

STATE OF MICHIGAN  
COURT OF APPEALS

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MANUEL R. VALDEZ and  
FABIANA R. VALDEZ,

UNPUBLISHED  
May 1, 1998

Plaintiffs-Appellants,

v

No. 200686  
Monroe Circuit Court  
LC No. 95-003834-CH

KENNIE ROBERTSON and  
LAURIE ROBERTSON,

Defendants-Appellees.

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Before: Saad, P.J., and Wahls and Gage, JJ.

MEMORANDUM.

In this adverse possession case, plaintiffs appeal as of right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

To prove their claim of adverse possession, plaintiffs were required to show that their possession was "actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years." *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). "The doctrine of adverse possession is strictly construed. The party alleging title by adverse possession must prove the same by clear and positive proof." *Strong v Detroit & Mackinac Rwy Co*, 167 Mich App 562, 568; 423 NW2d 266 (1988). Further "[t]here is a presumption that land is possessed by the owner of record unless it is shown to be otherwise," MCL 600.5867; MSA 27A.5867; *Kipka v Fountain*, 198 Mich App 435, 440; 499 NW2d 363 (1993), and possession that is concurrent with that of the true owner is never exclusive. *Hamilton v Weber*, 339 Mich 31, 53-54; 62 NW2d 646 (1954).

The only issue presented before the trial court and on appeal is whether, as a matter of law, plaintiffs can establish the element of exclusivity, even though defendants and their predecessor occasionally used the disputed property. Manuel R. Valdez testified that plaintiffs never excluded defendants or defendants' predecessor or attempted to exclude them. He further testified that defendants used the disputed property "occasionally," defendants' predecessor used the disputed

property “once in a while,” and defendants’ predecessor used the property continuously over the years. Hence, plaintiffs’ possession of the disputed property was not exclusive of defendants or defendants’ predecessor. See *Bachus*, *supra* 107 Mich App 747. Because plaintiffs failed to prove by clear and positive proof the element of exclusivity, their adverse possession claim must fail. Therefore, defendants were entitled to judgment as a matter of law and the trial court properly granted their motion for summary disposition.

Affirmed.

/s/ Henry William Saad

/s/ Myron H. Wahls

/s/ Hilda R. Gage