STATE OF MICHIGAN

COURT OF APPEALS

MELVYN C. KEESLER and SHIRLEY E. KEESLER,

Plaintiffs/Counterdefendants-Appellants,

v

IRWIN HARWOOD and AGNES HARWOOD,

Defendants/Counterplaintiffs-Appellees.

UNPUBLISHED
June 25, 1999

No. 206012
Ionia Circuit Court
LC No. 97-018016 CH

Before: McDonald, P.J., and Sawyer and Collins, JJ.

PER CURIAM.

Plaintiffs appeal by right from a judgment quieting title to a disputed strip of land in favor of defendants. The court concluded that defendants had established title by adverse possession. We affirm.

Plaintiffs argue the trial court erred in quieting title to a strip of land in favor of defendants. Plaintiffs contend they provided evidence that they had legal title to the property and, in the alternative, that they had acquired title to the property based on adverse possession. The disputed strip of land is approximately seventeen feet wide and located between plaintiffs' and defendants' lakefront properties. We review actions to quiet title de novo, but still give deference to the trial court's factual findings, which are reviewed under the clearly erroneous standard. *Grand Rapids v Green*, 187 Mich App 131, 135; 466 NW2d 388 (1991).

Plaintiffs' first argument, that they had legal title to the property, is without merit. In Michigan, a person is put on constructive notice of those matters within his or her chain of title. See *Meacham v Blaess*, 141 Mich 258; 104 NW 579 (1905). The chain of title reveals that plaintiffs' parcel has always been conveyed by deeds setting forth a description that included the northern eighty-nine feet along the eastern boundary line, thereby excluding the disputed seventeen-foot portion. Defendants' chain of title shows that although their parcel once included the disputed portion, it was thereafter excepted from the conveyances. According to the specific language of the deeds, plaintiffs only received legal title to the

northern parcel which was eighty-nine feet along the eastern boundary, while defendants only received legal title to the southern eighty-five feet of property. Neither party had legal title to the disputed seventeen foot strip because it was not included in either party's deed. While a court may look beyond the four corners of a deed for clarification if the deed is ambiguous, *Rix v Smith*, 145 Mich 203; 108 NW 691 (1906), the deeds in question here are not ambiguous, and thus were not subject to interpretation by the court.

Plaintiffs' alternative argument also fails. To establish adverse possession the claimant must show by clear and cogent proof that possession is 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), citing *Thomas v Rex A Wilcox Trust*, 185 Mich App 733, 736-737; 463 NW2d 190 (1990). The true owner must have actual knowledge of the adverse possession or the possession must be so notorious as to raise the presumption to the world that the possessor claims ownership. *Burns v Foster*, 348 Mich 8, 15; 81 NW2d 386 (1957); see also *Rozmarek v Plamondon*, 419 Mich 287, 293; 351 NW2d 558 (1984); *Ennis v Stanley*, 346 Mich 296, 301; 78 NW2d 114 (1956). Whether adverse possession has been established generally depends on the facts of each case and, to a large extent, upon the character of the premises. *Whitehall Leather Co v Capek*, 4 Mich App 52, 55; 143 NW2d 779 (1966).

We conclude that plaintiffs failed to establish a claim of adverse possession because they did not satisfy the fifteen year time requirement pursuant to MCL 600.5801; MSA 27A.5801. Plaintiffs had only had possession of their property since 1992 pursuant to a land contract. Accordingly, plaintiffs would have had to "tack on" prior periods of possession. "An adverse claimant is permitted to add his predecessors' periods of possession if he can establish privity of estate either by mention of the disputed lands in instruments of conveyance or orally at the time of transfer." *Caywood v Dep't of Natural Resources*, 71 Mich App 322, 331; 248 NW2d 253 (1976), citing *Siegel v Renkiewicz Estate*, 373 Mich 421; 129 NW2d 876 (1964). Plaintiffs' deed does not mention the disputed portion of land. Furthermore, no evidence was introduced to show that plaintiffs' predecessor in interest indicated to plaintiffs that the lot included the disputed portion. In addition, plaintiffs testified that their predecessor had not shown them where the supposed lot line was, and it was not apparent from the record that their predecessor orally referred to the disputed portion as being included in the parcel. Thus, plaintiffs cannot tack on this prior period of possession. *Siegel, supra* at 425-426; *Connelly v Buckingham*, 136 Mich App 462, 473; 357 NW2d 70 (1984). Since plaintiffs failed to satisfy this required element of an adverse possession claim, it is not necessary for this Court to address whether plaintiffs satisfied any of the remaining elements.

