

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF HELEN H. CAMBLIN,
Deceased.

CHARLES F. RHODES,

Plaintiff-Appellee,

v

DONALD L. HIGGINS and PATRICIA A.
HIGGINS,

Defendants-Appellants,

and

RODNEY D. PARKER, SHERYL E. PARKER
CARY KISTNER, and CAROL GERRITSEN,
Personal Representative of the Estate of Helen H.
Camblin, Deceased,

Defendants.

Before: Markey, P.J., and M.J. Kelly and Whitbeck, JJ.

PER CURIAM.

Following a bench trial, the trial court held that plaintiff acquired title by adverse possession to an area of real property encompassing a portion of the right-of-way owned by the two defendants who now appeal to this Court as of right. The remaining four defendants named by plaintiff in this quiet title action defaulted by failing to answer the complaint. We affirm the trial court's judgment for plaintiff.

UNPUBLISHED

March 3, 1998

No. 199332

St. Joseph Circuit

LC No. 94-000674-CH

According to the legal description of plaintiff's property, defendants' right-of-way lies several feet south of the southern borderline of plaintiff's property. Located approximately twenty feet within the right-of-way is a gravel road that provides plaintiff with access to his landlocked property. Plaintiff successfully argued below that he had gained title by adverse possession to the land located between the southern borderline of his property and the northern borderline of the gravel road, an area that is approximately 3,000 square feet. Thus, in the trial court, plaintiff not only gained title to a strip of land that apparently had belonged to the defaulting parties in this case who were heirs to one of plaintiff's predecessors-in-interest, plaintiff also gained title to a portion of defendants' right-of-way.

Defendants first assert that remand is necessary because the lower court forgot to rule on their counterclaim for injunctive relief seeking to prohibit plaintiff from storing items or parking vehicles within defendant's right-of-way. Initially, we note that defendants failed to object when the trial court entered judgment for plaintiff. MCR 2.602(B). Defendants also failed to move for amendment of the judgment, MCR 2.611, or relief from the judgment, MCR 2.612. Therefore, this issue was not raised before the trial court and is not preserved for review on appeal. See, e.g., *Herring v Golden State Mutual Life Ins Co*, 114 Mich App 148, 157; 318 NW2d 641 (1982).

Nonetheless, even if we accepted defendants' assertion and assumed that the trial court forgot to rule on their counterclaim, remand for the purpose of permitting the trial court to rule on this issue would be unnecessary because any further explanation by the trial court would not facilitate appellate review. In deciding that plaintiff gained title to the disputed property by adverse possession, the trial court implicitly found that defendants were not entitled to the injunctive relief they requested. If defendants no longer own the right-of-way, they plainly have no basis to bar plaintiff from using it. Although the trial court's conclusion about defendants' counterclaim should have been explicitly stated, the fact that the trial court found defendants' counterclaim to be without merit is inescapable in light of its judgment for plaintiff. Moreover, we note that the trial court was aware of the issues in this case, as evidenced by its well-reasoned and lengthy opinion.

Next, defendants argue that there was insufficient evidence of adverse possession to support the trial court's judgment for plaintiff. Actions to quiet title are equitable in nature, and a court acting in equity "looks at the whole situation and grants or withholds relief as good conscience dictates." *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992), quoting *Hunter v Slater*, 331 Mich 1, 7; 49 NW2d 33 (1951). This Court reviews the trial court's judgment de novo, but reviews the trial court's factual findings for clear error. *Morren, supra*. The sufficiency of the findings must be reviewed in the context of the specific legal and factual issues raised by the parties and the evidence. See *People v Rushlow*, 179 Mich App 172, 177; 445 NW2d 222 (1989), *aff'd* on other grounds, 437 Mich 149; 468 NW2d 487 (1991).

As the party seeking title, plaintiff bore the burden of proving by clear and cogent evidence that he satisfied the elements of adverse possession; *McQueen v Black*, 168 Mich App 641, 645, n 2; 425 NW2d 203 (1988); see also *Thomas v Rex A Wilcox Trust*, 185 Mich App 733, 736; 463 NW2d 190 (1990). The elements of adverse possession are well established: a claim of adverse possession exists where possession is actual, visible, open, notorious, exclusive, continuous, and uninterrupted for fifteen years after the cause of action accrued. *Thomas, supra*. In actions tried without a jury, the trial

court must find the facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1), MCR 6.403, *Fletcher v Fletcher*, 447 Mich 871, 883 (Brickley, J., joined by Cavanagh, C.J. and Boyle, J.), 890 (Mallett, J., concurring in Justice Brickley's opinion except with regard to the standard of review); 526 NW2d 889 (1994).

Here, the trial court committed no clear error in its findings of fact and properly entered judgment for plaintiff because plaintiff satisfied the elements of adverse possession. First, the trial court did not commit clear error in finding that plaintiff's possession of the disputed portion of land was actual and visible. Testimony at trial consistently revealed that acts of possession included parking vehicles on the disputed portion of the lot, maintaining that portion of the grass, and placing burn barrels, a bus stop, and a mailbox within that area. Second, the trial court did not commit clear error in finding that plaintiff's possession of the disputed portion of land was open and notorious because plaintiff testified that his actions were taken with the knowledge of the previous owner of record but without permission or interference. Third, the trial court did not commit clear error in finding that plaintiff's possession of the disputed portion of land was exclusive. Indeed, testimony revealed that plaintiff's use of the disputed area was possible because the gravel road was only infrequently traveled by others. Last, the trial court did not commit clear error in finding that plaintiff's possession of the disputed portion of land was continuous and uninterrupted for fifteen years. Even without including the acts of possession by plaintiff's predecessor-in-interest, plaintiff's own acts of possession, delineated above, occurred from at least 1976 to 1992.

Affirmed.

/s/ Jane E. Markey

/s/ Michael J. Kelly

/s/ William C. Whitbeck