it was intended to be permanent.”

The Bacchuses contend that the district court improperly relied on the use factor to conclude that there was no easement by necessity. They argue that this was a misapplication of the law, which does not require a petitioner to establish all three factors.

However, we read the district court’s order differently. The district court correctly identified the three factors and placed paramount importance on the necessity factor. Then,

the district court concluded that the factors, as applied to the undisputed facts, favored an easement by necessity. The district court placed particular emphasis on the necessity for an easement to provide access to tract B, which is landlocked. But, notwithstanding the district court's determination that necessity favored an easement, the district court granted summary judgment and dismissed the Bacchuses' petition based on Hilden's affirmative defenses of laches and unclean hands. Because the district court properly applied the law to the record evidence in considering whether an easement by necessity exists, we reject the Bacchuses' argument that the district court misapplied the law of implied easements.⁴

II. The district court did not err in determining that there were no genuine issues of material fact and in granting summary judgment in favor of Hilden based on the doctrine of laches.

The Bacchuses next argue that the district court erred in granting summary judgment because “genuine issues of fact remained disputed” and the district court “errantly construed certain facts against the [Bacchuses].” They contend that the record evidence shows there are genuine issues of material fact relevant to (1) their use of the purported easement and their intent to create an easement, (2) the affirmative defense of laches, and (3) the affirmative defense of unclean hands. They also argue the district court improperly weighed evidence when it determined that their petition is barred by the doctrine of laches. We conclude that the undisputed evidence supports the district court's grant of summary

⁴ The Bacchuses also argue that the district court improperly considered whether Hilden had notice of the easement, asserting that the district court's order states that the Bacchuses' failure to use the purported easement “resulted in no notice to [Hilden].” *See Magnuson*, 707 N.W.2d at 747 (“[N]otice is not a requirement for an easement implied by necessity. Implied easements, by definition, are not recorded.” (citation omitted)). But the district court's order contains no such statement. And we see no mention of the word “notice” in the order.

judgment in favor of Hilden based on the doctrine of laches and that the factual issues alleged by the Bacchuses are not material.

“Laches is an equitable doctrine applied to ‘prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.’” *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002) (quoting *Aronovitch v. Levy*, 56 N.W.2d 570, 574 (Minn. 1953)). When deciding whether equitable relief is warranted under the doctrine of laches, the district court must determine “whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for.” *Monaghan v. Simon*, 888 N.W.2d 324, 329 (Minn. 2016) (quotations omitted).

To be unreasonable, the circumstances of the delay must be “blamable.” *Jackel v. Brower*, 668 N.W.2d 685, 690-91 (Minn. App. 2003) (quotation omitted), *rev. denied* (Minn. Nov. 25, 2003). “Mere delay does not constitute laches,” but if a person knows of a right to make a claim or could have discovered the right to make a claim with proper diligence, and fails to take legal action, the doctrine of laches may apply. *Id.* If there was unreasonable delay in bringing a claim, a court should next consider whether the delay caused prejudice. *Id.* Although evidence of prejudice is “not always essential” to the defense of laches, it is “a circumstance of importance.” *Aronovitch*, 56 N.W.2d at 574-75 (quotation omitted).

The district court determined that the Bacchuses’ delay in asserting a claim for an easement was unreasonable. It noted that the undisputed record evidence shows the Bacchuses discovered in 2002 that no easement had been recorded, but they waited until

2018—16 years later—to petition for an easement by necessity. The district court observed that, within that 16-year period, the original buyers conveyed tract A to new buyers in 2003, and tract A was again conveyed in 2016 when it was purchased by Hilden. Moreover, according to the district court, due to the Bacchuses’ delay, any claim they may have had against Edina Realty Title “is now barred by the statute of limitations.” The district court also determined that the undisputed record evidence established prejudice—an easement claim would have impacted Hilden’s decision to purchase tract A. Thus, the district court concluded, “the equitable defense of laches applies to [the Bacchuses’] claim for an easement by necessity.”

The Bacchuses identify two sets of disputed facts that they contend are relevant to the laches defense. First, they argue that there are fact questions as to why the easement was not recorded during the 1998 sale of tract A. They note that their answers to interrogatories list individuals who were involved in the sale who may have information about the sale. And they posit that this evidence, construed in the light most favorable to them, “would provide a good faith basis for the delay, and potentially defeat the laches claim.”

However, this argument is purely speculative. A party “cannot defeat a summary judgment motion with unverified and conclusory allegations or by postulating evidence that might be developed at trial.” *Funchness v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001). Furthermore, the reason why an easement was not recorded in 1998 is not material to the laches analysis. *See Zappa*, 245 N.W.2d at 259-60 (“A material fact is one of such a nature as will affect the result or outcome of the case depending on its

resolution.”). The salient fact—a fact that counsel for the Bacchuses conceded at oral argument—is that the Bacchuses learned in 2002 that the easement was not recorded. The district court’s laches determination is based on the Bacchuses’ failure to act between 2002 and 2018.

Second, the Bacchuses argue there is a genuine issue of material fact as to the reasons for their delay in petitioning for an easement. But they also admit there is no evidence in the record about the reasons for their delay. Although the movant must demonstrate that no genuine issue of material fact exists, “when the moving party makes out a prima facie case, the burden of producing facts that raise a genuine issue shifts to the opposing party.” *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988) (discussing Minn. R. Civ. P. 56). In opposing a motion for summary judgment, the nonmoving party “cannot rely upon mere general statements of fact but rather must demonstrate at the time the motion is made that specific facts are in existence which create a genuine issue for trial.” *Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986). The Bacchuses cannot rely on a mere assertion that there *may* be good reason for their delay in petitioning for an easement. And there is no record evidence explaining their delay. They have failed to demonstrate that there is any genuine issue of material fact regarding the reasonableness of their delay in seeking an easement.⁵

⁵ Rule 56.04 of the Minnesota Rules of Civil Procedure—which was rule 56.06 until a 2018 reorganization of the rule—allows a party who opposes a motion for summary judgment to request that the district court deny or continue the motion “on the ground that the non-moving party should be permitted to conduct additional discovery.” *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010) (“An affidavit filed pursuant to rule 56.06 must be specific about the evidence expected, the source of discovery necessary

The Bacchuses also contend the district court improperly weighed evidence to decide that their easement claim is barred by the doctrine of laches. We disagree. In determining that laches applies, the district court did not weigh evidence. The record evidence relevant to the doctrine of laches is undisputed. That undisputed evidence shows that the Bacchuses learned in 2002 that no easement had been recorded, they inexplicably waited 16 years to petition for an easement, tract A was conveyed multiple times during that 16-year period, tract A is a residential property, the purported easement is a 20-foot-wide private driveway that would pass through the front and back yard of tract A to tract B, and Hilden would not have paid the purchase price for tract A had she known of the easement claim. The district court then applied the law of laches to the undisputed evidence. It determined that the Bacchuses' delay in pursuing an easement was unreasonable and prejudicial, and accordingly, their easement claim is barred by laches as a matter of law. Applying de novo review, *see Caldas*, 820 N.W.2d at 838, we discern no error in the district court's decision.

Because we have determined that the district court did not err in finding that the doctrine of laches bars the Bacchuses' claim for an easement by necessity, we do not address the Bacchuses' argument that there are genuine issues of material fact concerning their petition for an easement by necessity. We also do not reach their challenge to the district court's determination that their petition is barred by the doctrine of unclean hands.

Affirmed.

to obtain the evidence, and the reasons for the failure to complete discovery to date.” (quotation omitted)). The Bacchuses did not file such a motion.