Plaintiffs also argue that the trial court erred in finding that defendants did adversely possess the disputed parcel. Testimony revealed that part of a cottage owned by plaintiffs' predecessor in interest lay on the disputed portion along with a well and septic tank. Other testimony indicated that plaintiffs' predecessors may have had a dock and fire pit on the disputed property that they used on occasion. There was also testimony that plaintiffs' predecessors used and cared for the disputed portion when they were there during the summer. However, the trial court relied on the testimony of Marcia Slater,

defendants' next-door neighbor, who testified that it had been her understanding that the property line between plaintiffs' and defendants' properties was marked by a clothesline, by which she apparently meant that the disputed portion was part of defendants' property. Slater remembered the day that the addition was attached to the cottage and that there had been some concern that the addition would be on the property of defendants' predecessor, but she testified that everyone agreed to this placement. According to Slater, she had not seen anyone taking care of the disputed property other than defendants in years, and she did not think anyone had stayed regularly on plaintiffs' property in the last twenty years other than occasional renters. Moreover, Slater testified that any dock had always been located farther north on plaintiffs' property and not on the disputed portion.

We note that defendants' alleged possession can be construed as hostile because they were possessing the land of another up to a recognizable boundary. See *Gorte v Dep't of Transportation*, 202 Mich App 161, 170; 507 NW2d 797 (1993). There was testimony that defendants had been mowing, raking and burning leaves on the disputed portion since the late 1960s. To support a claim of adverse possession, the "acts of possession must be open and of a hostile character, but it is sufficient if the acts of ownership are of such character as to indicate openly and publicly an assumed control or use such as is consistent with the character of the premises in question." *Rose, supra* at 175, citing *Monroe v Rawlings*, 331 Mich 49, 52; 49 NW2d 55 (1951); *Denison v Deam*, 8 Mich App 439, 443; 154 NW2d 587 (1967). Defendants' acts of regularly maintaining the area as a lawn openly indicated an assumption of control and was consistent with the character of the premises as a residence. Thus, defendants' behavior was "actual, visible, open, and notorious." Furthermore, defendants satisfied the requirement that possession be for the statutory period of fifteen years since they had lived year-round on the premises since 1966. Regarding the "hostile" and "exclusive" elements, defendants' regular maintenance of the property constituted "use inconsistent with the right of the owner [i.e., the grantor who conveyed the defendants' parcel without including the disputed strip];" this was done without permission and would have "entitle[d] the owner to a cause of action against the intruder." *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976).

In addition, a claimant attempting to establish adverse possession must act under a claim of right, but only as is demonstrated by the individual's overt activities. The claimant need not believe in his or her title nor really have any title. *Howard v Village of Berrien Springs*, 311 Mich 567, 569; 19 NW2d 101 (1945). The claimant must only intend to take title. See *Smith v Fenley*, 240 Mich 439, 441-442; 215 NW2d 353 (1927). The facts indicate that defendants were aware, or should have been aware from their chain of title, that their predecessor interest could only have conveyed an eighty-five foot parcel to them. Thus, defendants presumably knew that they did not have legal title to the full 102 feet that they now claim. However, it appears that defendants were trying to take title to the disputed portion by failing to correct their deed at the time they purchased the property, by failing to correct the legal description used for tax purposes, and by continuously maintaining the disputed portion. Accordingly, defendants were acting under a claim of right. Finally, we note that although the payment of taxes is not conclusive, it is an important element in determining title by adverse possession. *Rozmarek, supra* at 293, citing *Bachus v West Traverse Twp*, 107 Mich App 743; 310 NW2d 1 (1981); *Burns, supra* at 15; *Monroe, supra* at 51.

Based on the evidence, we cannot conclude that the trial court clearly erred in finding that defendants established the elements of adverse possession, nor are we left with a definite and firm conviction that a mistake has been made. Accordingly, we find the trial court did not err in quieting title in favor of defendants based on adverse possession.

Finally, plaintiffs argue, also in the alternative, that they established a boundary by acquiescence. However, since plaintiffs failed to raise this issue below, it is not preserved for this Court's review, and we decline to address it. *Alford v Pollution Control Industries*, 222 Mich App 693, 699; 565 NW2d 9 (1997).

Affirmed.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Jeffrey G. Collins