

STATE OF MICHIGAN
COURT OF APPEALS

LARRY TUCKERMAN and
CHERYL TUCKERMAN,

UNPUBLISHED
July 15, 1997

Plaintiffs-Appellees,

v

No. 187898
Lenawee Circuit Court
LC No. 94-006324

MICHAEL MATTOX and GLORIA MATTOX,

Defendants-Appellants,

and

BLISSFIELD STATE BANK,

Defendant-Appellee.

Before: Holbrook, Jr., P.J., and White and A.T. Davis, Jr.*, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court judgment, as amended, which held that plaintiffs had established title by adverse possession to a disputed strip of land located between adjacent lots owned by plaintiffs and defendants. We affirm and remand.

Defendants first argue that the trial court erred as a matter of law in finding that plaintiffs had established title to the disputed area by both adverse possession and acquiescence because those theories are incompatible. We find it unnecessary to address the merits of this issue because it is moot. After issuing its initial opinion in this matter, the trial court issued an addendum to its opinion clarifying that the judgment was based on adverse possession, rather than acquiescence. Accordingly, the issue whether the doctrines of adverse possession and acquiescence are incompatible as a matter of law has been rendered moot because of the lower court's clarifying addendum.

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

Defendants next argue that the trial court applied an inappropriate standard of proof to plaintiffs' claim of adverse possession. Adverse possession must be established by clear and cogent evidence. *Martin v Arndt*, 356 Mich 128; 95 NW2d 858 (1959); *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993). Here, the trial court specifically found that its decision was supported by "clear" or "clear and unequivocal" evidence. Therefore, it applied the correct standard of proof in resolving plaintiffs' adverse possession claim.

Defendants next argue that the trial court clearly erred in finding in favor of plaintiffs on their adverse possession claim and in finding that plaintiffs could tack their predecessor's period of possession to establish the statutory period of fifteen years. We disagree. Adverse possession requires actual, visible, open, notorious, exclusive, and hostile possession of property under a claim of right for a continuous and uninterrupted period of fifteen years. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). See also MCL 600.5801(4); MSA 27A.5801(4). While a party cannot establish adverse possession if he intends to hold only to the actual property line but fails to do so, a party can establish adverse possession if he intends to hold to a specific, recognizable boundary. *DeGroot v Barber*, 198 Mich App 48, 52-53; 497 NW2d 530 (1993); *Connelly v Buckingham*, 136 Mich App 462; 357 NW2d 70 (1984). The adverse possession claim is not defeated by a claimant's mistaken belief that he was respecting the line believed to be the boundary. *Id.* Adverse possession claims, being equitable in nature, are reviewed de novo, although the underlying factual findings are reviewed for clear error. *Gorte v Dep't of Transp.*, 202 Mich App 161, 170-171; 507 NW2d 797 (1993).

In this case, the testimony of the witnesses at trial was contradictory. While there was evidence that plaintiffs had established their claim to the disputed strip through adverse possession, there also was evidence that they did not. The trial court found that plaintiffs and their predecessor in interest (Bishop) continuously and without interruption occupied the disputed area openly, notoriously, and exclusively under a claim of right between 1969 and 1994. Further, the trial court found that Bishop and plaintiffs maintained this possession because they believed that the property line placed the disputed area within their holdings and that this property line was indicated by the former location of an ancient woven fence which had been at least partially removed early in Bishop's period of possession. The circuit court heard the proofs, observed the witnesses, and ruled in favor of plaintiffs, finding their predecessor Mr. Bishop to be a particularly credible witness. Deferring, as we must, to the superior ability of the trial court to assess the credibility of the witnesses who appear before it, MCR 2.613(C), we affirm the trial court's finding that plaintiffs had established title to the disputed strip through adverse possession. See *Rozmarek v Plamondon*, 419 Mich 287, 296; 351 NW2d 558 (1984).

Moreover, contrary to defendants' argument, Bishop and plaintiffs were in privity for purposes of tacking, where there was an oral reference to the disputed land at the time of conveyance between Bishop and plaintiffs. See *Siegel v Renkiewicz' Estate*, 373 Mich 421; 129 NW2d 876 (1964); *Connelly, supra* at 474.

Nonetheless, because plaintiffs did not claim adverse possession of any land north of the corral fence, and it appears that a portion of the parcel transferred to plaintiffs included land north of the fence,

we remand to the trial court for an explanation of the reasons for its June 5, 1995,

opinion addendum. In the alternative, the trial court may redraw the line so as to allow defendants to retain title to the land north of the fence.

Affirmed but remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Alton T. Davis, Jr.