STATE OF MICHIGAN

COURT OF APPEALS

ANGELO PASQUALONE and ANN K. PASQUALONE,

Plaintiff-Appellees,

v

LOWELL G. WERTH and GARNET L. WERTH,

Defendant-Appellants.

UNPUBLISHED
January 22, 1999

No. 204989
Alcona Circuit Court
LC No. 95-009218-CH

Before: Hood, P.J., and Neff and Markey, JJ.

PER CURIAM.

In this adverse possession and acquiescence case, defendants appeal by right the judgment awarding plaintiffs a certain portion of real property formerly titled to defendants. We affirm.

Defendants first allege that the trial court erred in finding that plaintiffs adversely possessed a significant portion of the disputed property. Actions to quiet title are equitable in nature and are therefore reviewed de novo by this Court, but the circuit court's factual findings are not reversed unless they are clearly erroneous. *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993).

A party claiming title by adverse possession must present clear and cogent evidence that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the applicable statutory period, which is fifteen years. *Id.* at 170; *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993); MCL 600.5801, MSA 27A.5801. To prove the requisite possession, it is enough that "the acts of ownership are of such a character as to openly and publicly indicate an assumed control or use such as are consistent with the character of the premises in question." *Denison v Deam*, 8 Mich App 439, 443-444; 154 NW2d 587 (1967), citing *Monroe v Rawlings*, 331 Mich 49, 52; 49 NW2d 55 (1951), citing *Murray v Hudson*, 65 Mich 670, 673; 32 NW 889 (1887).

With regard to the portion of the property awarded to plaintiffs, Angelo Pasqualone testified that he seeded and mowed the lawn area and hauled gravel onto the property in constructing a drive and "turnaround." He further testified that he and his family regularly used the gravel drive for parking

as well as for a "turnaround." All this activity commenced before November 1980 and continued through the required fifteen year period. These activities openly demonstrated plaintiffs' use and control of the property. See *Denison, supra*. Therefore, the trial court did not clearly err in finding that plaintiffs' possession was actual, visible, open, notorious, exclusive, continuous and uninterrupted for the statutory period.

Defendants next argue that the trial court erred in finding that plaintiffs' possession of the awarded property was hostile. They maintain that plaintiffs could not have hostilely possessed land that plaintiffs believed to be their own. We believe that the trial court did not err.

Adverse possession also requires possession that is hostile to the title of the record owner. *Kipka, supra* at 439. As this Court observed in *Gorte, supra* at 170-171:

> Where a landowner possesses the land of an adjacent owner with the intent to hold to the true line, the possession is not hostile and cannot establish adverse possession. *Connelly v Buckingham*, 136 Mich App 462, 468; 357 NW2d 70 (1984). By contrast, where a person possesses the land of another intending to hold to a particular recognizable boundary regardless of the true boundary line, the possession is hostile and adverse possession may be established. *Id.* Simply being mistaken with regard to the true boundary line, however, does not defeat a claim of adverse possession. *DeGroot v Barber*, 198 Mich App 48, 53; 497 NW2d 530 (1993). As noted by this Court in *DeGroot*, it would be unjust to limit the application of the doctrine of adverse possession to those adverse possessors who knew the possession was wrong, while excluding those whose possession was by mistake, thereby rewarding the thief while punishing the person who was merely mistaken. *Id.*

In *Gorte, supra*, this Court concluded that the plaintiffs intended to possess property to particular boundaries that they believed represented their true property lines; they later discovered that they were mistaken in believing that the twenty acres they purchased included horse paddocks, outbuilding, a horse-training track and a portion of a lake that belonged to the defendant. We found that the plaintiffs established their hostile possession of the acreage even though they mistakenly believed that a recognizable boundary represented the true boundary line. *Id.*

In *DeGroot v Barber*, 198 Mich App 48, 49-51; 497 NW2d 530 (1993), we observed that literal interpretations of the *Connelly* principles cited above could result in conflicting outcomes where the plaintiffs believed, based on a realtor's erroneous representations, that their property extended south to a visible, recognizable boundary, i.e., a road. The *DeGroot* Court saw the difference between (1) intending to hold to the true line, which is not hostile, and (2) intending to hold to a recognizable boundary, regardless of the true line, which is hostile as being the same difference between (1) erroneously placing a monument, intending to place it on the true line but failing to do so, and (2) erroneously believing a preexisting monument represents the boundary and holding to that monument. *Id.* at 52, n 1. Because the landowners intended to claim title to the property ending at the roadway but that "boundary" was subsequently proved not to be the true boundary, this Court found that the landowners fell under category (2) and thereby established their hostile possession of the property. *Id.*

at 53. Cf. *Warner v Noble,* 286 Mich 654, 661-662; 282 NW2d 855 (1938) (no hostile possession was found where the parties erred in sighting from one survey stake to another when establishing their boundary lines and each claimed title to that "true" boundary line).

In the instant case, when plaintiffs purchased their lakefront property, they noticed four preexisting white markers: two at the southeast and southwest corners of the property that fronted the lakeshore, and two at what they believed were the northeast and northwest corners of their rectangular property. Angelo Pasqualone testified that he intended to possess land bounded on the north corners by those white stakes or markers. Unlike *Warner, supra,* there is no evidence cited by either party that plaintiffs themselves placed the white markers on the property. Rather, plaintiffs mistakenly believed that those stakes represented the true boundary line. When a party intends to hold to *the* boundary, such as a recognizable, preexisting monument, hostility can be shown even where the party only intends to hold to the true line. Accord *Gorte, supra* at 171; *DeGroot, supra* at 53. Thus, plaintiffs' erroneous belief that a preexisting monument represented the boundary and their holding to that monument is not fatal to their hostility claim. *DeGroot, supra* at 52, n 1.

In light of the evidence that plaintiffs used the disputed property up to the preexisting white markers by putting down gravel, creating a turnaround for vehicles, parking cars on it, seeding the grass, and maintaining a lawn for more than fifteen years, we believe that the trial court did not err in finding that plaintiffs established their hostile possession of the property.

We affirm.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Jane E. Markey